

Supreme Court of the United States

OCTOBER TERM, 1918

93318

No.

to

38

DEFENDANTS IN ERROR

PLAINTIFFS IN ERROR

ERIE RAILROAD COMPANY

(Cases 1 and 2)

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
CITY OF PATERSON, AND BOARD OF FINANCE
OF SAID CITY.

PUBLIC SERVICE RAILWAY COMPANY

vs.

SAME

PASSAIC WATER COMPANY

vs.

SAME

WESTERN UNION TELEGRAPH COMPANY

vs.

SAME

D. FULLERTON & COMPANY

vs.

SAME

JACOB MEYER, et al., PARTNERS, &c.

vs.

SAME

MORRIS & COMPANY

vs.

SAME

In Error to the Court of Errors and Appeals of the
State of New Jersey.

GENERAL INDEX.

Filed ... APR 23 1918

(Number)

COLLINS & CORBIN,

*Attorneys of Erie Railroad Company and Western
Union Telegraph Company.*

FRANK BERGEN,

Attorney of Public Service Railway Company.

HUMPHREYS & SUMNER,

Attorneys of Passaic Water Company.

HUDSON & JOELSON,

Attorneys of D. Fullerton & Co.

WILLIAM B. GOURLEY,

*Attorney of Jacob Meyer, et al., Partners, &c., and
Morris & Co.*

L. EDWARD HERRMANN,

Attorney of Board of Public Utility Commissioners.

FRANK H. SOMMER,

Of Counsel.

FRANCIS SCOTT,

*Attorney of City of Paterson and Board of Finance
of said City.*

WILLIAM L. LEWIS,

*Attorney of Paterson & Hudson River R. R. Co.
and Paterson & Ramapo R. R. Co.*



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FILED
OCT 4 1920

JAMES D. WATKINS,
Clerk

Supreme Court of the United States

OCTOBER TERM, 1920.

Nos. 33 and 34.

ERIE RAILROAD COMPANY,

Plaintiff in Error,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE of said City,

Defendants in Error.

Case No. 1.

(*Re Order,*
April 20, 1915.)

ERIE RAILROAD COMPANY,

Plaintiff in Error,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE of said City,

Defendants in Error.

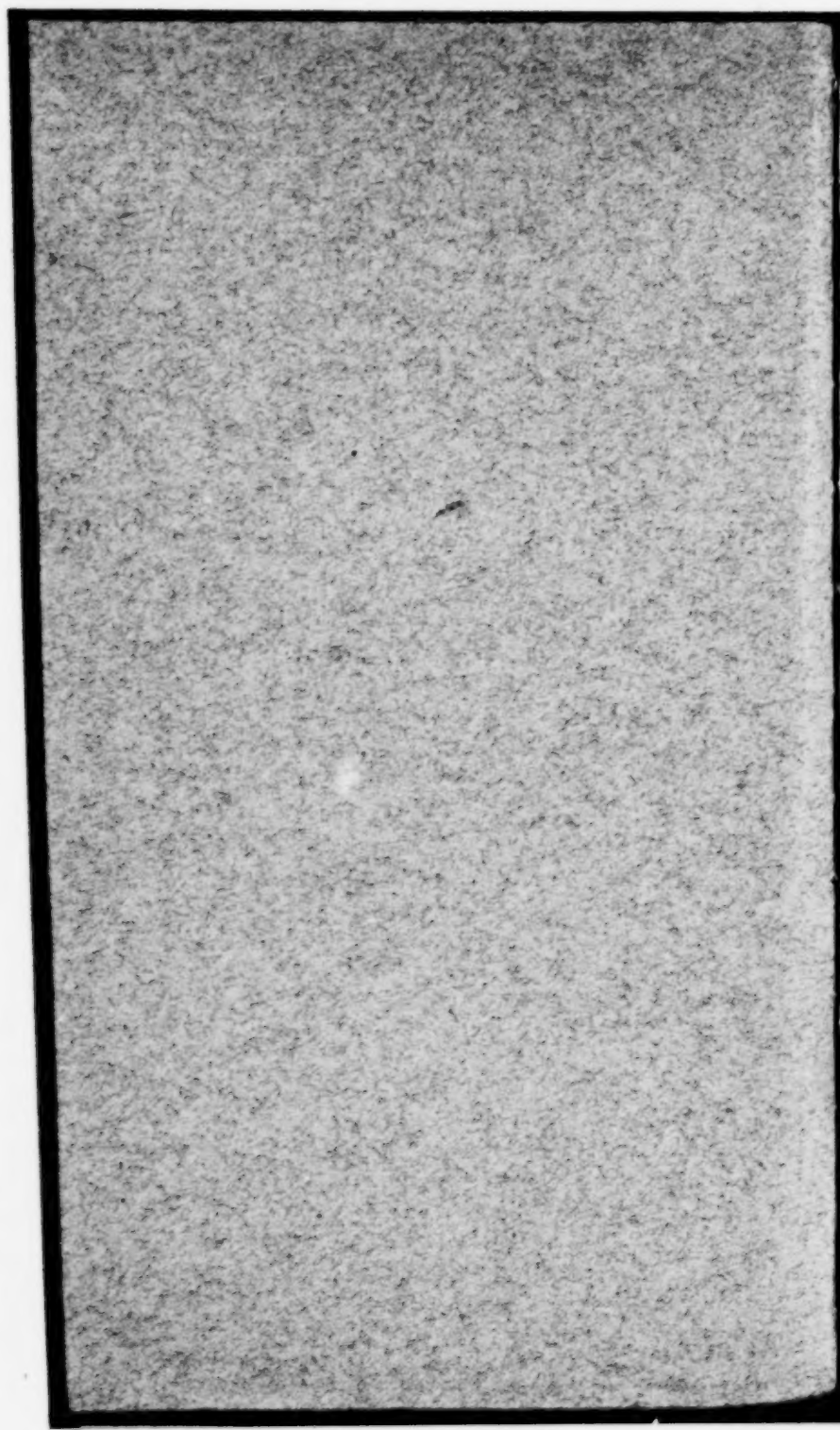
Case No. 2.

(*Re Order,*
July 9, 1915.)

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

Brief in Behalf of Plaintiff in Error.

GILBERT COLLINS,
GEORGE S. HOBART,
GEORGE F. BROWNELL,
CHARLES E. HUGHES,
Counsel for Plaintiff in Error.



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Supreme Court of the United States

OCTOBER TERM, 1920.

ERIE RAILROAD COMPANY,
Plaintiff in Error,

vs.

BOARD OF PUBLIC UTILITY COMMISSION-
ERS, CITY OF PATERSON and BOARD
OF FINANCE of said City,
Defendants in Error.

Case No. 1.

(*Re Order,*
April 20, 1915.)

ERIE RAILROAD COMPANY,
Plaintiff in Error,

vs.

BOARD OF PUBLIC UTILITY COMMISSION-
ERS, CITY OF PATERSON and BOARD
OF FINANCE of said City,
Defendants in Error.

Case No. 2.

(*Re Order,*
July 9, 1915.)

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

BRIEF IN BEHALF OF PLAINTIFF IN ERROR.

(1.)

STATEMENT OF THE CASE.

There are two writs of error of the above title, and for convenience they have been respectively designated in the record as case No. 1 and case No. 2; the first writ was sued out to review a judgment of the Court of Errors and Appeals of the state of New Jersey affirming a judg-

ment of the Supreme Court of said state which had sustained an order of the Board of Public Utility Commissioners of said state, dated April 20, 1915, directing the plaintiff in error to elevate certain main line tracks and side tracks used by it in the city of Paterson, New Jersey, for the purpose of eliminating fifteen highway crossings at grade in said city. The Supreme Court of the state of New Jersey allowed a writ of certiorari on June 16, 1915, for the purpose of reviewing said order, and, after hearing, sustained the same. For the opinion see 89 N. J. L. 57, 98 Atl. 13. An appeal was then taken by the railroad company to the Court of Errors and Appeals of the state of New Jersey. The latter court affirmed the judgment of the said Supreme Court, without further opinion, the vote in favor of said affirmance being 7 to 5 (see 90 N. J. L. 672, 103 Atl. 1052).

The second writ of error, designated as case No. 2, was sued out to review a judgment of the Court of Errors and Appeals of the state of New Jersey affirming a judgment of the Supreme Court of said state, which sustained an order of said Board of Public Utility Commissioners, dated July 9, 1915, whereby said board had denied the petition of the plaintiff in error for a rehearing of the first mentioned order of April 20, 1915. The denial of said petition for rehearing was likewise brought before the Supreme Court of the state of New Jersey for review, the writ of certiorari being allowed July 22, 1915. This writ was argued with the first-mentioned writ, reviewing the order of April 20, 1915; the Supreme Court of the state affirmed said order of July 9, 1915, and its judgment was thereafter sustained by the Court of Errors and Appeals by the same vote which had sustained the order and judgment in case No. 1. (See 90 N. J. L. 673, 103 Atl. 1052.)

The said order of the Board of Public Utility Commissioners of April 20, 1915, affected the rights and property of many other companies and individuals in the city of Paterson, and several of these brought separate proceedings by writ of certiorari to review the same in so far as it affected their several rights. The parties who obtained such separate writs were: Public Service Railway Company, Passaic Water Company, Western Union Telegraph Company, D. Fullerton & Company, Meyer & De Vogel, Fuller's Express Company and Morris & Company. The said order of the board was affirmed as to each of these several prosecutors of said writs of certiorari; and thereafter each of them took an appeal to the Court of Errors and Appeals of the state of New Jersey (except Fuller's Express Company, which had gone into bankruptcy subsequently to the decision of the New Jersey Supreme Court and prior to the hearing of the appeal in the Court of Errors and Appeals). The judgment of the New Jersey Supreme Court was affirmed in each case by the Court of Errors and Appeals, on the opinion below, the vote in said court being 7 to 5, the same as in the two cases wherein the Erie R. R. was the appellant.

We subjoin the following table showing the reports of the several cases in the New Jersey courts:

	N. J. Supreme Court	Court of Errors and Appeals
Erie R. R. (No. 1)	89 N.J.L. 57, 98 Atl.	12 90 N.J.L. 672, 103 Atl. 1052
Erie R. R. (No. 2)	89 N.J.L. 57, 98 Atl.	12 90 N.J.L. 672, 103 Atl. 1052
Public Service Ry. Co.	89 N.J.L. 34, 98 Atl.	28 90 N.J.L. 712, 103 Atl. 1054
Passaic Water Co.	90 N.J.L. 714, 103 Atl. 1053	90 N.J.L. 715, 103 Atl. 1053
West'n Union Tel. Co.	90 N.J.L. 729, 103 Atl. 1055	90 N.J.L. 729, 103 Atl. 1055
D. Fullerton & Co.	90 N.J.L. 677, 103 Atl. 1051	90 N.J.L. 678, 103 Atl. 1052
Meyer & DeVogel		
Fuller's Express Co.	90 N.J.L. 694, 103 Atl. 1053	90 N.J.L. 695, 103 Atl. 1053
Morris & Co.		

There are also two other railroad companies whose rights are affected by the orders under review. These are known as the Paterson and Hudson River Railroad

Company and the Paterson and Ramapo Railroad Company. They were organized many years ago under special charters granted by the state of New Jersey and are still the owners in fee of the larger part of the right-of-way in the city of Paterson where the tracks are ordered to be elevated. These companies were given leave to intervene in the certiorari proceedings instituted by the Erie Railroad Company and, we understand, will present a brief in support of their claim that the expense of elevation is not chargeable, in whole or in part, to them or either of them.

After the affirmance by the New Jersey Court of Errors and Appeals of the several judgments relating to parties other than the Erie Railroad Company, each of them (except Fuller's Express Co.) took a separate writ of error to this Court and each of them will present separate briefs; the present brief is limited to the writs of error sued out by the Erie Railroad Company from the said judgments sustaining the said orders of April 20, 1915, and July 9, 1915.

The records in all of the cases have for convenience been printed together. They consist of five volumes with a separate volume of the various maps that were offered as exhibits.

The fundamental question involved in whether the Court of Errors and Appeals of the state of New Jersey, in affirming the judgment of the Supreme Court of said state sustaining said orders or either of them has deprived the plaintiff in error of any of the rights secured to it by the Federal Constitution or by the Fourteenth Amendment thereto.

(2.)

SPECIFICATION OF ERRORS.

(In the following specifications we have, for the sake of convenience and brevity, combined the assignments of error in Case No. 1—re original order of April 20, 1915—and the assignments of error in Case No. 2—re order of July 9, 1915—as the latter grows out of and is incidental to the former. References are to assignments in Case No. 1, except where otherwise noted.)

The Court of Errors and Appeals of the state of New Jersey erred in holding that the orders, and each of them, made by the Board of Public Utility Commissioners of said state, dated, respectively, April 20th, 1915, and July 9th, 1915, and the statute of said state whereon the same are based did not violate the rights of the plaintiff-in-error, secured to it by the Constitution of the United States, and the several amendments thereto, and in not holding that the said orders, or one or the other of them, or that the said statute, did violate such rights or some one or more of them, in the following particulars:

THE ORDER.**I.**

Because said order imposes a burden upon the interstate traffic of the plaintiff-in-error, and interferes with, and impairs its ability to perform its duty as an interstate carrier of freight and commerce, contrary to the provisions of Article I, Section VIII, paragraph 3, of the Federal Constitution.

Assignments Nos.

- 8 (p. 2363);
- 18 (g) (p. 2369);
- 33 (p. 2380);
- 34 (pp. 2381-5);
- 8 (Case No. 2, p. 2405).

II.

Because the evidence shows, without dispute, that the plaintiff-in-error did not have sufficient funds, or any means of procuring same for the purpose of meeting the cost of complying with said order; and, under these circumstances, the action of the Board of Public Utility Commissioners, in ordering the elimination of the grade crossings in question, was unreasonable and arbitrary, and thereby the plaintiff-in-error was deprived of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Federal Constitution.

Assignments Nos.

- 4 (p. 2362);
- 16 (p. 2367);
- 32 (p. 2380);
- 4 and 5 (Case No. 2, p. 2405).

III.

Because the evidence shows that said order is unreasonable and arbitrary in that the plaintiff-in-error is not given the alternative of decreasing or eliminating the alleged danger to public safety and the alleged impairment to public travel by decreasing the number of train movements or abandoning the railroad, and therefore the plaintiff-in-error is deprived of its property without due

process of law, contrary to the provisions of the Fourteenth Amendment to the Federal Constitution.

Assignments Nos.

- 4 (p. 2362);
- 12 (p. 2365);
- 13 (p. 2366);
- 14 (p. 2366);
- 17 (p. 2368);
- 14 (Case No. 2, p. 2407).

IV.

Because said order requires the plaintiff-in-error to make certain changes in the properties of the Public Service Railway Company, and limits the proportion of the expense to be paid by said street railway company to a certain number of the crossings ordered to be eliminated, without reference to the total cost of the elimination of all the crossings, and thereby takes the property of the plaintiff-in-error for the use of said street railway company, and thereby violates the due process clause of the Fourteenth Amendment.

Assignments Nos.

- 4 (p. 2362);
- 21 (p. 2371);
- 31 (p. 2379).

V.

Because, in so far as the said order affects the side tracks indicated on the plan attached thereto, it impairs the obligation of the contracts between the plaintiff-in-error and the respective owners or lessees of said side tracks; if the order is construed to require the plaintiff-

in-error to relocate or reconstruct said side tracks (either on or off its right of way), at its own expense, then it further operates to deprive the plaintiff-in-error of its property, without due process of law, while, on the other hand, if not so construed, it deprives the owners or lessees of said side tracks of their property without due process of law.

Assignments Nos.

- 4 (p. 2363);
- 18 (e), (d), (e), (f), (pp. 2368-9);
- 20 (pp. 2370-1);
- 30 (d), (p. 2378);
- 34 (pp. 2381-5);
- 35 (p. 2385);
- 36 (p. 2387).

THE STATUTE.

VL

Because said statute, as construed by the state courts, takes the property of the plaintiff-in-error, as lessee of the Paterson & Hudson River Railroad Company, and the Paterson & Ramapo Railroad Company, for the private use and benefit of said two companies, and because the cost of complying with said order will make the investment of the plaintiff-in-error in said companies incapable of earning a fair and reasonable return, and thereby takes the property of the plaintiff-in-error without due process of law, and deprives the plaintiff-in-error of the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment to the Federal Constitution.

Assignments Nos.

- 4 (p. 2362);
- 5 (p. 2362);
- 12 (p. 2365);
- 13 (p. 2366);
- 14 (p. 2366);
- 15 (p. 2367);
- 4, 5 and 6 (Case No. 2, p. 2405).

VII.

Because said statute impairs the obligation of the contracts between the plaintiff-in-error and the Paterson & Hudson River Railroad Company, and the Paterson & Ramapo Railroad Company, contrary to the provisions of Article I, Section X, paragraph 1 of the Federal Constitution.

Assignments Nos.

- 30 (e), (p. 2378);
- 6 (Case No. 2, p. 2405).

VIII.

Because said statute impairs the obligation of the contracts between the state of New Jersey, and the plaintiff-in-error, as the successor in interest of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, by imposing a greater duty, with respect to the construction and maintenance of grade crossings, then was imposed upon said two companies, contrary to the provisions of Article I, Section X, paragraph 1 of the Federal Constitution.

Assignments Nos.

- 9 (p. 2364);
- 26 (p. 2377);
- 27 (p. 2377);
- 28 (p. 2377);
- 30 (b), (p. 2378);
- 6 (Case No. 2, p. 2405).

IX.

Because said statute impairs the obligation of the contracts between the plaintiff-in-error and the Public Service Railway Company, by altering their respective rights and duties, as fixed by said contracts, contrary to the provisions of Article I, Section X, paragraph 1 of the Federal Constitution.

Assignments Nos.

- 30 (c), (p. 2378);
- 31 (p. 2379).

X.

Because said statute is an unreasonable exercise of the police power and thereby deprives the plaintiff-in-error of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Federal Constitution.

Assignments Nos.

- 4 (p. 2362);
- 10 (p. 2364);
- 11 (p. 2365);
- 22 (pp. 2373-4);
- 23 (pp. 2375-6);
- 25 (p. 2376);
- 29 (p. 2378).

(3.)

BRIEF OF THE ARGUMENT.*Preliminary Statement.*

Before taking up in detail the various legal questions it will be helpful to state the terms of the order of the Board of Public Utility Commissioners of which the plaintiff in error complains, and the terms of the statute upon which the order is based, as well as an outline of the facts giving rise to the proceedings under review. The statute is known as Chapter 57 of the New Jersey Laws of 1913 (page 91). It is in the form of a supplement to the act providing for the creation of the Board of Public Utility Commissioners of the state of New Jersey; and, with its title, reads as follows:

A supplement to an act entitled "An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April twenty-first, one thousand nine hundred and eleven.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Whenever a public highway and a railroad cross each other at the same level and it shall appear to the board that such crossing is dangerous to public safety, or that the public travel on such highway is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad, within such time as said board may fix, to alter such crossing according to plans to be approved by said board, by substituting therefor a crossing not at the grade of such public highway either by carrying such public highway under or over such railroad, or by reconstructing such railroad under or over such public highway,

or by vacating, relocating or changing the lines, width, direction or location of such highway and the opening of a new highway in the place of the one ordered vacated.

2. The entire expense of such alterations, changes, relocation or opening, including damages to adjacent property, shall be paid by such railroad, unless a street railway uses such crossing, in which event the board may order not exceeding ten per centum of such expense directly chargeable to the crossing used by the street railway company, to be paid by the company operating such street railway and the balance to be paid by the company operating such railroad.

3. The expense of removing, relaying or relocating any municipal water or sewer pipes or other municipal pipes, conduits or subways, shall be borne by the municipality owning the same and also the expense of paving, curbing and flagging the highway constructed as the result of the change of grade.

4. Where the order of said board shall require changes in, or the removal of the property or constructions of any telegraph, telephone, gas, electric lighting, power, water, oil, pipe lines or other company or corporation, co-partnership or individual, they shall, at their own expense, move or change the grade or location of their property or constructions in conformity with the order of said board. They shall be deemed parties in interest and shall be given notice of hearing and an opportunity to be heard.

5. The board or body having charge of the finances of any municipality wherein any such crossing exists, may present to the Board of Public Utility Commissioners a petition in writing setting forth the facts upon which relief under this act is sought, or upon the petition of any railroad company whose tracks cross or are crossed at grade, or said Board of Public Utility Commissioners

may, of its own motion, proceed with respect to any such crossing; whereupon said Board of Public Utility Commissioners shall fix a time and place for a hearing before it and shall give such notice thereof as it shall deem reasonable to the municipality and corporations, co-partnership or individuals interested therein and after such hearing, shall determine or order what, if any, alterations to or changes in or connected with such crossing and public highway shall be made.

6. All the powers, supervision, regulation of, jurisdiction and control over public utilities granted by the act to which this is a supplement, are hereby vested in the Board of Public Utility Commissioners and courts of this state as may be necessary to carry the provisions of this act into effect.

7. This act shall take effect immediately.

Approved, March 12, 1913.

At the time of the enactment of this statute, the plaintiff-in-error, a railroad corporation of the state of New York, having its eastern terminal at Jersey City in the state of New Jersey, and its western terminals at Buffalo and Chicago, ran some of its freight and passenger trains over the railroad tracks of two railroad companies, organized many years ago by special charters from the state of New Jersey, and known as the Paterson and Hudson River Railroad Company, and the Paterson & Ramapo Railroad Company. This operation was under the terms of certain leases, as hereinafter set forth in detail. Part of the railroad of each lessor company is located in the city of Paterson, the total length of the main line through that city being nearly four miles. All the main line railroad tracks which are ordered to be elevated are on the property of one or the other of these two companies.

The tracks of the Paterson & Hudson River R. R. Co. enter the city of Paterson at the southerly boundary

thereof; the first street crossed by them is known as Crooks avenue, which is the boundary line between the city of Paterson and the adjoining municipality, known as the township of Acquackanonk. This street crosses the tracks at grade; but was not included in the application for elimination. After passing Crooks avenue the railroad continues in a general northerly direction for a distance of about 4500 feet to Madison avenue, which is the first street involved in this proceeding. Between Crooks avenue and Madison avenue a street known as Gould avenue is open across the tracks. This is located about 2500 feet north of Crooks avenue. It is not included in the present proceeding. There are several other streets between Crooks avenue and Madison avenue, on the easterly side of the tracks, all of which streets are open up to the railroad right of way but none of them crosses the tracks (see Key Map of city, Ex. P. 1, at page 1 of Vol. VI. Map of Lot Numbers, Ex. P. 40, at page 16 of Vol. VI; and plan attached to order under review, at page 57 of Vol. VI).

After crossing Madison avenue the tracks continue in a general northerly direction for a distance of over half a mile before reaching the next crossing—the one known as Straight street—which is the second street involved in this proceeding. Between Madison avenue and Straight street there are six streets, to wit, Elizabeth, Hemlock, Mallard, Lynn, Ivy and Leroy, on the westerly side of the tracks; and four streets, to wit, East Nineteenth, Lewis, Martin and Gray, on the easterly side of the tracks, all of which extend either to the right of way or to a street running parallel with the right of way, but none of which crosses the railroad tracks (see Key Map of city, Ex. P. 1, and Map of Lot Numbers, Ex. P. 40).

The next crossing to the north of Straight street is Clay street, about 100 feet distant; the next street, one block or about 400 feet to the north, is Taylor street, where no crossing exists at the present time (although by the order under review the plaintiff in error was directed to construct at that point an undergrade crossing); next is Cedar street, which is about 500 feet north of Taylor street. There is a grade crossing at Cedar street at the present time but under the board's order this crossing is to be closed.

Next is Oak street, which is shut off from access to the railroad tracks by a large factory, and is not involved in this proceeding.

The next street is Essex, which is distant about 800 feet from Cedar street. At this point an *undergrade* crossing already exists. No reference was made to this street in the city's petition, although the board's order directs that the present undergrade crossing be widened and altered in certain respects.

The next street to the north which approaches or crosses the tracks is Market street, which is nearly 1000 feet north of Essex street. A street known as Park avenue begins on the easterly side of the tracks near the point where Market street crosses the tracks, and the city's maps showing this crossing are accordingly designated as "Market street and Park avenue," although the crossing in question is commonly called the Market street crossing.

Proceeding to the north from the Market street crossing there are five grade crossings, to wit, Ellison, Van Houten, Broadway, Fair and Hamilton avenues—each crossing being separated from the other by a city block. All of these streets are included in the city's petition.

Proceeding to the north after passing Hamilton avenue the next street included in the petition is the one called Lafayette street, which is over 2000 feet to the north of Hamilton avenue.

Between Hamilton avenue and Lafayette street are four streets, to wit, Godwin, Tyler, Lawrence and Montgomery, which extend to, but do not cross, the railroad tracks. None of them is referred to in the city's petition. There are also two existing *undergrade* crossings, to wit, Governor street, a distance of about 750 feet to the north of Hamilton avenue, and Fulton street, a distance of about 500 feet to the north of Governor street. Neither of these last two streets was included in the city's petition, although by the board's order they are required to be widened and altered in certain respects.

Proceeding to the north beyond Lafayette street there are four crossings, to wit, Franklin, Keen, Warren and River (the last named including also Putnam), each crossing being a distance of one block, or about 250 feet, from the crossing next south thereof. All of these streets are included in the present proceeding. But the board's order requires the existing crossing at Franklin street to be closed and a *new undergrade* crossing to be constructed at Montgomery street—which latter street does not at the present time cross the tracks.

The last crossing included in the city's petition is the one known as the River and Putnam street crossing. Proceeding to the north beyond this crossing, for a distance of about 2500 feet, we come to the next and last grade crossing within the city limits, that known as Fifth avenue. After passing Fifth avenue the railroad tracks continue in a northerly direction for a distance of about 500 feet to the Passaic river, which marks the northern boundary of the city at that point. The tracks

cross the river on a bridge and thence proceed to the north to Suffern, N. Y., a distance of about sixteen miles above Paterson.

That part of the railroad which extends from Jersey City to a point at or near the Market street station in Paterson was constructed and is owned by the Paterson & Hudson River R. R. Co., and that part which extends north from the Market street station to Suffern, N. Y., was constructed and is owned by the Paterson & Ramapo R. R. Co. Beyond Suffern, and extending thence to Buffalo, Chicago and other points, the tracks were constructed and are owned either by the plaintiff in error, or by other companies which are either operated or controlled by it.

In accordance with Section 5 of the above statute, the Board of Finance of the city of Paterson filed a petition with the Board of Public Utility Commissioners, wherein the city prayed for the elimination of 15 crossings, which were designated in the petition as follows:

- A. Madison avenue.
 - B. Clay and Straight streets (two crossings).
 - C. Cedar Street.
 - D. Market street and Park avenue (one crossing).
 - E. Ellison street.
 - F. Van Houten street.
 - G. Broadway.
 - H. Fair street.
 - I. Hamilton avenue.
 - J. Lafayette street.
 - K. Franklin street.
 - L. Keen street.
 - M. Warren street.
 - N. River and Putnam streets (one crossing).
- (Vol. IV, p. 1637.)

The city claimed in its petition that it was not practicable to change the grade of said highways or any of them so as to carry the same under or over the railroad; asserting "the said highways are all in the center of a thickly populated city and all contain large numbers of buildings which would be ruined or destroyed by any such change of grade"; and prayed that the crossings be altered by depressing the tracks of the railroad so that the same would pass under the highways, or in case such a plan should be impracticable that the railroad should be elevated to pass over said highways. (Pars. 18 and 19; Vol. IV., p. 1660).

After the filing of this petition, several hearings were heard before the Board of Public Utility Commissioners, with the result that on April 20th, 1915, the board directed the plaintiff in error to eliminate the crossings at grade according to a certain plan therefor annexed to the board's order and made a part thereof. This order reads as follows:

STATE OF NEW JERSEY.
BOARD OF PUBLIC UTILITY
COMMISSIONERS.

IN THE MATTER OF THE APPLICATION
OF THE CITY OF PATERSON FOR
ALTERATION OF GRADE CROSSINGS
ON THE LINE OF THE ERIE RAIL-
ROAD.

Order.

The Board of Finance of the city of Paterson, a municipality of this state, having presented to, and filed with, the Board of Public Utility Commissioners, a petition in writing, and an amendment to

said petition, likewise in writing, praying that, by virtue of the powers conferred by an Act of the Legislature of this state, entitled, "A Supplement to an Act concerning Public Utilities; to create a Board of Public Utility Commissioners, and to prescribe its duties and powers, approved April 21, 1911," which supplement was approved March 12, 1913, and which constitutes Chapter 57 of the Laws of 1913, the Board order the alteration of the crossing of Madison avenue, Clay and Straight streets (two crossings), Cedar street, Market street and Park avenue (one crossing), Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Franklin street, Keen street, Warren street, River and Putnam streets (one crossing), each of which streets and highways is a public highway in said city of Paterson, where the same cross at the same level the railroad of the Erie Railroad Company, in said city of Paterson "according to plans to be approved by said Board by substituting for each of such crossings a crossing not at the grade of such public highways either by carrying such public highway under or over such railroad or by reconstructing such railroad under or over such public highway or by vacating, relocating or changing the lines, width, direction or location of such highway, and the opening of a new highway in place of the one or ones ordered vacated," and which petition set forth the facts upon which relief under said statute was sought, and the Board having fixed a time and place for a hearing before it upon said petition, and having given notice thereof to the said municipality, the Erie Railroad Company, the Paterson and Ramapo Railroad Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, and all corporations, co-partnerships and individuals interested, all in accordance with the provisions of said act, and the said Erie Railroad Company having filed its answer to said petition, which answer was later

amended, and the Paterson and Ramapo Railroad Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, Passaic Water Company, Western Union Telegraph Company, National Silk Dyeing Company, Fullers' Express Company, the Herman Company, John Agnew Company, James Wilson & Sons (Inc.), P. S. Van Kirk Company, Henry M. Post, Paterson Brewing and Malting Company, Public Service Electric Company, Public Service Gas Company, Public Service Railway Company, D. Fullerton & Company, Meyer & DeVogel, Leslie Elliott & Co., Samuel Smith & Sons Company, Morris & Company, McNab & Harlin Manufacturing Company, New York Telephone Company, and Paterson, Passaic & Suburban Telephone Company having likewise filed answers, and all of the parties in interest who appeared having been duly heard, the Board of Public Utility Commissioners filed a report of its findings and determinations on January 11th, 1915, which report is made part of this order by reference thereto herein, and it

Now appearing to said Board that the Board of Finance of the city of Paterson is the board or body having charge of the finances of said municipality, and that said Madison avenue (Clay street, Straight street), Cedar street, Market Street, Park avenue, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Franklin street, Keen street, Warren street, River street and Putnam street is each a public highway; and that the said public highways, and each of them, and the railroad of the Erie Railroad Company in said city cross each other at the same level, and that such crossings are, and each of them is, dangerous to public safety and that the public travel on such highways, and each of them is impeded thereby and that the said Erie Railroad Company is operating said railroad, and that said crossings, and each of them, should be altered according to a plan and profile approved by the

Board, and such a plan and profile having been prepared.

Now, therefore, it is on this twentieth day of April, nineteen hundred and fifteen, ORDERED, and the said Board of Public Utility Commissioners by virtue of the power and authority vested in it by the aforesaid act, does hereby ORDER the Erie Railroad Company to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof, entitled, "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings Plan for Elimination of grade crossings on main line of Erie Railroad from Madison avenue to River street, Paterson, N. J. Based on surveys made by the city of Paterson, H. J. Harder, Eng'r. Scale, 1 in.=50 ft. January, 1915, approved Chas. A. Mead, Chief Inspector Div. of Bridges and Grade Crossings," and profile of same also annexed to and made part hereof, entitled, "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings. Profile for Elimination of Grade Crossings on Main Line of Erie Railroad from Madison avenue to River street, Paterson, N. J. Based on surveys made by the city of Paterson, H. J. Harder, Eng'r. Scales: Hor. 1"=100' Vert. 1"=4'. January, 1915, drawn by J. L. Vogel, approved Chas. A. Mead, Chief Inspector Div. of Bridges & Grade Crossings," which said plan and profile are hereby approved; by substituting therefor crossings not at the grade of the public highways known as Madison avenue, Straight street, Clay street, Market street and Park avenue, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Keen street, Warren street, Putnam and River streets; by changing the lines, width and direction thereof and carrying so much thereof as so changed under the said railroad, except in the case of Madison avenue, which is carried over the railroad, according to and as shown on said plan and profile for

said purpose, and by vacating the remaining parts of said highways within the lines of the right of way of said railroad company, and further by vacating the part of Madison avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison avenue; by substituting for the existing crossings at Cedar street a crossing under the railroad at Taylor street and for the existing crossing at Franklin street a crossing under the railroad at Montgomery street and also by widening and altering the existing highways known as Essex street, Governor street and Fulton street, adjusting the structures spanning them to the proposed grade or grades (which said new highways shall be located, and of the width, length and direction and carried over or under the said railroad where so indicated); by reconstructing said railroad and highways and by performing all other work required according to and as shown on the said plan and profile.

Any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual whose property or construction it may be necessary to change or remove to carry said plant and this order into effect, shall change or remove the same, according to said plan.

AND IT IS FURTHER ORDERED, that the said Erie Railroad Company and the city of Paterson, and Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company and Western Union Telegraph Company, and all other parties to this proceeding, and each and every of them proceed with due diligence to the execution of this order, and comply with all of the requirements thereof and the duties imposed upon them thereby, and by the said act under which this order is made, and the laws of

this state, and that to that end, they and each of them exercise in good faith, all of the powers conferred upon them and each or any of them by the laws of this state.

AND IT IS FURTHER ORDERED, that the said Erie Railroad Company begin the actual work of construction required in the performance and execution of this order on or before the first day of August, nineteen hundred and sixteen, and continuously carry on the same thereafter and perform and fully comply with the directions and requirements of this order, and complete all of the work required to be done, within eight years from the date hereof, and that in the continuous prosecution of said work it takes up in the order named the division thereof in said profile marked and designated "A," "B," "C" and "D"; the work required in connection with Section "A" thereof to be begun on or before August 1st, 1916, and to be completed within four years and three months from the date hereof; the work required in connection with Section "B" to be begun within four years and three months from the date hereof and completed within five years and six months from the date hereof; the work required in connection with Section "C" to be begun within five years and six months from the date hereof and completed within seven years and three months from the date hereof; and the work in connection with Section "D" to be begun within seven years and three months and completed within eight years from the date hereof.

And it appearing to the Board that the street railway operated by Public Service Railway Company uses the said crossings at (1) Park avenue and Market street, (2) Broadway and (3) River street, the Board in accordance with the power and authority vested in it by said act further ORDERS the Public Service Railway Company to pay ten per centum of the expenses of the alterations, changes, relocating and opening, required by this

order, including damages to adjacent property, directly chargeable to the crossings, and each of them, so used by the said street railway operated by it.

And the said Erie Railroad Company and said Public Service Railway Company are ordered to keep specific and complete records of the expenses directly chargeable to the crossings, and each of them, so used by said street railway of said Public Service Railway Company and leave is hereby given to said companies or either of them, to make application to the Board for further order in the event that they cannot agree upon the amount of such expenses so directly chargeable to said crossings used by the street railway operated by said Public Service Railway, or any of them.

This order shall take effect May 20th, 1915.

Dated April 20th, 1915.

BOARD OF PUBLIC UTILITY
COMMISSIONERS,

By

(Signed) RALPH W. E. DONGES,
President.

(SEAL)

Attest:

(Signed) ALFRED N. BARBER,
Secretary.

(See Vo. IV, p. 1787.)

The estimated cost of the work as ordered is the sum of \$2,948,218.68. See report of board (Vol. IV., p. 1765). This does not include damages to adjacent property, which under said Chapter 57, Laws of 1913, must be paid by the plaintiff in error. The amount of such damages, due to changing the grades of streets, was estimated at \$168,500; and the amount due to the revision of buildings and sidings, outside the railroad right of way, at \$131,922. (pp. 1323-4.)

The plaintiff in error's share of this total cost of over \$3,000,000 is as follows:

Section A—Market street to Lafayette street.	\$1,442,719.30
Section B—Keen, Warren and River streets..	418,260.78
Section C—Straight street to Market street..	572,319.51
Section D—Madison avenue	104,278.02

\$2,537,577.61

(See Ex. R-103, Vol. II., p. 1324, and summary thereof at p. 1326; Ex. R-104, at p. 1327.)

But the foregoing figures do not represent the total amount to be paid by the railroad, as they do not include certain other items which must also be paid by the railroad, namely, the cost of street work, amounting to the sum of \$54,160.79. There must also be added the cost of reconstruction of sidings, leads, etc., amounting to the sum of \$131,922. See Exhibit R-102, at page 1324. But as the work is ordered to be done in sections, the actual cost of reconstruction of the sidings, etc., will be slightly in excess of that amount, namely, \$136,922. This figure is obtained by adding the items in Exhibit R-103, at page 1325, entitled "Industries off R. of Way." The total cost, therefore, to the plaintiff in error is as follows:

General Construction Work.....	\$2,537,577.61
Street Work Chargeable to Railroad.....	54,160.79
Reconstruction of Sidetracks.....	136,922.00

Total\$2,728,660.40

The above estimate includes a guess as to the amount of property damage under the item of street damages. (See Exhibit R-103, pp. 1324, 5.) But it is impossible to tell how much more the property damage may be. In view of the fact that under the order the street grades are

changed in some cases for a distance of nearly 500 feet outside the right of way, it is certain that the property damage will be much in excess of this preliminary estimate.

Moreover, in a work of this magnitude there are bound to be many unforeseen emergencies and difficulties; and, extending as it does over a period of several years, there will probably be a very considerable increase in the estimated cost of labor and material—indeed, such increase has already been observed since the promulgation of the order in April, 1915. In view of the general increase in the cost of labor and material since that time, it is probable that the total cost would be not less than \$5,000,000.

The private properties that may be affected by the proposed changes in the grades of the streets and the railroad tracks, covering an area of about 400 feet on each side of the railroad, are valued at nearly \$10,000,000, as shown by the testimony of the chief clerk of the tax receiver (Vol. I, p. 120; Exhibit P. 42, Vol. II, pp. 864-904). A compilation of these valuations taken from the eighty-five separate sheets giving the details thereof, and included in said Exhibit P. 42, shows the total of these valuations to be as follows (in round figures):

Land	\$3,800,000
Buildings	6,000,000
<hr/>	
Total	\$9,800,000

None of the numerous property owners whose names appear in this exhibit received any notice of the proceedings except in the case of a comparatively few persons or corporations who happened to be the owners of, or otherwise interested in, certain side tracks, and who, as such side track owners, were brought in as parties after the proceedings had been started.

Under said Chapter 57, as construed by the board in the order under review, the entire expense of the change of grade of the above mentioned fifteen crossings, including damages to adjacent property, must be paid by the plaintiff in error, except that at three crossings, to wit, (1) Park avenue and Market street, (2) Broadway, and (3) River street, the board ordered the Public Service Railway Company, in accordance with said Chapter 57, to pay ten per cent. of said expenses and damages "directly chargeable" to the said three crossings.

After the filing of the report of the board and before the making of the order under review, the plaintiff in error filed a petition for *further* hearing, wherein it requested the Board to take further testimony upon certain matters set forth in said petition (Vol. IV., p. 1772). On the same date upon which the order under review was made the board filed a report refusing to take any further testimony and denying the petition (Vol. IV., p. 1793).

After the order under review was made, the plaintiff-in-error, under date of June 15, 1915, filed a petition for re-hearing in which it submitted an alternative and much less expensive plan for the elimination of the alleged danger to public safety and the alleged impediment to public travel at the more important of the several highways included in the proceedings (Vol. IV, p. 1885).

Pending the board's decision on said petition for rehearing the plaintiff-in-error obtained the writ of certiorari in Case No. 1, with stay, as the time limit within which such writ might be allowed, as provided by Section 38 of the act concerning public utilities (Chapter 195, Laws of 1911), was about to expire. Thereafter, on July 9, 1915, the board denied the petition for re-hearing (Vol. IV., p. 1919). The proceedings thereunder are the subject of

the second writ of certiorari allowed on July 22, 1915, and known herein as Case No. 2.

The plaintiff in error will urge before this Court that the statute upon which said order was based is invalid, and that, even if the statute is not invalid, nevertheless, certain parts of the order violate its constitutional rights. We will first consider the question of whether the order is valid as against the constitutional objections urged by the plaintiff in error; and will then consider whether the statute itself is valid as against such objections or any of them.

CHAPTER ONE.

Objections to the Order.

I.

The order imposes a burden upon the interstate traffic of the plaintiff in error and interferes with and impairs its ability to perform its duty as an interstate carrier of freight and passengers.

The police power which is resident in the states may be exercised upon interstate railroads, but not in such a way as to unlawfully interfere with interstate commerce (Vol. 2, Elliott on Railroads, Section 667). In the present case we submit that the order under review is invalid because,

(a) It requires changes in the location or grade of switches, sidetracks, leads, bridges, yards, structures and other facilities and properties, which are used by the plaintiff-in-error in the furtherance of its interstate business.

(b) It arbitrarily compels the plaintiff-in-error to raise and expend moneys for the purpose of complying with said order, which said moneys should otherwise be available for and would be used by it in the making of changes and improvements which are essential for the purpose of enabling the plaintiff-in-error to carry on its interstate business.

(a)

The changes required in the several leads, switches and side tracks, which, under the order, must be destroyed or relocated and reconstructed, are set forth in detail in Assignment of Error No. 34, at pages 2381-5 of Vol. V. We claim that this part of the order violates the Federal Constitution, by reason of the fact that the necessary effect thereof is to interfere with interstate commerce. The total cost of making these changes in the side tracks, as required by the order, is about \$250,000 (see Exhibit Erie 28, Vol. IV, p. 2254; testimony, p. 1980). The effect of the order upon the side tracks is described in detail in the testimony of Mr. Brameld (pp. 1966-1981). See also Exhibit Erie 27, as printed in Vol. VI, at pp. 51-6.

So far as relates to these side tracks the execution of the board's order requires the entire destruction of several of them without any provision for the reconstruction or relocation thereof, and in the case of other sidings the board's order likewise requires the destruction of the sidings and suggests the reconstruction thereof at different grades and locations. If the order be construed to require such cost to be paid by the side-track owners, it is of course invalid, as these owners are not public utilities; on the other hand, if it requires the cost to be paid by the plaintiff-in-error the order is equally invalid, because the plaintiff-in-error is not legally bound

to pay such expense, and an order requiring it so to do takes its property for the benefit of other persons or corporations, and therefore deprives it of its property without due process and without just compensation. See authorities cited in Point V. It therefore follows that neither the railroad nor the siding owners can be compelled to reconstruct and relocate the several sidings. The necessary result is that the sidings or the connections thereof with the main line tracks are destroyed and no one can be compelled to restore them. It follows that the destruction of these sidings interferes with the interstate commerce of the plaintiff-in-error, and for that reason we submit is in violation of the Federal Constitution.

In *McNeill v. Southern Ry. Co.*, 202 U. S., 543, 50 L. Ed., 1142, it was held that an order of the Commission of the State of North Carolina requiring a railroad company to deliver cars from another state to the consignee on a private siding beyond its own right of way, was a burden upon interstate commerce, and for that reason was void. This Court said:

"Without at all questioning the right of the State of North Carolina in the exercise of its police authority to confer upon an administrative agency the power to make any reasonable regulations concerning the place, manner and time of delivery of merchandise moving in the channels of interstate commerce, it is certain that any regulation of such subject made by the state or under its authority which directly burdens interstate commerce is a regulation of such commerce and repugnant to the Constitution of the United States. *Houston & Texas Central Ry. Co. v. Mayes*, 201 U. S. 321; *American Steel & Wire Co. v. Speed*, 192 U. S. 500."

Referring to the case of *Central Stock Yards Co. v. Louisville & Nashville R. R. Co.*, 118 Fed., 113, the Court further said:

"The direct burden and resulting regulation of interstate commerce operated by an alleged assertion of state authority similar in character to the one here involved was passed upon by the Circuit Court of Appeals for the Sixth Circuit in *Central Stock Yards Co. v. Louisville & Nashville R. R. Co.*, 118 Fed. Rep. 113. The court in that case was called upon to determine whether certain laws of Kentucky imposed a direct burden upon interstate commerce and were a regulation of such commerce, upon the assumption that those laws compelled a common carrier engaged in interstate commerce transportation to deliver cars of live stock moving in the channels of interstate commerce at a particular place beyond its own line different from the general place of delivery established by the railway company. In pointing out that if the legislation in question was entitled to the construction claimed for it, it would amount to a state regulation of interstate commerce, it was aptly and tersely said (p. 120):

"It is thoroughly well settled that a state may not regulate interstate commerce, using the terms in the sense of intercourse and the interchange of traffic between the states. In the case at bar we think the relief sought pertains to the transportation and delivery of interstate freight. It is not the means of making a physical connection with other railroads that is aimed at, but it is sought to compel the cars and freight received from one state to be delivered to another at a particular place and in a particular way. If the Kentucky constitution could be given any such construction, it would follow it could regulate interstate commerce. This it cannot do."

If an order of administrative body which requires a railroad to deliver cars on a private siding is an interference with interstate commerce, *a fortiori* is there such an interference when the order of the board requires the physical destruction of the sidings or the connections thereof (some on and some off the right of way) upon which interstate traffic is delivered and received.

(b)

The order also operates as a regulation of interstate commerce because the great cost of carrying out the same impairs the ability of the plaintiff-in-error to perform its public duty as a common carrier of interstate traffic. It may be that ordinary expenses that are incidental to the exercise of the state's police power cannot be said to interfere with interstate commerce, yet in the present case the expense is so great and the conditions are so unusual that we submit that the order is unreasonable and arbitrary because it will cripple the financial resources of the plaintiff-in-error to such an extent as to seriously impair its ability to function as an interstate carrier by preventing it from making improvements that are essential to its continued operation as such carrier.

The railroad system of the plaintiff-in-error covers a total mileage of 2,257. (See annual report, Ex. R. 123, p. 1348.) The tracks run through the states of New York, New Jersey, Pennsylvania, Ohio, Indiana and Illinois. By far the larger proportion of the company's operations is of an interstate character.

On the filing of the board's report of January 11, 1915, from which it appeared that board had decided to make an order requiring the elimination of crossings at an expense of approximately \$3,000,000, the plaintiff-in-error

immediately filed a petition for further hearing, in which it asked the board, among other things, to again consider whether the proposed order would impose a burden upon the interstate traffic of the plaintiff-in-error and interfere with its ability to perform its duty as an interstate carrier.

In this petition (dated Feb., 1915) it called attention to the following facts:

1. That during the next twelve months it was absolutely necessary for safety in the operation of the railroad to expend the sum of \$1,094,825, the estimated cost for repairs to bridges. (See Par. 9 of Petition, p. 1779; Schedule B thereto attached, p. 1785); that it would be impossible to divert funds from such work for the purpose of carrying out the proposed order, and the failure to do this work might result in serious accident and loss of life.

2. That the sum of upwards of \$12,000,000 should be expended at once upon improvements of its railroad property for the purpose of enabling it to render safe, adequate and proper service in the transportation of interstate commerce and that the proposed order would impose a burden upon such interstate traffic and impair its ability to perform its duty as an interstate carrier, for the reason that moneys which would otherwise be available for the purpose of making these necessary improvements would have to be diverted from such purposes to the extent of the cost of eliminating the crossings, and would to that extent prevent the plaintiff-in-error from making such necessary changes and improvements. (See par. 10, p. 1780; Schedule C, p. 1785.)

The board declined to give any further hearing on this point. (See *report* of April 20, 1915, pp. 1793-5.)

Prior to the filing of the board's report of January 11, 1915, and the presentation of the said petition for further hearing, some testimony was submitted to the board showing the financial condition of the plaintiff-in-error and the effect upon its interstate commerce of the making of any such order as was demanded by the city.

Mr. Lincoln, general superintendent of the company, testified that he had made an investigation of the necessary improvements from the standpoint of safety. He pointed out that the first consideration was the construction of a double track and that the largest share of available funds that could be secured had been devoted to that purpose for a number of years, and that the plaintiff-in-error had "under way or authorized" double track construction which would require a further expenditure of \$7,000,000 (p. 712). The witness pointed out that there were two important reasons for the necessity of double track construction; the first was the protection of the traveling public, the second was the increased earning capacity (p. 712, l. 30, to p. 713, l. 20).

Next to the construction of double track he said the next important large item is the construction of additional tracks between Jersey City and Suffern, as there is a very dense passenger traffic handled over the same tracks on which freight is moved. Additional tracks should be constructed in the commuting territory so that the freight service can be taken off the passenger tracks. The cost of this construction between Jersey City and Suffern amounts to \$3,500,000, a total expenditure for track work of \$10,500,000 (p. 713, l. 30, to p. 714, l. 20). This money was not available at that time, as the company had not income sufficient to justify a loan for such purpose (p. 714, l. 30).

The next important item is for automatic block signals. The amount now required for such improvement is \$500,000 (p. 715, ll. 10-30).

The next item of expense for safety, which has to be made in order to comply with the law, is the application of safety appliances to operating equipment. The time limit thereon was July 1, 1916 (later extended to July 1, 1917). The original amount for that work was \$1,750,000. The company still had to spend \$1,354,741 for the purpose before July 1, 1917, or the equipment could not be used. This work is proceeding all the time (pp. 715, 716).

The next item of large importance is the construction of a passenger terminal at Jersey City. At the present time an average of 55,000 people per day is handled at Jersey City. That terminal serves a population of from 750,000 to 1,000,000 within forty miles of Jersey City, and as an element of safety and convenience there must be a new terminal. This involves an expenditure of \$7,000,000. It also involves very large other expense by reason of the necessity of removing the shops and engine terminals from Jersey City and the rebuilding thereof at a point west of the Bergen Tunnel, at what is called Croxton Yard. The estimate for such shop and yard facilities at that point calls for an expenditure of \$3,500,000 (p. 717, l. 20, to p. 718, l. 20). In other words, the total cost of making the necessary changes in the terminal facilities at Jersey City will be not less than \$10,500,000 (p. 719, l. 25).

The next important item is the installation of steel underframes on passenger cars to take the place of the present wooden cars. This work has been started and the estimated cost to complete it is \$741,000 (p. 719, ll. 30-40).

Other items that have to be met in order to comply with the law are the extra cost of the full crew law, amounting to about \$275,000 a year (p. 720, l. 10), and the increased cost of payroll due to the arbitration awards, amounting to \$2,744,688 per year (p. 721, ll. 20-30). These last two items, of course, do not deal with the question of improvements in the physical properties, but nevertheless have to be considered because the payments are compulsory.

There was a further increase by another award, amounting to \$400,000 a year (p. 722, l. 10).

Another item of increase on payroll is under the hours of service law, which averages about \$140,000 a year (p. 723, l. 10).

Taxes have increased from \$900,000 in 1904 to \$1,800,000 in 1914 (p. 723, l. 15).

The average increase in the cost of the maintenance of way is \$500,000 a year, that is, the cost of such maintenance, if the property were kept at a certain average level of efficiency, would be \$7,000,000 a year, but in order to raise the standard by increasing the weight of rails, improvements of bridges, providing better ballasts, etc., this average increases at the rate of \$500,000 per year (p. 723, l. 30 to p. 724, l. 10).

This item, averaging \$7,000,000 for maintenance of way, has recently been postponed to a large extent because of lack of funds—although this work cannot be put off indefinitely and much of it would have to be done within a year from that date (p. 724, l. 5).

The next item is the maintenance of equipment. The normal charge for this is \$11,000,000 a year. This charge is increasing on account of the safety appliance act and steel underframes. Much of the repair work has had to be deferred for lack of funds, with the result that about

10½ per cent. of the total equipment was in bad order on August 1st. After that date, it was absolutely necessary to make repairs and the shop forces were therefore increased and the percentage of bad order cars reduced to 4½ per cent. (p. 726).

The expenditures for freight equipment will average \$2,500,000 a year for the next ten years (pp. 728, 729).

As compared with an expenditure of \$3,000,000 for the elimination of grade crossings in Paterson, the foregoing expenses are "of far more importance both as safety measures and from the standpoint of affording better facilities for operation and increased earnings" (p. 730, ll. 30-40).

During the previous five years the company had spent about \$35,000,000 on construction of double track, renewals of bridges and new equipment. The sum of \$22,000,000 additional has been authorized and \$8,000,000 of that has been spent (p. 732, ll. 1-40).

The testimony of Mr. Falconer, chief engineer, shows in detail the amount expended by the company for the past ten years, in the making of necessary improvements and the estimate of the cost of expenditures, which are required to be made within five years. The total amount spent from 1906 to 1914 for "additions and betterments" is \$55,727,039 (p. 750; Exhibit R. 128, p. 1379). The estimate of expenditures for the next five years is given in detail in the testimony of Mr. Falconer and is summarized in Exhibit R. 129 at pp. 1380-2, and Exhibit R. 130 at pp. 1383-8; Exhibit R. 131 at pp. 1388-1393).

Mr. Falconer described in detail the order of importance of these several items. His first series of items is the completion of the double track and grade reduction; and of this the most important single item is the

completion of the double track from Lomax to Griffith, which will cost \$2,051,000 (p. 753-4).

Mr. Falconer then described the necessity and the advantage of certain other double track work and reduction of grades (pp. 755-762). The total cost of these items is \$7,806,000 (p. 762, l. 15, Exhibit R. 129, p. 1379).

On the question of the necessity and importance of making these improvements, so far as it affects the handling of interstate business, the witness said:

“Q What is your view of their importance with regard to the ability of the railroad company to adequately handle its interstate business?

“A They are of prime importance to enable the railroad company to handle its interstate business. The business of the railroad company is very largely interstate and all of these improvements, every single one of them, and the terminal improvements, are all necessary to aid in handling interstate business.

“Q In your judgment, if the railroad company was required at this time to spend three millions or more for the elimination of grade crossings in Paterson, would its ability to handle the improvement, its duty with regard to interstate business be impaired?

“A In my opinion it would. In my opinion that three million or whatever it is, should be expended in making some improvement that would enable the railroad to earn a greater income and it might thereby be enabled to set aside sums to carry out work which is not non-income producing. The elimination of grade crossings in Paterson or any other city produces no income, adequate, when compared to the expenditure. The saving in expenses is a very small fraction of one per cent. of the cost of the elimination, as a rule, and it would be so in Paterson. In other words, if the Paterson elimination is undertaken, the company will be burdened by fixed charges equal

to the interest on the cost of construction and will save practically nothing in operating expenses, whereas if this same amount of money is expended at a point where operating expenses are reduced, such a grade reduction or additional tracks where they are necessary, the saving in operating expenses will help to pay for such improvements at a later time. The credit of the company is impaired by expenditures which do not improve, which do not increase its revenue. The credit of the company is improved by expenditures which do increase its revenue and the company, as I see it, cannot make expenditures of such magnitude as the Paterson grade crossing elimination without borrowing money."

The next series of items is for "necessary terminal improvements" (pp. 764-8). The cost of these amounts to \$14,866,000. (See p. 1380.)

Other items are for additional tracks and grade reductions amounting to \$12,632,000, and improvements at division points amounting to \$1,293,000. (See p. 1380; also p. 772.)

In addition to the foregoing items, the witness stated that the renewal of or the repairs to certain bridges as shown on Exhibit R. 129 was "absolutely necessary." This item amounts to \$3,457,458 (p. 1381).

The witness also gave the details of the expenditures required for automatic signals. This amounts to \$669,700 (p. 775, ll. 20-40; Exhibit R. 129, p. 1381).

The witness also prepared a list showing the cost of the elimination of grade crossings, either ordered or pending in New Jersey and other states; the former amounts to the sum of \$3,317,000, the latter to \$3,767,000, including an estimate of \$3,000,000 for the Paterson crossings (pp. 1381-2), the last named being included because of the order now under review.

Prior to the filing of the board's report of January 11, 1915, and the presentation of the said petition for further hearing, some testimony was submitted to the board showing the financial condition of the plaintiff-in-error and the effect upon its interstate commerce of the making of any such order as was demanded by the city.

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The next important item is the installation of steel underframes on passenger cars to take the place of the present wooden cars. This work has been started and the estimated cost to complete it is \$741,000 (p. 719, ll. 30-40).

The witness testified that all of the items on these lists, with the exception of the two groups for elimination of grade crossings, either directly or indirectly, facilitate the handling of interstate business (p. 781, l. 30). He further said:

"I wish to say, however, that this list contains in the main, items which are very important to the handling of interstate business and most of them have a direct bearing on the handling of such business and not an indirect or a far-fetched one. For instance, our grade reduction, our double tracking, strengthening our bridges, increase of our intermediate terminals, increase of the terminals at the ends of the railroads, terminal facilities, are very important to interstate business."

The foregoing testimony was not disputed. It shows conclusively that the order under review will interfere with interstate commerce by diverting from other improvements a large sum of money, which would otherwise be used to make or to complete such improvements.

Since the foregoing testimony was given other laws have added substantial burdens upon the plaintiff-in-error. Thus, under the Federal Act of March 4, 1915, inspection is required to be made of all parts of the locomotives, such as driving wheels, etc., in addition to the inspection required by the act of 1911, which was limited to inspection of boilers. Pursuant to this new law the Interstate Commerce Commission has promulgated an order, under date of June 6, 1916, and effective January 1, 1917, requiring certain kinds of headlights to be installed and maintained—at largely increased expense; and also requiring changes in the kinds and number of lights on switch engines—also at increased expense.

The so-called Eight Hour Law of Congress, recently held constitutional, adds very materially to the operating expenses of the plaintiff-in-error.

We submit that the same principle should apply as laid down in the case of *Kansas City Southern Ry. Co. v. Kaw Valley District*, 233 U. S., 75, 58 L. Ed., 857. In that case the district sought to compel two railroad companies to raise to a higher level certain bridges across the Kansas River. The defendants-in-error claimed that this work would require a change of the grades of the streets for the approaches to the bridges, that the city of Kansas City had not given any consent to raise them, that the work as ordered would interfere with interstate commerce, that the district had made no provision to compensate the owners of private property, who would be damaged by the change of grade of the streets, that the damage to the defendants would be a large sum, and that the plan had not been approved by the Secretary of War. The Supreme Court of Kansas issued peremptory writs of mandamus. This judgment was reversed by this Court, which said:

"The decisions also show that a state cannot avoid the operation of this rule by simply invoking the convenient apologies of the police power. It repeatedly has been said or implied that a direct interference with commerce among the states could not be justified in this way. 'The state can do nothing which will directly burden or impede the interstate traffic of the company, or impair the usefulness of its facilities for such traffic.' *Illinois Central R. R. Co. v. Illinois*, 163 U. S. 142, 154. *Austin v. Tennessee*, 179, U. S. 343, 349. *Atlantic Coast Line R. R. Co. v. Wharton*, 207 U. S. 328, 334. To destroy the bridges across which these railroad lines necessarily pass is at least as direct an interference with such commerce as to prohibit

the importation of cattle or oleomargarine, or the export of natural gas. *Hannibal & St. Joseph R. R. Co. v. Husen*, 95 U. S. 465. *Schollenberger v. Pennsylvania*, 171 U. S. 1. *West v. Kansas Natural Gas Co.*, 221 U. S. 229, 262. Furthermore in the present case it is not pretended that local welfare needs the removal of the defendants' bridges at the expense of the dominant requirements of commerce with other states, but merely that it would be helped by raising them. The fact that the court cannot order them to be raised does not justify a judgment that they be destroyed even in the avowed expectation that what it wants but cannot command is all that will come to pass."

The evidence in the present case shows beyond reasonable controversy that obedience to the order under review will seriously "impair the usefulness of the plaintiff-in-error's facilities for interstate traffic." The destruction of the means by which such traffic may be facilitated is an interference therewith to the same extent as if the property used for that purpose were physically destroyed—in fact, in the present case a very considerable portion of the property of the plaintiff-in-error used for interstate commerce must be actually destroyed in order to comply with the board's order.

A recent case is *Chicago B. & Q. R. Co. v. Railroad Commission of Wisconsin*, 237 U. S., 220, 59 L. Ed., 926, where this Court reversed an order of the said railroad commission requiring a railroad company to stop two passenger trains a day at a certain station. The Court summarized the legal rules as follows:

"In reviewing the decision we may start with certain principles as established: (1) It is competent for a state to require adequate local facilities, even to the stoppage of interstate trains or the re-arrangement of their schedules. (2) Such facili-

ties existing—that is, the local conditions being adequately met—the obligation of the railroad is performed, and the stoppage of interstate trains becomes an improper and illegal interference with interstate commerce. (3) And this, whether the interference be directly by the legislature or by its command through the orders of an administrative body. (4) The fact of local facilities this Court may determine, such fact being necessarily involved in the determination of the Federal question whether an order concerning an interstate train does or does not directly regulate interstate commerce, by imposing an arbitrary requirement.”

A similar question was considered in *Mississippi Railroad Commission v. Mobile & O. R. Co.*, 244 U. S., 388, 61 L. Ed., 1216, where this Court affirmed a decree of the United States District Court enjoining the enforcement of orders of the state commission requiring a railroad to restore certain passenger trains. The Court said (italics ours):

“But while the scope of this power of regulation over carries is very great and comprehensive, the property which is invested in the railways of the country is, nevertheless, under the protection of the fundamental guarantees of the Constitution and is entitled to as full protection of the law as any other private property devoted to a public use, and it cannot be taken from its owners without just compensation or without due process of law. (Citing cases.) The power of regulation, if it is exercised in such an arbitrary or unreasonable manner as to prevent the company from obtaining *a fair return upon the property invested in the public service, passes beyond lawful bounds and is void*, because repugnant to the due process of law provision of the Fourteenth Amendment to the Constitution of the United States.” (Citing cases.)

These rules are not in any way affected by the recent decision of this Court in *Denver & Rio Grande R. Co. v. City and County of Denver*, 250 U. S. 241, 63 L. Ed. 958.

In that case, the Court held that there was no constitutional interference with interstate commerce by an ordinance which directed a railroad company to remove a connecting track from a certain street crossing, it appearing that the expense was small and that there were other convenient means of moving cars to and from its track beyond said crossing. The conclusion was reached upon the ground that there was no discrimination against interstate commerce and that the removal of the connecting track would not impede the movement of said commerce in the regular course, and would affect it only incidentally and indirectly. That case is very different from the present one, where the evidence shows that if the plaintiff-in-error is required to meet this enormous expense in the city of Paterson, there will be a direct interference with the interstate commerce carried on by it. The same principle should be applied as in the *Mississippi R. Com. v. Mobile & O. R. case, supra*, as it clearly appears that obedience to the order will prevent the plaintiff-in-error "from obtaining a fair return upon the property invested in the public service."

The New Jersey Supreme Court discussed this point in its opinion, but concluded that the question of whether or not police regulations constitute an unlawful interference with interstate commerce was for the ultimate decision of the *highest* Federal court, but declined to pass upon the question, in the first instance. The question is, therefore, now presented to this Court, and we respectfully submit that for the reasons heretofore urged, the necessary effect of the order under review, is to create

a burden upon and an interference with interstate commerce, and, under these circumstances, the order should be declared invalid, even if the statute itself is sound, as against this objection.

There was no real occasion or necessity for imposing such an enormous burden upon the company in the present case. Under the statute upon which the order is based, the city might well have selected any one of the crossings, rather than combining fifteen of them in a single proceeding. It was urged before the state courts that, under the terms of the statute, only one crossing could be considered in any one proceeding, but as the state courts have construed the statute otherwise, that question cannot be considered in this Court. But, it is important to observe that there is nothing in the statute which *requires* all of the fifteen crossings to be considered in a single proceeding. The effect of such construction might be even more disastrous than it is in the present case—for example, if fifteen crossings in a single city may be considered in one proceeding, there is no reason why all of the crossings within the limits of a municipality should not be considered—indeed, there is no logical stopping place fixed by the boundary line of any municipality; we might as well include all of the grade crossings in the entire state upon any particular railroad; and it is difficult to suggest any logical reason why even the state boundary should be taken as the limit, other than the limitation of the jurisdiction of a state commission.

According to the report of the Board of Public Utility Commissioners of the state of New Jersey, for the year 1913 (page 9) there are no less than 2,500 grade crossings in that state, of which 256 are on the line of the plaintiff-in-error (see Transcript, page 282, ll. 10-40).

According to the testimony of Mr. Brameld, the average cost of the elimination of a grade crossing is \$55,000 (p. 289, l. 38). On this basis, the cost to the plaintiff-in-error of eliminating its grade crossings in the state of New Jersey would be over fifteen millions, without regard to the large increase in cost of materials since this original estimate was made.

This illustrates the claim that there was no occasion whatever for the Board of Public Utility Commissioners to impose this enormous burden upon the plaintiff-in-error; and even if the statute, as construed by the state courts of New Jersey permits more than one crossing to be included in a single proceeding, nevertheless, there is nothing in the present case which makes it necessary for fifteen crossings to be included in a single proceeding, at a cost of three million dollars, or more. This is shown by the very terms of the order itself, which directs the plaintiff-in-error to perform the work in four sections or divisions—the work on one to begin immediately after the completion of the work in the preceding section. The city's own engineers subdivided the work into sections and advised that it was practicable to do the work in one section without affecting the crossings in any other section; but instead of constructing the crossings one at a time, or at most—two or three or four, as the case might be—or those that may fairly be said to be associated with one another, as an engineering proposition—the board arbitrarily required all of them to be eliminated in one and the same order.

We do not ask this Court to review the supposed discretion of the board to include more than one crossing in the same order, but we do insist that under the *undisputed testimony* the necessary effect of an order which requires several millions to be spent within the limits

of a single municipality, covering about two miles of main line track, is a direct interference with and a burden upon the interstate commerce of the plaintiff in error. There are over 2,200 miles of railroad tracks which it is necessary for the plaintiff in error to maintain in an operating condition; and to appropriate a large part of the money which might be, and ought to be, used for that purpose and pour it into a single town—to the detriment of all the rest of the system, is a direct burden upon the interstate commerce of the plaintiff-in-error; and indeed, it is even more than that, because the inevitable result is to prevent the plaintiff-in-error from carrying on its interstate traffic, as it would have no money left with which to maintain the rest of its system even if it had enough money in the first instance (which the proof shows it had not) to pay the cost of eliminating the crossings in Paterson.

II.

The order was unreasonable and arbitrary and therefore violates the due process clause because the evidence shows without dispute that the plaintiff-in-error did not have sufficient funds or any means of procuring same for the purpose of meeting the cost of complying with the order.

The legislature may, of course, prescribe a standard, by which the action of an administrative board is to be governed, but when it undertakes to commit to such board certain powers which are dependent upon the existence of certain facts, the statute must itself prescribe some standard upon which the action of such board is made to depend. In the absence of such a prescription in the statute such a board cannot undertake to make

its action dependent upon the existence of a standard selected by itself. The case is different from a rate case, where the question is whether the rate is reasonable. There is a standard by which that question can be determined, namely, common usage, as illustrated by the interest laws, the ordinary experience of mankind, as illustrated by the average return on investments, and the decisions of the courts determining what is or should be a reasonable return on such investments.

It is clearly impossible to lay down any hard and fast rule or set of rules by which it may be determined whether or not a crossing is "dangerous," and hence there is no standard upon which the action of the board in any particular case must be based. It is equally impossible to lay down any rule by which the question of whether public travel is "impeded" may be determined—unless the word "impeded" is held to be applicable only to permanent obstructions and not merely to delays or hindrances to public travel caused by the passage of trains.

But even if it is possible to spell out from the statute a standard upon which the action of the board may be based, the fact still remains that the board is not *required* to take action, but in such event *may* order the elimination of the crossing.

The statute provides, in Section 1, that

"Whenever a public highway and a railway cross each other at the same level and it shall appear to the board that such crossing is dangerous to public safety, or that the public travel on such highway is impeded thereby, the board *may* order the company operating such railroad to alter the crossing," etc.

The statute confers on the board arbitrary power to order or to refuse to order the alteration of a grade

crossing, even though it may find the jurisdictional facts on which the right to make such order under the statute depends. It might well be that the board could constitutionally be delegated power to determine whether or not certain facts exist, but when such facts have been found, this statute leaves it to the board to decide arbitrarily whether or not it will or will not make an order for the alteration of the crossing.

There is no provision in the statute under consideration which requires that the orders of the commission must be lawful and reasonable, as there are in many other similar statutes. See, for example, the case of *Commission v. Toledo, etc. R. Co.*, 107 N. E. 774, Pub. Util. Reports 1915-B, p. 879, dealing with the question of the power of the Public Service Commission of Illinois to enforce a statute requiring the erection and maintenance of depots. Under the New Jersey statute the Board of Public Utility Commissioners *after* a finding of the existence of the jurisdictional facts as to danger to public safety and impediment to public travel, has arbitrary power in one case to order a company to spend millions, and in another case where the crossings may be equally dangerous to refuse to order the alteration of the crossings. An illustration of this principle is found in the case of *State v. Great Northern R. Co.*, 111 N. W. 289 (Minn.), where it was held that a statute was unconstitutional as a delegation of legislative power which authorized a railroad commission in its judgment to allow an increase of capital stock for such purposes and on such terms as it might deem advisable, or in its discretion to refuse it.

Furthermore, there is no standard fixed with regard to the proportion of the expense to be borne by a street

railway company, as the board *may*, but is not required to, order not exceeding 10 per cent. to be paid by the street railway company.

The opinion of the New Jersey Supreme Court is not clear as to whether the statute is to be construed as permissive or as mandatory, after the board has found the jurisdictional facts as to danger to public safety, or as to impediment to public travel. From one part of the opinion, it might be inferred that the state courts thought the statute was permissive; from another part, that it was mandatory. Referring to the argument on this subject, the New Jersey Supreme Court said:

“The obvious answer to this point of the prosecutor is the fact that the prosecutor was required by the order to make the alterations and changes in the grades, so as to it, the statute is mandatory, and if the facts before the board justify the order, it is not arbitrary. The prosecutor is not concerned with what might be ordered to be done by some one else by the Board of Public Utility Commissioners.

There is a line of authorities, however, which hold that ‘may’ in a statute means must or shall. Thus, in England, in the case of *King v. Harlow*, 2 Salk 609, it was said that the word ‘may’ in a statute shall be taken to be mandatory, where the thing to be done, is for the sake of justice, or for the public good. So, Chancellor Kent, in the case of *Newburgh Turnpike Co. v. Miller*, 5 Johns., Ch. 113, said, in respect to statutes, the rule of construction seems to be that the word ‘may’ means must or shall, only in cases where the public interests and rights are concerned, and where the public or third persons have a claim, *de jure*, that the power shall be exercised. These cases were cited with approval by our courts, in the cases of *Davidson v. Davidson*, 17 N. J. L. 171; *Seiple v. Borough of Elizabeth*, 27 *ib.* 410; *Atlantic City Water Works Co. v. Road*, 50 *ib.* 672. So, there is a line of au-

thorities which hold, that the agencies of government do not act automatically. It is necessary to vest in its officers certain general powers, with a discretion in the governmental agents, as to their exercises. It would be as impractical as it is undesirable, to attempt to formulate in advance, a set of hard and fast rules, by which every conceivable public act should be governed. In order to accomplish the ends of local government, it has been found expedient to create various boards and commissions, which are charged with the duty of supervising, directing, and controlling particular subjects. It has been held, that the granting of such power by the legislature was not a grant of either legislative or judicial power. *People v. Roth*, 249 Ill. 532. For other illustrative cases see, in re Connecticut Co., 94 Atl. 992 (Conn.). In *Matter of New York Elevated R. R. Co.*, 70 N. Y. 327; *Trustees of Saratoga Springs v. Saratoga Gas, &c. Co.*, 191 *ib.* 123; *Alton & C. R. R. Co. v. Vandalia, &c. R. R. Co.*, 268 Ill. 68. (Vol. V, pp. 2278-2279.)

We respectfully submit that what the court calls an "obvious answer" to the point is not obvious at all. The opinion does not meet the point as to whether or not the statute gives the Board of Public Utility Commissioners arbitrary power to order or not to order the elimination of a grade crossing, after a finding of the preliminary fact or facts. So far as not being concerned as to what might be ordered to be done by "some one else," the plaintiff-in-error is very much concerned, if the statute be so construed as to authorize the board to order the plaintiff-in-error to do certain work for the purpose of eliminating grade crossings, and to decline to order "some one else" to do like work in substantially similar circumstances. If that is the proper construction of the statute, it is apparent that the plaintiff-in-error is deprived of the equal protection of the laws, for the reason

that it is obliged to use its money and property for the purpose of eliminating grade crossings, whereas, other railroad companies, similarly situated, might not be required so to do; and in considering the question of the constitutionality of a statute, the question depends upon not what *is* done, under such statute, but what might or could be done thereunder. The question of constitutionality must be determined according to the terms of the statute, and is not dependent upon the action or non-action of the officials authorized to proceed thereunder.

Montana Co. v. St. Louis Mining Co., 152 U. S. 160, 38 L. Ed.;

Security Trust Co. v. Lexington, 203 U. S. 323, 51 L. Ed. 204;

Georgia Ry. Co. v. Wright, 207 U. S. 126, 52 L. Ed. 134;

Ex Parte Christensen, 43 Fed. 243;

Grainger v. Douglas Park Club, 148 Fed. 513.

On the other hand, if the authority of the board, under the statute, is not discretionary, and the word "may", as used in section 1 thereof, means "must," then so much the worse for the statute; under such circumstances, the board has no power to consider any facts other than danger to public safety and impediment to public travel, and, therefore, it cannot take into consideration at all the question of whether the elimination of the crossing or crossings would result in any compensating advantage to the railroad or to the public, and cannot consider the financial ability of the railroad to do the work required by the order. In other words, there is no limit to the arbitrary power conferred upon the board, and the statute might as well have stated that *every* grade crossing must be eliminated, as every crossing, in the very nature of

things, is to some extent dangerous to public safety and to some extent impedes public travel.

We submit that these are not reasonable standards upon which the action of an administrative body is to be based, and that if this be the proper construction of the statute, then it deprives the plaintiff-in-error of its property without due process of law, and, in this respect, violates the Fourteenth Amendment.

But, as the opinion of the New Jersey Supreme Court on this subject is ambiguous, and we cannot foresee what construction will be adopted by this Court, it is necessary to give consideration to the question of whether the statute is *permissive*; if it is permissive, then, as we have above shown, it violates another provision of the Fourteenth Amendment, in that it deprives the plaintiff-in-error of the equal protection of the laws; but, if the view of the state courts, that this plaintiff-in-error is not concerned about the construction of the statute on this point, is correct, we further submit that the evidence in the present record shows that the action of the board was unreasonable and arbitrary, because it appears, without dispute that the plaintiff-in-error did not have the financial ability to comply with the order under review, and hence, if we assume, for the purpose of argument, that the statute is valid, as against the objections stated above, the question still remains whether the present *order* can be sustained. In the present case we have a situation where it is literally impossible, because of financial conditions, for the plaintiff-in-error to comply with the order of said board.

We therefore urge that the order in the present case should be set aside, for the reason that the evidence shows, *without dispute*, that the plaintiff-in-error does not have and will not have sufficient funds for the purpose of meeting the enormous cost of complying

with the order; but if the plaintiff-in-error does not obey, then under the statute it is subject to a penalty of \$100 per day for every day during which the default continues and may also be proceeded against by mandamus or injunction; or by suit in equity; and thereby, if it still refuses, put itself in contempt of court; and any person who knowingly and willfully does or causes others to do, or advises or instructs the officers of any public utility to do any act forbidden or prohibited by the act, is guilty of a misdemeanor; and likewise any person who knowingly and willfully neglects, or fails to do, or causes others to neglect or fail, or advises any officer of any public utility to neglect or fail to do, is guilty of a misdemeanor; and the public utility itself which neglects or fails to do any act required to be done by the statute is also guilty of a misdemeanor. (See Sec. 33 to 36, Chap. 195 P. L. 1911.) The plaintiff in error and its officers must therefore choose between the jail and the poorhouse, as the evidence shows that it is impossible for the plaintiff-in-error to obey the order.

The board, in the report of January 11th, 1915, said on the subject of the company's finances:

"In considering this matter the board has been mindful of the claim of the Erie Railroad Company that it is not now financially able to make the expenditure necessary to do the work. The testimony discloses that the company contemplates spending larger sums than would be required for this purpose, in doing work that in the judgment of the board, is not so immediately necessary. It seems to the board that some of the money intended to be used for other purposes might more appropriately be used in this work, should it be found necessary to divert it. Nor does the testimony satisfy us that the company will not be able to secure the necessary funds" (p. 1756, line 30, and p. 1757, line 3).

It would appear from this that the view of the board was, that the company had under consideration and was *intending to expend for other purposes* larger sums than would be required to carry out the board's order; and it would also appear that the board was of the opinion that it had the right to usurp the functions of the company's directors, by determining for them which of several improvements was most *immediately necessary*, and in what manner the little money that the company had for use on its entire line might be most *appropriately* used. But the legislature has not yet abolished the method of control of a railroad corporation prescribed by the general railroad law and by other general laws, namely, honest management by directors acting according to their best judgment.

The suggestion in the board's report that the company *contemplated* spending larger sums in some other work were so serious a misunderstanding of the company's attitude that immediately on the filing of this report, and before the making of any order thereon, the company considered it its duty to file a petition for a further hearing, in which it called attention (*inter alia*) to the fact that the board had apparently mistaken its *desire* to make needed improvements for its ability to secure or expend the sums required therefor; and that the company did not, at the time of the filing of the petition nor at the time of the giving of the testimony, contemplate the spending of larger sums than would be required for the elimination of the crossings, nor indeed any considerable sums in making other improvements, for the reason that it did not have, nor could it obtain, the necessary funds, or any considerable part thereof, beyond what it actually required for the continuation of

safe operation on its railroad; that, as shown by the evidence, its net income available for improvements during the fiscal year ending June 30th, 1914, was only \$662,295.87, being the entire *net* income, less such amounts as were required by the terms of the mortgages and other obligations to be devoted to sinking and other funds. The petition then showed that during the six months ending December 31st, 1914, the company had already been required to expend, principally in the interest of safe operation, over \$600,000, that it was under legal obligation to spend large sums for improvements under existing contracts or orders of the courts, that certain expenditures were also required immediately in order to maintain safe operation, that it had no capital funds outside of its income to devote to these purposes, except the proceeds of an obligation heretofore issued, amounting to \$300,000, all of which was already required to be devoted to a particular work in the course of construction under order of the public authorities, and that it had no additional capital obligations available over and above what was required for the payment of obligations that were about to mature.

The petition then set forth in considerable detail the financial situation of the company (see pp. 1777 to 1783.) Various schedules attached to the petition gave a list of the sums which the company was obliged to expend; schedule "A" (p. 1784) gave a list of the work required to be done, either under existing contracts, statutes or orders of the courts; the total cost of this work was the sum of \$4,042,700. If that work were not performed then the company would lay itself open to suits for breach of contract and to proceedings by way of indictment or contempt for failure to comply with

the provisions of the statutes of other states or the orders of administrative bodies in other states, particularly in New York and Pennsylvania.

Schedule "B" (p. 1785) gave a list of the work which was absolutely necessary for the purpose of operating safety, covering a period of one year only, from February 4th, 1915; these items made a total of \$1,094,825. This covered repairs and renewals of bridges which were put in the list as *absolutely necessary* for the obvious reason that if the work was not performed there would be danger of serious catastrophies, any one of which might cause far more injury to life and limb than all the grade crossings in Paterson since the railroad was first built.

Schedule "C" (p. 1785) gave a list of a large number of improvements, aggregating a total of \$12,091,200, all of which needed to be expended *at once* for the purpose of enabling the company to render proper service.

If the board had had any doubt before the filing of this petition as to the needs of the company and its purpose to spend money in doing work that, in the judgment of the board, was not so *immediately* necessary, the facts set forth in this petition should have removed it. The petition was read before the board on February 5th, 1915 (p. 796, *et seq.*), and on April 20, 1915, the board filed its report denying the prayer to submit further testimony on this and certain other points specified in the petition (p. 1795, lines 10 to 15). It is hard to imagine what further or stronger testimony could be produced to "satisfy" the board that the company would not be able to secure the necessary funds to eliminate the Paterson crossings. There were items amounting to over \$4,000,000 which had to be paid under previous contracts or orders; items aggregating over \$1,000,000 which had to be paid in order to make operation safe, and

items aggregating over \$12,000,000, the expenditure of which was necessary at once in order to perform proper service; yet the board brushed aside these facts as of no importance compared with the *immediate* "necessity" of eliminating grade crossings, some of which had been in existence for at least sixty years and other for probably eighty years. The board did not even consider these representations of sufficient importance to justify a few days' or a few weeks' delay in the presentation of testimony in support thereof—although at the time the petition was read before the board counsel for the company stated that the company was prepared on the very day the petition was read to offer testimony in support thereof, and that if there was any matter in the petition on which the board desired testimony the company was prepared to proceed at any time or place (p. 840, line 25; p. 842, line 35).

Let us now examine some of the testimony which failed to "satisfy" the board that the company was not financially able to make the necessary expenditure, and could not secure the necessary funds.

We will first look at the company's annual report to its stockholders for the fiscal year ending June 30th, 1914.

The net income for that year was..... \$1,422,975.20

From that amount the following appropriations were made:

To sinking and other reserve

funds required by the terms

of its mortgage..... \$760,709.33

Additions and betterments.... 502,742.77

1,263,452.10

Balance credited to Profit and	
Loss Account	\$ 159,523.10
(pp. 1369 to 1370.)	

There were direct entries to the Profit and Loss account which resulted in a net debit of\$ 229,806.49
 (Page 1371) so that the company's surplus was actually reduced during the year by the sum of\$ 70,283.39
 (See Annual Report, 1914.)

The net income of \$1,422,975.20 for the year ending June 30th, 1914, compares with the net income for the year ending June 30th, 1913, of \$8,105,675.23, or a decrease of \$6,682,700.00 in 1914 as compared with 1913. (See Exhibit R-113, p. 1337.)

Exhibit R-113 further shows that the appropriations of income for additions and betterments for 1913 and 1914, were as follows:

1913	\$ 657,587.93
1914	502,742.77

Excess of 1913 over 1914.....	\$ 154,845.16
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But even in 1913 the amount appropriated or additions and betterments was not above the average. (p. 638.)

It is, therefore, evident that if the company had maintained the same appropriations for additions and betterments in 1914 as in 1913 (which the officers testified was a desirable thing to do, if possible,) the surplus in 1914 would have been the practically negligible amount of \$4,677.94 (p. 637).

The credit balance of \$159,523.10, transferred from Income Account to Profit and Loss in 1914, compares with \$6,682,568.31 in 1913. It should be stated that in

1913 the railroad company received as dividend from the Pennsylvania Coal Company the sum of \$2,450,000.00, as against \$500,000.00 (Exhibit R-126, p. 1377), in 1914, but even after allowing for the difference in the dividends received from that company, the decrease in the net income of 1914 was over \$4,500,000.

The principal cause of decline in net income in 1914 appears as follows:

Operating revenue decreased	\$1,663,784.22
Operating expenses and taxes increased....	2,077,247.00

Operating income decreased	\$3,741,031.22
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The income statement for the two months ending August 31st, 1914 and 1913, shows that the surplus carried to Profit and Loss account was \$140,021.03 in 1914, whereas for the corresponding period in 1913 it was \$312,968.76; the decrease, however, is largely accounted for by appropriations for needed improvements in property investments. The net income shows a very slight increase for these two months in 1914, as compared with 1913.

Operating Income (which is usually the best test of a carriers' prosperity or adversity,) decreased in 1914 \$46,231.41, as compared with the very poor showing of 1913. (Exhibit R-114, p. 1338 to 1341.)

It is true that during the two months ending August 31st, 1914, the company's statement shows a surplus of \$140,021.03 (p. 1341), but the testimony of Mr. Lincoln shows that this is due to the fact that the maintenance and operating expenses were cut to the lowest limit, and that it represented merely what was held back from repairs and improvements that were absolutely essential,

but that were necessarily postponed because of the financial conditions (pp. 724, 725).

The testimony of Mr. Lincoln further shows that the average annual increase of expenses for right of way and structural expenses, in order to keep up with demands for heavier rails, stronger bridges, better ballast and other improvements necessary for convenience and safety, was the sum of not less than \$500,000 (p. 724). The mere fact that this amount of money may not have been spent for this purpose in any one year, therefore, does not show that it was not necessary to spend it, but it was merely a postponement of expenses that must be met sometime, somehow, somewhere, if the company is to continue to carry out its functions as a carrier of freight and passengers.

On the basis of the surplus account for the year 1914 the elimination of these crossings would take the company's total surplus for a period of 25 years, and in the meantime nothing could be spent for improvements beyond the bare necessities of maintenance of present conditions, and even that would be problematical.

The matter of safety at grade crossings depends not upon the railroad but upon the highway travel; it is most unreasonable to require the company to expend for the protection of travelers who can protect themselves immense amounts of money that should be devoted to the protection of the passengers traveling on the railroad and whose safety depends absolutely upon the management and operation of the railroad. The report of 1914 (Exhibit R. 123, p. 1352) shows that during that year the total number of passengers carried was 27,628,242. If, under such a showing as is presented in this report, any board of directors had

voluntarily undertaken to do what the Board of Public Utility Commissioners has ordered the company to do, such directors would deserve to be indicted for conspiracy against the traveling public.

The further suggestion is made in the board's report that the company might in some way be able to borrow the funds, as, they say, the testimony does not satisfy them that the company will not be able to *secure* them. This is a remarkable statement in the face of the undisputed evidence as to the existing and presently maturing obligations of the company. We start with a capital stock on which no dividends have been paid for many years, and a large bonded indebtedness, interest on which must be paid or the company becomes bankrupt. The figures are as follows:

CAPITAL STOCK.

Description	Authorized	Issued
1st Preferred 4%.....	\$48,000,000	\$47,892,400
2d Preferred 4%.....	16,000,000	16,000,000
Common	153,000,000	112,378,900
Totals	\$217,000,000	\$176,271,300

MORTGAGES, BONDED AND SECURED DEBT.

Mortgage Bonds	\$166,110,900.00
Collateral Trust Bonds.....	65,749,500.00
Equipment Trust Obligations.....	17,217,457.45
Miscellaneous Funded Obligations.....	1,103,065.63

Total \$250,180,923.08

(See annual report, Exhibit R. 123. Also Exhibits R. 118, 119, 120.)

While, of course, the company is under no obligation to pay dividends on its stock, the interest on these bonds and other obligations must be maintained or disaster follows.

MORTGAGE BONDS.

	Issued	Maturing
Prior Lien Bonds.....	\$35,000,000.00	1996
General Lien Bonds.....	51,724,000.00	1996
Convertible Bonds	32,000,000.00	1953
Miscellaneous Bonds	47,386,900.00*	
Collateral Trust Bonds.....	65,749,500.00	1914-1951
Equipment Trust		
Obligations	17,217,457.45**	
Miscellaneous Funded		
Obligations	1,103,065.63†	

*Varying Dates from 1916-1982.

**Semi-annual payments from 1914-1924.

†Part each year.

(See Exhibit R. 123, pp. 1372 and 1373 for details of Mortgage Bonds and Collateral Trust Bonds.) Also Exhibit R. 118, 119, 120.

But the most important considerations, from the standpoint of the company's immediate financial necessities, are the obligations which the company was bound to meet within the next three years; these are shown in detail on certain exhibits as follows:

Exhibit R. 115 (p. 1342)—

Obligations Oct. 14, 1914, to

June 30, 1915.....\$18,831,939

Exhibit R. 116 (p. 1343)—

Obligations during year ending

June 30, 1916..... 11,241,438

Exhibit R. 117 (p. 1344)—

Obligations during year ending

June 30, 1917\$16,079,491

Total\$45,155,913

A majority of these items are for Equipment Trusts which are not subject to renewal (p. 651). Some of the other items might be renewed if the credit of the company is maintained. The difficulty in renewing a few million dollars in the month of October, 1914, is shown by the testimony of Mr. Crawford. These obligations must be met or renewed in some way. The company had under consideration the question of a new general refunding mortgage, as explained by Mr. Crawford (p. 675), the purpose of which is "To refund all of these underlying securities as they come due, including these equipment trust obligations or a percentage of them."

If the Board of Public Utility Commissioners deemed it such a simple matter for a railroad company to borrow fresh money, or even to renew old obligations, we respectfully invite the attention of the Court to Exhibit Erie 15, printed in volume 4, from pages 1947 to 2042, containing a summary of 29 equipment trust leases, agreements, conditional sales, collateral trust notes, etc.—all of which have required the most careful and exacting negotiations and attention on the part of the officers and directors of the company.

It is obvious that the duty of the officers and directors is to look to the future as well as to the present; it was in the fulfillment of this duty that they prepared a list of expenditures which they deemed necessary for the company to make within the next five years. This is shown in detail in Exhibit R. 129, p. 1379. It is explained

in memorandum prepared by the company's engineer. Exhibit R. 130 and R. 131, pp. 1383 to 1393.

Mr. Falconer, Superintendent of Construction with the duties of chief engineer, testified that from 1906 to 1914 inclusive the railroad company had spent for the general improvement of its road amounts aggregating \$55,727,-039.00 (see Exhibit R. 128 at p. 1379), and that it had a list of improvements that the company hoped to carry out during the next five years (Exhibit R. 129, p. 1379, introduced at p. 752), to which he referred as follows:

"A We have spent a great deal of money to secure a double track railroad. The double tracking is not completed. We have spent a great deal of money to reduce grades; the grade reduction is not complete. When the double tracking and grade reduction are completed they will enable the railroad to handle a much heavier volume of traffic than it has in the past or than it does now, and will necessitate large improvements to our terminal facilities, not only division terminals, intermediate points on the road, but to our terminals at the ends of the railroad. The most important things aside from safety seem to be the completion of the double tracking and the completion of the grade reduction and the increase in the capacity of the terminals. The order in which—

Q Just let me ask right there—is there in your judgment, an element of safety in those things you have mentioned, terminal improvements and grade reductions and double tracking?

A Yes. There is a very large element of safety in double tracking and in grade revision. In terminal improvements, such of the terminal improvements as have to do with the handling of passenger business is an element of safety."

After this he testified to the detailed items of this list and described them in the order of the importance

attached to these items by the board of directors of the railroad company (p. 752 *et seq.*).

This program called for an expenditure during the next five years of \$47,808,158. The order of importance in which these expenditures should be made is fully explained by Mr. Falconer (pp. 762 and 763). There may, of course, be room for a difference of opinion as to the comparative importance of some of the items on these exhibits, but there is no room for debate as to the items for double tracking, grade reduction and necessary terminal improvements; these two items alone amount to over \$20,000,000. (See pp. 1379, 1380.) The improvement of facilities at division points, amounting to \$1,293,000, is also an important item; and the improvements of terminal facilities, including the Jersey City station, is equally necessary. The cost of such improvements amounts to nearly \$15,000,000 (p. 1380).

The items of bridges and buildings, for automatic signals and interlocking, aggregate over \$4,000,000, and are of great importance to the safety of the travelling public, far more so than the elimination of grade crossings (pp. 787, 788).

Practically all of the items of expenditures from 1906 to 1914, as shown on Exhibit R. 128, are for improvements outside of the state of New Jersey and none of them is for improvements on the leased lines in the city of Paterson, except such incidental items as were necessary to keep that part of the railroad in proper operating condition.

The five-year program, as indicated on Exhibit R. 129, calls for a number of improvements in the state of New Jersey, but none of them is within the city of Paterson, with the exception of the expenditure which was directed by the order which is under review in this case. The estimate of three million dollars (\$3,000,000) for the cost of

complying with this order is included in the total program, not because it has been approved or authorized by the board of directors, but because it was commanded by the Board of Public Utility Commissioners. Leaving out of consideration this and other like items (see page 1382) it will be seen that the five-year program, as prepared in the year 1914, called for an expenditure of about forty-four millions of dollars—all of which, in the judgment of the board of directors and of the officers of the railroad company, were more important than the elimination of grade crossings. It is, perhaps, needless to say that this program has not been completed, or even well started, for the reason that the unforeseen conditions arising out of the War have necessarily postponed many improvements which it would have been desirable to make.

It may be said that many of these improvements were to be made outside of the state of New Jersey, but that is beside the point. The question is not what the company can afford to spend in New Jersey, but what it can afford to spend in New Jersey when consideration is given to the demands of the railroad system as a whole. The total mileage of the system is 2,257 miles, one-half of which is double-tracked. (See report of 1914, p. 1348.) It passes through the states of New Jersey, New York, Pennsylvania, Ohio, Indiana and Illinois. It is impossible to divide up one part of the road as belonging exclusively to New Jersey, another to New York, and another to some other state; the entire system must be treated as a whole; not only by its officers and directors, but also by the commissions of the states through which it operates. No one would undertake to say that the Erie system should be divided up according to where the tracks happen to cross the state lines, and each separate piece operated with reference

to the interests peculiar and local to any one particular state. Yet it sometimes seems as if there was a rivalry between the various state commissions as to which one could compel the company to pay the most within the borders of its particular state.

We have endeavored to summarize the important financial considerations which we submit justified the company in taking the position that it would be bad business judgment, if indeed it were possible, to spend the money required by the order under review, for the purpose of eliminating the crossings in Paterson. We submit that the evidence shows (and there was no dispute whatever on this point) that the company did not have the money on hand or in prospect to meet the expenditure demanded by this order, or any considerable part thereof. We therefore urge that the action of the board was unreasonable and arbitrary, because it appeared that the plaintiff-in-error did not have the financial ability either to pay for the expense of the change of grade or to borrow the money necessary therefor—if indeed it is the duty of a railroad to *borrow* money for the purpose of complying with such an order.

In the present case testimony showing the financial condition of the company was not only offered in the main case, but when it seemed to the plaintiff-in-error that the board had either misunderstood or disregarded this testimony, the matter was brought to their attention again, but with stronger emphasis in the petition for further hearing which, as has been above stated, the board declined.

The undisputed evidence shows that from the financial standpoint it was impossible for the company to comply with the board's order; and yet notwithstanding the absence of any evidence to the contrary, the board re-

fused to put its conclusion upon the evidence, but arbitrarily decided that in *its* "judgment" any work other than the elimination of the grade crossings in Paterson was not "so immediately necessary."

The financial condition shown by the foregoing testimony did not develop shortly prior to the hearing before the board, but was the culmination of a depression that had been steadily growing worse for several years past. This is shown in striking form by Exhibit R. 44, which is a table showing the operating income expressed in mills per traffic unit for a period of ten years from 1903 to 1913, as follows:

1903	2.77
1910	2.30
1913	2.03
average 1903-1907	2.33
" 1908-1912	2.04

(See Volume II, p. 1105.)

It will be seen that the operating income as expressed in this unit has decreased from 2.77 in 1903 to 2.03 in 1913; and in the latter year the income was less than the average for either of the preceding five year periods.

The operating income, as expressed in mills per traffic unit, is usually considered as the best test of financial conditions. Another exhibit gives the result of the company's operations based upon the percentage of return on the property devoted to railroad purposes. (See Exhibit R. 1, p. 931, 3.) By referring to same it will be seen that the percentage of such return decreased from 2.22 in the year 1903 to 1.13 in 1913, and the latter percentage was the lowest of any year for the last ten years except that in the year 1908 there was a deficit; in 1905 the percentage was 1.12; in 1909, 78; in 1912, 64.

If 6 per cent. be considered as a fair average return on property devoted to public use, what shall be said of a return of but little more than one per cent.?

In the case of *Willcox v. Consolidated Gas Company*, 212 U. S., 19; 53 L. Ed., 382, the Court said:

"The court below regarded it as the most favorably situated gas business in America, and added that all gas business is inherently subject to many of the vicissitudes of manufacturing. Under the circumstances, the court held that a rate which would permit a return of six per cent. would be enough to avoid the charge of confiscation, and for the reason that a return of such an amount was the return ordinarily sought and obtained on investments of that degree of safety in the city of New York.

Taking all facts into consideration, we concur with the court below on this question, and think complainant is entitled to six per cent. on the fair value of its property devoted to the public use." (See p. 49.)

The conditions as to the net income were, in a large part, the result of the many unusual and unnecessary expenses required by reason of recent legislation. Thus, the extra cost to the plaintiff-in-error by reason of the so-called "full crew laws" in the states of Indiana, Ohio, Pennsylvania, New Jersey and New York, from the time when each of these laws went into effect to December 1, 1913, was the sum of \$281,049.68. (Exhibit R. 5, p. 937.)

The annual expense of this law in the states of New Jersey, New York and Pennsylvania amount to \$277,000 (Ex. R. 125, p. 1376); and if we include Ohio and Indiana, the total annual cost is about \$300,000. (See Ex. R. 5, p. 937.)

Another very important item of increased expense was the increase in wages as the result of the awards of arbi-

trators. The summary of these shows that the *annual* increase amounted to the sum of \$692,194.53 (Ex. R. 14, p. 50).

In addition to the foregoing expenses the requirements for improvements in traveling and terminal facilities and the increases in the cost of supplies have added greatly to the operating expenses. The following are illustrations:

Betterment of Conditions and Safety, 1910-1913,	\$52,944,628.94
(Exhibit R-2, p. 934.)	

Station improvements ordered by Com-
missions to October 31, 1913:

Improvement:	Expended:	To be expended:
\$62,483.93	\$59,644.64	\$2,838.29
(Exhibit R. 3, p. 935.)		

Principal capital expenditures made in New Jersey for 1911-1913,	\$5,919,461.00
(Exhibit R. 6, p. 938.)	

Statement of Additions and Betterments authorized to
October 31, 1913, and Unexpended Balances
to September 30, 1913:

Amount Authorized,	\$35,899,102.59
Chargeable to:	

Additions & Betterments	Expenses	Individuals & Companies
\$31,550,492.60	\$3,550,061.55	\$798,548.54

Unexpended Balances:

Additions & Betterments	Expenses	Individuals & Companies
\$13,849,700.81	\$2,585,086.04	\$653,443.39

Appropriations Exceeded,	\$544,144.23
(Exhibit R-7, p. 939.)	

The fact that the railroad has not been financially able to live up to its improvement program (as shown in Exhibit R-7) is illustrated by the fact that some of these improvements were authorized as long ago as February 20, 1896; one on August 3, 1910, and on more than half of the divisions some authorizations are as old as 1911 (Ex. R-8, p. 940), and the same may be said of the authorizations for general improvements.

The increase in the cost of fuel and ties alone showed an increase in 1913 over 1910 of \$545,591. (Exhibit R. 10, p. 946.)

An approximate estimate of cost of construction expenditures which should be made within the next five years amounts to \$47,808,158 (Exhibit R-129, p. 1379).

It may be urged that the plaintiff-in-error had a prospect of some increase in income by reason of a recent decision of the Interstate Commerce Commission in the so-called five per cent. rate case, referred to in the present record. An estimate of the amount of the increased revenue by reason thereof was made by the Auditor of Freight Accounts, under date of Oct. 30, 1914, from which it appears that the best guess that could be made on that subject showed a probable increase in revenue of \$71,393.81 per year, based on the company's freight traffic in the territory known as the central freight association territory, to which the increase applied (see p. 679, ll. 20-40; Ex. R. 121, p. 1345).

It may also be urged that the plaintiff-in-error had a prospect of an increase in revenue on account of an advance in the price of mileage books. The best guess on that subject is that the increase would amount to \$48,842.64, based on the number of books issued for the year ended June 30, 1914. This estimate, however, was based on the assumption that the same number of books would

be sold as in that year and leaves out of consideration the probability that because of the increase in price a number of people might change the form of transportation used by them. (See p. 702, ll. 1-40; Ex. R. 127, p. 1378.)

If the hope of the plaintiff-in-error as to the increased revenue from these two sources should be realized, and if the guesses should prove to be true, the result would be an additional revenue of about \$120,000 per year, which is \$60,000 per year less than the legal interest on the estimated cost (exclusive of property damage) of complying with the board's order.

The indifference of the Board of Public Utility Commissioners of the state of New Jersey to the question of the financial feasibility of obeying the board's order was in striking contrast with the attitude of the commissioners of other states.

Thus, the Public Service Commission of the state of New York on December 2, 1914, entered an order in the matter of the complaint of the Cattaraugus Board of Trade against the Erie Railroad Company, asking for a new passenger and freight station. The amount involved was less than \$15,000. The commission concluded that:

"Better station facilities for both passenger and freight are imperatively demanded; but it does not seem to be the opportune time to make an order which will require the expenditure of a large sum of money on the part of the Erie Railroad Company, for it is a matter of common knowledge that at the present time the financial and business conditions of the country require the practice on the part of the railroads of the utmost conservation and economy, and in all proper cases it is the duty of this commission to assist."

The case of *Selectmen of St. Johnsbury against Boston and Maine Railroad Company*, before the Vermont Public Service Commission, was a petition for the elimination of two grade crossings; the commission expressed the opinion that the crossings in question were dangerous and should at *some time* be eliminated. We quote:

"At the hearing it was represented and shown by the Boston and Maine Railroad, that because of the financial condition of said corporation, and the pending plans for the reorganization of said corporation, it would be an excessive financial burden to undertake to eliminate these crossings at the present time. This was not controverted or questioned by the petitioners. * * * In view of the financial situation of the Boston & Maine Railroad as above indicated we believe that the work of elimination should be postponed until said company is in better financial circumstances."

(See Public Utilities Reports, 1915 A, p. 641.)

In a grade crossing case before the Public Service Commission of Maryland, decided December 16, 1912, the commission directed the installation of an electric bell at a railroad crossing, saying:

"The broad policy of the state, acquiesced in, we believe by railroad companies generally, is that where it is practicable and does not lay upon the company an unreasonable burden of expense, grade crossings ought to be eliminated, and when overhead or undergrade crossings cannot be had, as in this case, we conceive it to be the duty of the commission to see that such protection be given to the public as is reasonably practicable."

Public Service Comm. of Md. Reports, 1912.

In a dispute between the City of Danbury, Conn., the N. Y. N. H. & H. R. R. Company and the Danbury & Bethel Street Railway Company as to the type and size of a bridge to be built, the Public Utilities Commission

ordered the railroad to pay 11/24ths, the city 8/24ths, and the street railroad 5/24ths of the cost of the bridge carrying White street over the railroad tracks.

"In view of the existing law requiring railroad companies to maintain whatever type and construction of bridge may be authorized, some consideration should be given in the apportionment of expense to the increasing use of said bridge by the City and Electric Railway Co."

Report of the Public Utility Commrs. of Connecticut, 1912, p. XLVII.

Counsel for the defendants will no doubt urge that in a matter which, as they claim, affects the public safety, the question of expense should not be considered either by the board in making its order or by the court in reviewing such order. The same argument was made before the Board of Railroad Commissioners of the state of Iowa in a proceeding wherein the city of Des Moines undertook to compel the construction of a viaduct at a certain street. The evidence showed that the total cost of the work would be \$139,000, of which \$89,000 was chargeable to a railroad company. It appeared that 6 per cent. interest on such amount would be greater than the entire gross earnings per year of the railroad company from all the freight hauled over the line of railroad on which the crossing was located. The Iowa board held that under the claim made by the city it would be necessary to order the alteration of a grade crossing in every application that might be made to it. They said:

"We cannot accept this as the intention of the legislature. There must be some reasonable, legitimate relation between the expense and the danger removed by a proposed viaduct. We must give consideration to the subject of expense. The commission must consider the whole situation in the state, and use its judgment, bearing in mind all of

the important factors, in determining the necessity for viaducts, from time to time."

The commission continues:

"The expense of a proposed overhead crossing, or public improvements of that character, in its relation to the benefit resulting therefrom has been unquestionably, one important factor considered by the courts in determining the necessity for such an improvement."

After referring to the cost of the work and the comparison thereof with the amount of traffic, the commission continues:

"As a transportation company, pure and simple, aside from other investments of the parties in interest, it would pay the Des Moines Terminal Company to tear up their tracks, rather than build the proposed viaduct. Property has some rights as well as the public."

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"We find, in view of all the evidence adduced before the board, that the said viaduct, proposed by the city, is at an expense entirely out of proportion with the hazard sought to be removed; and that there is no necessity for the said viaduct, as proposed. If this expense can be very largely reduced, a different situation will present itself."

(See Report of Board for 1913, p. 43.)

The foregoing decision of the Board of Railroad Commissioners of the state of Iowa is of particular interest because that board considered it part of its duty to consider questions of law as well as questions of fact; and one of the questions of law decided by the commissioners was whether or not they had the right to take into consideration the large expense of the proposed improvement as one of the important factors in deciding whether or not the improvement was necessary for public safety.

There are several cases in which the courts have given consideration to the question of whether or not a public utility has the financial ability to carry out a desired public improvement.

In the case of *Erie Railroad Company v. Board of Public Utility Commissioners* (not reported, decided April, 1915), involving the board's order for improvements in station facilities at Little Falls, the New Jersey Supreme Court said with reference to financial conditions (italics ours):

"The important argument urged upon the court at the hearing of this cause was that on account of general and fundamental changes in economical and financial conditions, the company was in no condition at the present time to go to the expense of building this new station, and that it had been compelled to withhold improvements projected all along its line amounting to many millions of dollars. *This argument might and probably would have had much force if it had been made prior to the determination of the Board of Utilities that a new station should be erected or even with reasonable promptness after that determination.* In such case the board, no doubt, would have given the matter due consideration, but when it is considered the decision requiring the erection of a new station was made on September 29, 1913, that the plans were submitted on October 28, and that the company then gave no intimation of any inability to carry out the improvements but merely set June 30, 1914, as the time required to complete the work and had done nothing when in March the commission asked for a report of progress, the argument now made seems to us, and probably seemed to the commission when it was offered, as one that ought not to be considered in view of the circumstances of the case."

In *Houston, etc., Ry. Co. v. City of Dallas*, 98 Tex., 396, 84 S. W., 648, the question involved was the validity of

an ordinance requiring railroad companies to make their tracks conform to the grade of streets. We quote as follows from the opinion (*italics ours*):

"The proper construction of the crossing and grading of the street thereat would, in a manner specified, throw the surface water collecting in the streets, and heretofore passing along the gutters in other directions upon the roadbed, making it a channel or sluiceway for the rain and storm waters, and rendering it unstable, insecure and dangerous to life and property; the only means of preventing which would be the construction by respondent of a sewer, of the character designated in the answer, 2 miles in length, at a cost of \$60,000."

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"Much less can we know that the difference in the advantages of the two characters of crossings will be so great in favor of those contended for by plaintiff as to justify the imposition of such a burden upon respondent as the allegations show will result from the making of the change. If it be true that there is to be no benefit to the public from the proposed change, or a benefit which is inconsiderable when compared with the detriment to be suffered by the respondent, who will say that it is just and reasonable to subject respondent to such expense and loss as is averred? The petition itself so couples together its allegations of danger with those of mere convenience as to leave it doubtful how far the consideration of each has weighed in determining the city's action. While the convenience of the public in the use of the streets is generally to be considered and promoted, it may well be that in particular instances it should not be allowed to outweigh in the adoption of such measures as that under consideration, *a great and disproportionate injury to be inflicted on private interests in advancing it*. When it is found that a proposed action is to be fraught with such consequences as those averred in the answer, *a public*

exigency correspondingly great and urgent should be required in its support. In considering this phase of the case at present, we can only treat all of the relevant facts well pleaded as true, and announce our opinion that they are sufficient to show the ordinance relied on to be unreasonable and arbitrary in its operation against respondent, and to entitle it to a hearing on the evidence."

In *Northern Central Railway Company's Appeal*, 103 Pa., 621, one railroad company attempted to enjoin another from crossing the former's tracks at grade. The question involved was whether under the facts an overhead crossing was "reasonably practicable." It appeared that an overhead crossing would cost from \$300,000 to \$600,000 more than a grade crossing. The court approved the finding of the Master before whom the testimony was taken as follows:

"In view of the greatly increased cost of an overhead crossing, the damages to private property, the destruction, to some extent, of an entire street, the increase of the distance of a twenty-eight feet to the mile grade, the difficulty of having freight and passenger depots, the impossibility of making switches or sidings for the accommodation of factories or other business within the borough limits, except the southeasterly part, and there only by a spur siding, all these, taken together with other facts already found, I am of the opinion, and so find, that an overhead crossing is not reasonably practicable."

It will be seen that in this case the court gave consideration to the question of the differences in expense as a factor to be considered in determining the method of making a public improvement, involving public safety.

In *Pennsylvania, Schuylkill Valley R. Co. v. Philadelphia & Reading R. Co.*, 160 Pa., 227, a similar question arose as to the crossing of one railroad track by that of

another company. The decision of the lower court, permitting the grade crossing, was affirmed. The decision had been put on the ground of the heavy cost of construction of a crossing then at grade. We quote as follows:

"It is safe to conclude that for a permanent overhead crossing, good and substantial, of sufficient length to permit additional trackage for both roads, with gradual approaches and easy curves, so as to be safely and conveniently used with ordinary engines, including incidental damages to be paid to third parties, an outlay of at least \$60,000 would be rendered necessary. The superintendent of the Pennsylvania Schuylkill Valley Railroad Company testifies that, if compelled to cross overhead, in view of the expense and the uncertainty of an adequate return from the enterprise, the company would abandon it, and in this he is sustained by a number of other witnesses. Under all the facts and circumstances of the case it would not be reasonably practicable to avoid a grade crossing in this case."

In *Cleveland, etc., Ry. Co. v. Street Public Utilities Commission*, 273 Ill., 210, 112 N. E., 689, an order of the commission requiring the separation of the grades of a street and of a railroad track was sustained when it appeared that the entire cost of making the change amount to only about \$46,000. The court said, however (*italics ours*):

"While the financial condition of the railway company is a matter which *should be also considered* in this class of cases, the showing made by the railway company upon this question falls far short of convincing us that the imposition of this expense upon the railway company will result in any hardship to the company."

In the case of *Connecticut Co. v. Town of Stamford*, 110 Atl. 554, the Supreme Court of Errors of Connecticut set aside an order of the commission of that state requiring a street railway to relocate its track upon a certain street in the town of Stamford at a cost of about \$28,000 besides a further charge of about \$76,000 for paving the tracks when relocated. Testimony was offered as to the operating expenses and other financial details, and it was shown that the railway had operated its system at a loss for the last preceding fiscal year and that it was in debt to the state for taxes and was under duty to expend \$1,500,000 for paving improvements upon the order of other municipal authorities. In reaching the conclusion that the order should be set aside the court said:

"Under these circumstances, we think it ought to clearly appear that the public need is urgent before so serious a burden is imposed upon the public service corporation.

"In this case the order is in its nature confiscatory and must be held unreasonable until it clearly appears that the public welfare urgently requires this relocation of plaintiff's track.

"Looking at the public interest to serve so far as this record develops, and at the excessive expense entailed by the order, and at the serious financial condition which confronts the plaintiff, we can reach no conclusion other than that the order of relocation is an unreasonable one under the circumstances of this case."

The importance of considering the question of the expense of an improvement as compared with the supposed resulting benefit has also been pointed out by this Court in the case of *Chicago & N. W. R. Co. v. Ochs*, 249 U. S. 416, 63 L. Ed. 679. In that case the Court had occasion to consider whether a railroad company could be compelled to pay the expense of altering and extending a side-track leading from the main line to an adjacent plant.

The action of the Railroad Commission of the state of Minnesota in directing such construction was affirmed on the ground that under the law of the state such sidetrack was not merely a private siding, but was also for the use of the general public; and on the further ground that the new construction was reasonable because of the growth of the plant and its increase in shipments. Another point which the Court emphasized was that the cost was apportioned between the railroad and the owner of the plant. The estimated cost of the work in dispute was about \$2,300. The Court laid down the following principles:

"Of course, the expense is an important element to be considered in determining whether the requirement is within the bounds of reasonable regulation or is essentially arbitrary, but it is not the only one. The nature and volume of the business to be affected, the revenue to be derived from it, the character of the facility required, the need for it and the advantage to be realized by shippers and the public, are also to be considered. Tested by these criteria we think the order in question is not arbitrary, but reasonable."

The foregoing authorities show that the element of expense is an important one for consideration in determining the question whether an order of the public utility board violates the Due Process clause; if the expense is found to be unreasonable under the circumstances of the particular case that fact will usually suffice to demonstrate that the order is arbitrary. For example, in the *Ochs* case, *supra*, this Court said:

"Of course, the expense is an important element to be considered in determining whether the requirement is within the bounds of reasonable regulation or is essentially arbitrary."

Other decisions by this and other courts to the same effect, in addition to those hereinbefore cited, will be found at pages 124, 125. The point has been raised most frequently in cases involving the construction or relocation of sidetracks, but the same principle would apply to any order of a board or commission which involves substantial expense by the public utility. An illustration of the application of the principle to the relocation of a street railway track is found in the case of *Connecticut Co. v. Town of Stamford, supra*.

In *Chicago etc. Ry. Co. v. City of Minneapolis*, 238 Fed. 384, the same principle was applied by the U. S. District Court in Minnesota to a case involving the validity of an ordinance providing for the elimination of certain railroad grade crossings. The ordinance required the depression of the railroad tracks at a cost of over \$5,000,000 and suit was brought by the railroad company to restrain its enforcement. The ordinance was set aside on the ground, among others, that it required the depression of the tracks of a certain crossing at a cost of over \$1,000,000, whereas, under the evidence, the tracks might be elevated at that street at a cost of about \$400,000, including the expense of adjusting the plant of a certain industry to the new elevation. The court held that so far as that crossing was concerned, the ordinance was unnecessary, unreasonable and arbitrary to such an extent as to deprive the railroad company of property without due process of law, and that because the ordinance was invalid in that particular respect, the entire ordinance would be enjoined.

In the state courts counsel for defendants-in-error cited as their principal authority on this point the case of *Health Department of the City of New York v. Rector, etc., of Trinity Church*, 145 N. Y. 32; 27 L. R. A. 710;

39 N. E. 833. This case is strong authority for the plaintiff in error, as will appear from the following quotations from the opinion:

"If the expense to the individual under such circumstances would amount to a very large and unreasonable sum, that fact would be a most material one in deciding whether the method or means adopted for the attainment of the main object were or were not an unreasonable demand upon the individual for the benefit of the public. Of this, the courts must, within proper limits, be the judges."

• • • • •

"These exactions must be regarded as legal so long as they bear equally upon all members of the same class, and their cost does not exceed what may be termed one of the conditions on which individual property is held. It must not be an unreasonable exaction, either with reference to its nature or its cost."

In their brief in the state courts counsel for defendants-in-error criticized the foregoing argument as to financial conditions in certain respects and it may therefore be wise to anticipate such criticism.

Thus they pointed out an apparent discrepancy between certain statements which were offered in evidence by the plaintiff-in-error for the purpose of showing its operating revenue and operating income, saying that the figures for operating revenue as given in Exhibit R-1 do not correspond to the figures in Exhibit R-123. This difference is easily explained. The figures in Exhibit R. 1 were testified to by Mr. Sorensen, who said that they include "outside or auxiliary operation" (p. 179, ll. 1-20). The figures in Exhibit R-123 include only the Erie system proper, omitting certain auxiliary companies, the stock whereof is owned by the Erie Railroad, but which are separately operated. This is made clear

by the testimony of Mr. Crawford, who, in referring to Exhibit R-113 (the figures whereof are the same as the corresponding items for R-123) includes the Erie Railroad Company and a company known as the Chicago & Erie R. R., but does not include the New York, Susquehanna & Western R. R., Wilkesbarre & Eastern R. R., New Jersey & New York R. R., and the Bath & Hammondsport R. R. Company (pp. 636, 7). See Exhibit R-113, at pp. 1335-7, and Exhibit R-123, pp. 1349-50. This also explains the difference in the figures of operating income for the year 1913 as they are given in Exhibit R-1 as compared with the figures in Exhibit R-123.

Counsel also criticized the testimony showing the percentage of return on the property owned by the railroad company, saying that it assumes without proof that the property of the company is worth a certain amount. The valuations in question are based upon the figures of the reorganized company at the time of the formation of the present Erie Company in 1895, plus the amounts expended from year to year for additions and betterments. It is true that there has been no "physical valuation" of the company, if by that is meant an estimate by experts of the present value of each specific item of property. But the figures upon which the return was estimated have been recognized as substantially accurate in all of the company's operations, in the issuing of stocks and bonds, in the presentation of evidence before the Interstate Commerce Commission and other commissions for the purpose of determining reasonable rates. There was no attempt on the part of the city to prove that the total valuation or any part thereof was inaccurate.

Counsel also criticized the evidence as to the percentage of return. This criticism results from con-

founding bondholders with stockholders. The real owners of the company are the stockholders; the bondholders are merely creditors. The "return" of an investment in any particular business is the amount which the real owners thereof receive when the books are balanced at the end of the year. If an individual or a company borrows money for the purpose of carrying on a business and is able to earn from the business only enough to pay interest on the money borrowed he would not claim that there was any "return" from that business. If a company earns only enough to pay interest on its bonds, it is of very little value as a going concern, and under such circumstances there is in fact no "return" at all. Even if it were true, as may be asserted by counsel, that in the year 1913 the "capital stock" earned very nearly 3 per cent., that would still be less than half of what this Court has said is a reasonable return. But, of course, the truth of the fact of the matter is that the "capital stock" did not earn "nearly 3 per cent."; it in fact earned only the percentage which is stated on Exhibit R-1. The fallacy of defendants in error's argument on this point may be illustrated by supposing the case of a company with a very small capital stock, say \$1,000 and with a very large bonded indebtedness, say \$1,000,000. According to this argument, if that company earned enough to pay interest on its bonded indebtedness (say at 5 per cent.) then it would be receiving a "return" of \$50,000 on a capital stock of \$1,000. That would be at the rate of 5,000 per cent. on its capital stock, although as a matter of fact the stockholders in such case would not receive a single penny.

Counsel also argued that the net income for the year 1913 was greater than the sum of \$5,112,707, as appears

under the item "Net Income from Railroad Operating Investments" in Exhibit R-1 at p. 933; and that in fact for that year plaintiff in error had "other income," and in that connection they call attention to Exhibit R-113, which shows a net income of \$8,105,675.23. The difference in these figures is accounted for in the same way as the difference between the total operating revenue. The smaller figure is the net income (after paying interest) for the entire system, including the four auxiliary companies above named, which are separately operated, while the latter figure is limited to the Erie Railroad and the Chicago & Erie Railroad only.

Counsel also said that the "greatest stress" is laid upon the result of operations during the year 1914. What other year would counsel have the company select? The petition was not filed until late in the year 1913; the plaintiff in error had nothing to do with filing it, and if the city was unwise enough to attempt to compel this enormous expenditure at a time when the finances of the company were not able to bear it, that fact does not change the financial conditions. The evidence of the company covered its latest operations up to the time of the conclusion of the hearing. The board of directors of the company cannot anticipate the result of future operations, and in considering a work of this magnitude they must of necessity recognize existing conditions, and are not justified in discounting the future.

Counsel also said that even in the bad conditions of 1914 the company made additions and betterments to its property and equipment, aggregating \$14,475,703.33. This is true, but only a small part of this expenditure was made from *income* received during that year; the same exhibit (R-123) shows that during the same year the total amount of equipment trusts created that year

was the sum of \$6,233,948.94 (see p. 1359). This is included in the \$14,475,703.33.

Exhibit R-123 also shows that various notes and securities were issued during the year ending June 30, 1914. See pages 1360-1365. Exhibit R-115 shows some of the equipment trusts above mentioned, and also shows that in April, 1912, "collateral notes" were issued maturing in April, 1915, to the amount of \$10,000,000. A large portion of the proceeds of these notes were used for additions and betterments (see pp. 659, 660). It does not appear just how much of the proceeds of these notes was spent for additions and betterments for the year 1915, but the annual report (Exhibit R-123) shows that during that year the amount appropriated from *income* was the sum of only \$502,742.77 (p. 1357).

Counsel also said that it "may be" there should be some deductions from the item of "other income" in Exhibit R-112 (p. 1336). The evidence shows that a large proportion of this item is in the form of dividends from Pennsylvania Coal Company, and of course there must be deducted the interest on the collateral bonds of that company as well as the appropriations made to the sinking fund for the purpose of paying off those bonds.

In their argument, counsel for defendants assumed that the income should *all* be used for additions and betterments, overlooking entirely the claims of patient stockholders. But even if this assumption is correct, the city is demanding, and the Board of Public Utility Commissioners has ordered, that the company must disregard the requirements of all the other parts of its system between New York and Chicago, aggregating nearly 2,300 miles, for the purpose of improving a short stretch of track of less than two miles in a single city—

and that, too, without regard to the requirements of other public authorities, and without consideration of the pressing needs for other improvements, and without reference to the constantly increasing exactions of both state and Federal laws and regulations, and without reference to the company's obligations to carry on its operations as an interstate carrier of freight and passengers.

Counsel also said that it seems to be the practice of the company to pay for improvements out of current cash and charge the same to capital account, thereby increasing the surplus until such time as the company is reimbursed from the sale of bonds. It is quite true that it has been the practice of the company to pay for improvements out of current cash—the reason for so doing being that it had no other source from which to pay for the improvements. The evidence shows that for several years past it has not been able to dispose of its bonds; therefore if the improvements were to be made at all they had to be paid for out of current income. The evidence further shows, however, that a considerable part of the improvements has been paid for out of the proceeds of notes which have been issued from time to time; and so far as equipment is concerned the cost of that has been met by the creation of equipment trusts. For details of these, see Exhibit Erie-15, pp. 2042-2246.

In discussing the evidence as to the financial condition of the plaintiff-in-error, the New Jersey Supreme Court said:

“It is further urged that if the court should hold the statute valid, still the order in the present case should be set aside for the reason that it is insisted the evidence shows without dispute, that the prosecutor (plaintiff-in-error) has not, and in all rea-

sonable probability will not, have sufficient funds for the purpose of meeting the cost of complying with the order. The determination of this question is one of fact, in the first instance, devolving upon the Board of Public Utility Commissioners. The board had before it the financial history of the Erie Railroad Company, its indebtedness, its income and many other details bearing upon the finances of the company, and from this evidence, the board found adversely to the prosecutor, the Erie Railroad Company. After a careful reading of the voluminous testimony on this point, we are unable to say that the board's determination is without sufficient facts to support its conclusion." Vol. V, p. 2279, l. 35 to p. 2280, l. 18.

In reaching this conclusion we submit that both the board and the reviewing court failed to observe that the testimony of the plaintiff-in-error on this point was in no way impeached or contradicted by the defendants-in-error—indeed, they offered no evidence whatever on the subject, although given full opportunity to do so. But even if there was any dispute in the evidence, or even if there was room for a fair difference of opinion as to the inferences to be drawn therefrom, this Court will nevertheless examine the testimony so far as may be necessary to determine the questions of law raised by the plaintiff-in-error. It is well settled by a series of recent decisions that in a case of this kind the court will examine the evidence, not for the purpose of deciding disputed questions of fact, if there is any such dispute, but for the purpose of determining whether what purports to be a finding upon questions of fact is so involved with and dependent upon questions of law as to be in substance and effect a decision of the latter.

Kansas City S. R. Co. v. C. H. Albers Commission Co., 223 U. S. 573, 56 L. Ed. 556;

Cedar Rapids Gas Light Co. v. Cedar Rapids, 223 U. S. 655, 56 L. Ed. 594;

Washington ex rel Oregon R. & N. Co. v. Fairchild, 224 U. S. 510, 56 L. Ed. 863;

Southern P. Co. v. Schuyler, 227 U. S. 601, 57 L. Ed. 662;

Norfolk & W. R. Co. v. Conley, 236 U. S. 605, 59 L. Ed. 745;

Grosbeck v. Duluth, etc., R. Co., 250 U. S. 607, 63 L. Ed. 1167.

We therefore submit that a consideration of the testimony as hereinbefore analyzed demonstrates that the plaintiff-in-error did not have sufficient funds or any means of procuring same for the purpose of meeting the cost of complying with the order under review, and for this reason the order was so unreasonable and arbitrary as to amount to a violation of the due process clause.

III.

The order was unreasonable and arbitrary and therefore violates the due process clause because the plaintiff-in-error was not given the alternative of reducing or eliminating the alleged danger to public safety and the alleged impairment to public travel by decreasing the number of train movements or by abandoning the railroad.

The question of whether or not the *statute* upon which the order is based is an unreasonable exercise of the police power is discussed under Chapter II. But, whatever may be the conclusion of the Court in respect to the statute, we submit that the order itself, in the form in which it was made by the Board of Public Utility

Commissioners, is an unreasonable exercise of the power which is attempted to be given to the board by the statute. Assuming that this Court will not review the conclusion of the board that all of the crossings in question are dangerous to public safety and that public travel thereon is impeded within the meaning of the statute upon which the order is based, the question still remains whether the board should have exercised its discretion by commanding the plaintiff in error to eliminate the crossings by changing the grades thereof.

Involved in this is the further question of whether the statute itself, in order to be sustained as a constitutional exercise of the police power, should not have some provision whereby the board might be empowered to decrease or eliminate the danger to public safety and the impediment to public travel by some means other than the alteration of the crossings themselves.

In the present case the plaintiff in error is required to spend an enormous sum without any compensating advantage in the way of increased receipts or decreased expenses; it is required to spend such sum in the improvement of properties belonging to other companies or individuals; and the sum thus expended nearly equals the total value of the very properties upon a *small part* of which the money must be spent.

Under such circumstances we submit that the board should have refused to make an order directing the elimination of the crossings (see Point II), or it should at least have given the plaintiff-in-error the alternative of decreasing or removing the danger and the impediment by reducing the number of train movements over the crossings; or if need be, by abandoning the operation of the railroad at and over such crossings; and if it be said that under the statute the board has no jurisdiction to permit such

an alternative, then we submit that the statute itself is invalid as an unreasonable exercise of the police power.

After the filing of the report wherein the board concluded that all of the crossings were dangerous to public safety and impeded public travel, the plaintiff in error filed a petition for a further hearing in which it asked that if the board concluded that an order must be made for the elimination of the grade crossings, that then the board give consideration to the question of whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over the crossings or some of them, in accordance with the plans which the plaintiff in error professed itself willing to submit (p. 1772).

The board denied this petition without even offering the plaintiff in error an opportunity to be heard thereon, except to permit the same to be read before the board. It declined to permit any testimony to be offered on the plaintiff in error's prayer that the board consider reducing the number of train movements, saying:

"As to the reduction of train movements, the company was offered every opportunity to furnish such proof, if it had any, and did not avail itself of such opportunity. In addition, the offer on this score was so indefinite that it does not appear reasonable to delay the proceeding for the purpose." (See Report of board, filed April 20, 1915, Vol. IV, p. 1793.)

We submit that this ruling was arbitrary and unreasonable and that the plaintiff in error should at least have been given an opportunity to present evidence on this subject before the board denied the prayer of this petition. It may be conceded that the reduction of train movements was proposed only as a last resort, but the

plaintiff in error had no means of telling in advance of the board's report what the board's conclusions would be as to the necessity for the elimination of the crossings. But when the board's report was filed requiring the plaintiff in error to eliminate all the crossings at an expense of \$3,000,000 (exclusive of property damage), the question at once arose whether the alleged dangers and impediments could not be substantially reduced, or even entirely removed, by the comparatively simple and inexpensive expedient of reducing the train movements. It is obvious from the report of the board filed January 11, 1915, that in the board's opinion one of the important elements in the danger to public safety and the impediment to public travel was the number of train movements over the several crossings. It is obvious that such element of danger and impediment could be readily removed by decreasing, or, if necessary, abandoning train movements over the crossings. No previous opportunity to furnish such proof had been offered to the company for the reason that up to the time of the filing of the report of January 11, 1915, such question had not been raised by the city or the board either in the petition of the city for the elimination of the crossings or in any of the proceedings taken before the board on said petition.

As to the criticism of the board that the company's offer on this point was "indefinite," we submit that the petition for further hearing was amply sufficient to fairly present the matter to the board. Paragraph 12 thereof recites that the conclusions of the board (referring to the report of January 11, 1915) are predicated upon the finding that a large number of freight trains, passenger trains and drill engines pass daily over the crossings, thereby endangering public safety and impeding public

travel; and that inasmuch as the plaintiff in error could not assume the cost which would be imposed upon it by an order requiring it to eliminate the grade crossings, the plaintiff in error urged that "if the board concludes that under existing circumstances such an order must be made, an opportunity should be given to present plans whereby the number of train or engine movements or the manner of the same or both, over said crossings may be changed so as to remove the danger and impediment to public travel" (Vol. IV., p. 1782). What more could be said in such a petition? Is it necessary that detailed plans and schedules be presented in *the petition*? It would obviously be supererogatory on the part of plaintiff-in-error to undertake the preparation of such details until and unless the board first signified its willingness to give some consideration thereto.

On the same date that this petition for further hearing was denied, the board made the order which is now under review. Thereafter, the plaintiff in error, conceiving it to be its duty to its stockholders and creditors to exercise every possible means to avert the catastrophe threatened by such order, filed a petition for a rehearing, in which it sought to meet the criticism of the board that its previous petition was "indefinite." This petition was also denied, the report of the board thereon being dated July 9, 1915. The proceedings with respect thereto are the subject of a separate certiorari; the return to which is for convenience included in the record of the proceedings relative to the board's order of April 20, 1915. This is known as Case No. 2.

In this petition for rehearing the railroad submitted a detailed plan, with accompanying maps, wherein it proposed that the alleged dangers and impediments at

the crossings beginning at Market street and extending northerly to and including River street, be removed by the construction of a connection between the Erie Railroad Company and the tracks of the New York, Susquehanna & Western Railroad Company at Market street and Straight street, thereby entirely eliminating the Market street grade crossings of the Erie Railroad (and incidentally a grade crossing at Straight street of the N. Y. S. & W. R. R.) by elevating the tracks of the two railroads and slightly depressing the grade of the streets and by closing Ellison street. The plan further contemplated the abandonment of the existing Susquehanna station at Straight street and the consolidation thereof with the Market street station of the Erie Railroad, which latter station was to be raised and reconstructed. The plan involved the construction of a track connecting the Paterson City branch of the main line of the Susquehanna R. R. near the present Broadway, Paterson, station of that company and the construction of a connecting track between the Susquehanna Company and the Erie Company at Hawthorne.

By means of these connections it was proposed to have westbound Erie trains pass from the main line at Market street over the present Paterson City branch of the Susquehanna Company and the main line of the latter company returning to the tracks of the Erie Company at Hawthorne; and to have eastbound Erie trains pass from the tracks of the Erie Company at Hawthorne to the tracks of the Susquehanna Company and thence over the Paterson City branch to the main line of the Erie Company at Market street. It was also proposed to run trains from Jersey City to Market street via the Erie Company and to run them to Jersey City via the Susquehanna Company and *vice versa*, thus making a continuous direct forward movement.

As a part of the plan it was proposed to reduce the passenger train movements over the tracks of the Erie Company north of Market street to not more than seven per day—and even these could be removed if desired. The advantages of the proposed changes, from the standpoint of improvement in the passenger train service, were set forth in detail in the petition, and it was shown that by means of such operation the switching work at Market street and to the north thereof would be greatly decreased, certainly over 50 per cent. The proposed plan, it was shown, would also avoid any interference with private side tracks except two or three between Van Houten street and Market street. The plaintiff in error in the petition proffered itself as willing to undertake this construction and to make the necessary changes in the operation of its trains and to begin work thereunder not later than the date specified by the board in the order of April 20, 1915, and to complete the same within the time limited by said order for the completion of the section of the work therein designated as section "A" (Vol. IV, p. 1879 *et seq.*).

After the filing of this petition the board fixed a date for taking testimony thereon and the same was taken on June 28, 1915. The proposed plan was explained in detail to the board by the general manager of the plaintiff in error. The principal ground of objection that was suggested in argument was that the plan might make additional train movements over the tracks of another company, to wit, N. Y. S. & W. R. R. Co., and thereby increase the danger at certain grade crossings on the line of that company. Another objection was that the connection between the Erie and the Susquehanna tracks near the Broadway station of the Susquehanna Company would create another grade crossing at

the street known as Broadway. It is quite true that the number of train movements on the Susquehanna would be increased—indeed, it is difficult to figure out any scheme by which train service can be improved without increasing the number of train movements, but it was admitted that the existing crossings on the line of the Susquehanna Company did not have as much traffic as the crossings on the line of the Erie Company which it was sought to have eliminated. There was also another objection to the closing of the existing crossing at Ellison street, but this was not very seriously pressed. At this hearing the city, by its counsel, went so far as to say that it was willing to agree with the company to adopt this plan, provided the proposed crossings at Ellison place, Eighteenth street and Broadway could be eliminated (p. 1919).

Whether or not the city would be willing to agree to such a plan is beside the point, because of course it was the duty of the board to pass on the merits of such a proposition without regard to whether it pleased or displeased the interested parties.

Certain arguments against this plan were urged in the state courts by counsel for defendants and it is proper to anticipate such arguments. Thus counsel asserted that the board had no authority to order any plan which simply "reduced" the danger or the impediment to public travel. This overlooks the fact that the petition for rehearing did not propose to reduce but to *remove* the danger (Vol. IV., p. 1881, l. 18).

It was further argued that the plan submitted by the company for the diversion of certain trains to the Susquehanna railroad only transferred the danger from one set of crossings to another. This is hardly a fair criticism of the plan, in view of the fact that the plan

proposed to eliminate the crossing at Market street, where admittedly the railroad and the highway traffic is the heaviest. It would also eliminate an existing grade crossing at Straight street on the line of the Susquehanna railroad. The plan also contemplated the closing of Ellison street, and, therefore, the elimination of the existing grade crossing at that point.

Counsel for the city also criticized this plan because they said it would materially reduce the train service over all crossings west of Market street. That is true—indeed, that is one of the principal *advantages* of the plan. But such reduction of train service west of Market street would not impair the train service for that part of the city, because the patrons of the railroad from that section of the city could board trains at the present Riverside station of the Susquehanna railroad, which is not very far from the present River street station of the plaintiff in error (See Vol. IV., p. 1889, l. 2). Furthermore, the Riverside station would be relocated so far as necessary for the purpose of serving that territory (Vol. IV, p. 1890, l. 1).

Counsel also criticised this plan because it would increase the number of train movements over existing grade crossings on the line of the Susquehanna railroad. That is true, but counsel fail to suggest how it is possible to give better train service without increasing the number of train movements. However that may be, the crossings in that part of the city, through which the Susquehanna railroad passes, are not used as much as the crossings on the Erie line in question in the present proceeding (Vol. IV., p. 1913).

Counsel also claimed that "a serious objection" to the consideration of the plan was the fact that the Susquehanna railroad did not join in the petition nor appear

at the hearing thereof. But if the rehearing had been granted, then, of course, the Susquehanna could readily have been made a party and given an opportunity to be heard thereon.

We submit that the action of the board in denying the plaintiff in error's petition for rehearing was unreasonable and arbitrary. The plan proposed in this petition would successfully solve the problem of grade crossings at Market street and at all the other crossings north of said street, to and including River street; in addition, it would greatly improve the passenger train service at Paterson and would not interfere to any material extent with the existing side tracks. It would also enable the service to the side tracks located north of Market street to be greatly improved, as the switching could be done without the present interference by the movement of passenger trains. There was no testimony offered to contradict that given by the general manager of the company, but the board entirely disregarded this testimony and rejected the plan.

We submit that such action of the board was erroneous and that the plaintiff in error's application should have been granted, as it appeared by the undisputed testimony that it was feasible and practicable to remove the danger, if any, to public safety and the impediment, if any, to public travel at the several highway crossings by adopting the plan proposed by the plaintiff in error in its said petition in lieu of the plan required by the order under review.

Furthermore, under such conditions the plaintiff in error should at least be given the alternative of abandoning the railroad, and if the statute upon which the order is based does not give such option to the plaintiff in error then the statute itself is unreasonable and invalid.

While it is the general rule that where a railroad has been constructed and put in operation, the company has no right to abandon the enterprise or cease to operate, this rule does not go to the extent of requiring the continuance of operation in cases where such operation cannot be continued save at a loss, unless a statute expressly so provides. This was so ruled in the case of *Jack v. Williams*, 113 Fed. Rep. 823 (Cir. Ct. So. Car.), affirmed 145 Fed. 281. The opinion of the court below reviews the various cases on this subject and we quote therefrom as follows:

"A railroad is in a sense a public concern. To its construction and operation the action of the sovereign is needed. If a corporation is created, the franchise to be a corporation can be given only by the sovereign. Its franchise as a common carrier for hire of passengers and freight comes from the sovereign. Its right to exercise the right of eminent domain can come only from the sovereign. And, as its road is in a sense a highway, the sovereign grants that also. The consideration for these acts of the sovereign is the utility of the enterprise to the public. To be thus useful to the public, the road must be kept up in such a condition that life and property both must be made as safe as practicable. The rates of transportation of persons and freight must be reasonable. And the reasonable number of trains must be kept up, depending upon the circumstances surrounding the railway. Whilst thus serving the public, however, no corporation or private person is obliged to continue the service without a reasonable remuneration. No one can be compelled to serve the public for nothing. Private property of no kind, including railroad property, can be used for public purposes without compensation. *Smyth v. Ames*, 169 U. S. 467, 18 Sup. Ct. 418, 42 L. Ed. 819; *Road Co. v. Sandford*, 164 U. S. 578, 17 Sup. Ct. 198, 41

L. Ed. 560; *Chicago, M. & St. P. R. Co. v. Minnesota*, 134 U. S. 418, 10 Sup. Ct. 462, 33 L. Ed. 970; *Railway Co. v. Smith*, 173 U. S. 684, 19 Sup. Ct. 565, 43 L. Ed. 858. All these cases determine that a railroad company, in the full enjoyment and use and capacity to use its franchises, cannot be compelled to exercise its franchises without reasonable remuneration. *A fortiori* a railroad corporation, or a person owning a railroad, cannot be compelled to operate that road, not only without remuneration, but at a loss. And this not by any means because such corporation or person is insolvent. If a citizen has the wealth of the Rothschilds, he cannot be compelled to use a dollar of his wealth for public purposes without compensation. What, then, is a person to do who becomes possessed of wholly unproductive railroad property? Sell it? But in the case at bar several distinct efforts to sell had been made, and made in vain. No bid whatever had been made except by these purchasers. The public—even that portion of the public on the line of the road—could not be induced to make a bid on it. Repair it and put it in condition? But experience had shown that even when it was a new road, requiring no expense for repairs, it barely paid operating expenses. Could the state or the public, in the face of the Fourteenth Amendment, compel such an expenditure, involving certain loss? Evidence has been introduced of persons who are of the opinion that the road would pay. Can such testimony override the result of actual experience? It appears also in evidence that, notwithstanding the existence of this road, dealers in cotton and farmers preferred to carry their cotton to market in wagons, rather than ship it by rail. The difference of cost must have been small. But, small as it was, the people about the road evidently estimate the general advantage of the road at a sum smaller. Under these circumstances, what other course could have been pur-

sued? The roadbed was in such a condition that it could not be operated. The expenses attending its repair held out no hope of remuneration. The purchasers had lost the privilege of incorporation and retention of the franchise. They owned the property. Was it to be kept idle and useless, or could they dismantle it?

This question is somewhat of novel impression at least, there is no decision exactly on all fours with it. The leading case on this subject is *Kansas v. Dodge City M. & T. R. Co.* (Kan.), 36 Pac., 755, 24 L. R. A., 564, and this clearly resembles the case at bar. In that case a mandamus was refused. This is the headnote:

'Where a railroad company owning a short line railroad, 26 miles only, is wholly insolvent, and such company has no cars or engines with which to operate it, and no funds or property to be applied to the payment of expenses of the company or the road, and the road has been abandoned for several months, and the road cannot be operated except at a great loss by any corporation or person, not taking into account the repairs of the road and the taxes thereon, the Supreme Court, having discretion in the granting of a writ of mandamus, will not compel by a peremptory writ the railway company to replace or put in repair its track, a part of which has been torn up, as such an order would be futile and of no public benefit.'

The facts of that case show that the road had been sold, and that a private person had bought it, and had sold to another person, who had removed the rails. Among other things the Court says:

'The order prayed for should only be issued in the interest of the public. If the track is replaced there is no reasonable probability that the road will be or can be operated. If a railway will not pay its mere operating expenses,

the public has very little interest in the operation of the road or in its being kept in repair.'

* * * The question is incidentally touched upon in *Railroad Co. v. Dustin*, 142 U. S. 499, 12 Sup. Ct., 285, 35 L. Ed., 1095, and there the Court says:

'If as in *Railroad Co. v. Hall*, 91 U. S. 343, 23 L. Ed. 428, the charter of a railroad corporation expressly required it to maintain its railroad as a continuous line, it may be compelled to do so by mandamus. So, if the charter requires the corporation to construct its road and to run its cars to a certain point on tide water (was held to be the case in *State v. Hartford & N. H. R. Co.*, 29 Conn. 538) and if it has so constructed its road and used it for years, it may be compelled to continue to do so. And mandamus will lie to compel a corporation to build a bridge in accordance with an express requirement of statute. *New Orleans, M. & T. R. Co. v. Mississippi*, 112 U. S. 12, 5 Sup. Ct. 19, 28 L. Ed. 619; *Peo. v. Boston & A. R. Co.*, 70 N. Y. 569. But if the charter of a railroad corporation simply authorizes the corporation, without requiring it, to construct and maintain a railroad to a certain point, it has been held that it cannot be compelled by mandamus to complete or maintain its road to that point, when it would not be remunerative. *Railway Co. v. The Queen*, 1 El. & Bl. 858; *Railway Co. v. Southern Minnesota R. Co.*, 18 Minn. 40 (Gil. 21). In *Sec. Com. v. Fitchburg R. Co.*, 12 Gray, 180, mandamus was refused to compel the running of passenger trains over a branch road on which this had been discontinued, after running them for a time, because they were unprofitable. The question is not as to the existence of the duty, but as to its extent and qualifications. The duty of a railroad company is not more than to meet the public wants. If trains run at reasonable

and moderate fares, and cannot be supported, it is because they are not needed.'

The text writer Morawetz also says:

'The duty of a railroad company to operate its road requires it merely to meet the public wants and exigencies. If there is not sufficient traffic over a particular line of road to pay for the expense of running trains, this is sufficient evidence that the public do not require it to be kept in operation. In such case the company may cease operating the road unless this be contrary to the express terms of the charter.' (Mor. Priv. Corp., Sec. 1119.)

This is sustained in *Ohio & M. R. Co. v. People* (Ill.), 11 N. E. 350.

In *Coe v. Columbus, P. & I. R. R.* (Ohio), 75 Am. Rep. 524, the Court says:

'If we are at liberty to suggest on what the legislature very probably relied for the continued operation of a railroad, once constructed, we should say it was the interest of the owners. If it can be operated profitably, the interest of those concerned will rarely, if ever, fail to keep it in operation so as to subserve the public use. If it cannot, we know of no mode by which the state can compel those by whom it was constructed to operate it at a loss, and certainly there is no mode provided by which it can be operated at the risk of the state.'

The same rule was adopted in the case of *State of Iowa v. Old Colony Trust Co.*, 215 Fed. 307, where the Circuit Court of Appeals for the 8th Circuit affirmed a decree directing the receiver of a certain railroad to abandon the same. The Court said:

'A railroad corporation is in an important sense a public corporation. It is dependent upon the public for its franchises to exist and carry on business, and in consideration of these franchises it assumes and must perform certain duties and

obligations for the benefit of the public. Among them, as a general rule, is the duty of maintaining its entire line of road in a reasonably safe and operative condition and for a fair consideration to carry passengers and freight over it at all reasonable times whenever requested to do so. These propositions are elemental and lay down a general rule which cannot be gainsaid or denied. But there are some conditions which necessarily excuse full compliance with the requirements of these rules, and in our opinion, the present case affords a striking example of such conditions. Here is a case where the line sought to be abandoned is not only not self-supporting, but its continued operation jeopardizes the successful operation of the entire system of which it is merely a part. Moreover, its continued operation in its present condition is dangerous to life and property and there is no money or financial ability to improve its condition. Not only so, but there is little public necessity for its continued operation, whereas, there is a great public necessity for the continued operation of the balance of the system."

In *Northern Pacific Ry. Co. v. Washington*, 143 U. S. 492, 35 L. Ed. 1092, this Court reversed a judgment of the Territory of Washington, ordering a railroad company to erect and maintain a certain station and to stop its trains there. In the course of its opinion the Court said:

"But if the charter of a railroad corporation simply authorized the corporation, without requiring it, to construct and maintain a railroad to a certain point, it has been held that it cannot be compelled by mandamus to complete or to maintain its road to that point when it would not be remunerative. *York & N. M. R. Co. v. Reg.* 1 El. & Bl. 858; *Great Western R. Co. v. Reg.* 1 El. & Bl. 874; *Com. v. Fitchburg R. Co.*, 12 Gray 180; *State v. Southern Minnesota R. Co.*, 18 Minn. 40."

Other cases to the same effect are:

Amesbury v. Citizens Electric Ry., 199 Mass., 394.

Sherwood v. Atlantic & D. R. Co., 94 Va. 291, 26 S. E. 943.

Re Strayhorn, Philadelphia & R. R. Co. v. Public Service Commission, 67 Pa. Super. Ct. 604.

Re Denver, Boulder & Western R. R. Co., P. N. Reports 1919 F, 9. (Opinion of Colorado P. N. Commission.)

Bellefonte Central R. R. v. Public Service Commission. P. U. Reports, 1919 F, 67. (Opinion of Pennsylvania Public Service Commission.)

In *Mississippi R. Commission v. Mobile & O. R. Co.*, 244 U. S. 388, 61 L. Ed. 1216, a decree of the U. S. District Court enjoining the enforcement of certain orders of the state commission was affirmed. It directed the railroad to restore to service certain passenger trains, the continued operation of which the evidence showed would have involved a substantial loss to the company. It was held that the orders were arbitrary and unreasonable, because they prevented the company from obtaining a fair return upon the property invested by it in the public service. We submit that the principle of this decision can be logically extended, and on a proper showing, should be extended to a case where it appears that the continued operation of a certain part of a railroad system will result in a heavy financial loss, or will prevent a company from realizing a proper return upon its investment; and that, therefore, the plaintiff in error, in the present case, should have been permitted to decrease the number of train movements or, if not, to abandon that part of the railroad where this enormous expense was ordered to be incurred.

An analogous case is *Chicago &c., R. Co. v. City of Minneapolis*, 238 Fed. 384, wherein the U. S. District Court in Minnesota enjoined the enforcement of an ordinance requiring the abolition of certain grade crossings. The ordinance applied to several separate and distinct crossings. As to one of them it was shown that the cost of complying with the ordinance was about \$600,000 more than the cost of eliminating the crossing by another plan that was proposed by the railroad. The court held that under this evidence, the ordinance, so far as that particular crossing was concerned, was "unnecessary, unreasonable and arbitrary" to such an extent as to deprive the railroad company of its property without due process of the law.

The claim that a railroad may not be compelled to continue the operation of trains at a financial loss is not met by the provisions of Section 86 of the General Railroad Act of 1903 of the state of New Jersey, which provides for the appointment of a receiver by the Chancellor if the company neglects to run daily trains on any part of its road for the space of ten days. Operation by such a receiver would not be operation by the company. In such a contingency, can it be supposed that the Chancellor would order the receiver to continue an unprofitable operation?

It may be urged that the Board of Public Utility Commissioners, under Section 17 of the act concerning public utilities (which provides that the board shall have power to require every public utility "to comply with the laws of this state . . . and to conform to the duties imposed upon it thereby or by the provisions of its own charter . . . to furnish safe, adequate and proper service and to keep and maintain its property and equipment in such condition as to

enable it to do so") could compel the continuance of operation, but it seems obvious that the board is not sufficiently omnipotent to compel a railroad company, or any other public utility, to continue business at a loss. Section 20 of the act concerning public utilities provides that no railroad shall abandon any railroad station without the approval of the board, but there is nothing therein which prohibits the abandonment of the railroad.

But if it should be concluded that the company has no legal power to abandon the railroad no matter how great the financial loss may be, it should at least be given the alternative of decreasing the alleged danger and impediment by decreasing the number of train movements, especially when it proposes a reasonable and practicable scheme therefor which would greatly improve the train service to and from Paterson and would result in a saving of at least half (and probably more) of the great burden imposed upon it by the order under review.

In discussing the foregoing argument the New Jersey Supreme Court said:

"Insofar as this reason challenges the discretion exercised by the board in making its order, we are not concerned with it in this part of our opinion."

In reaching this conclusion we respectfully submit that the court seems to have overlooked the claim of the plaintiff in error that even if the board did have "discretion" to make the order under review (as well as discretion to refuse to permit the removal of the alleged danger and impediment by decreasing the number of train movements, or if necessary by abandoning the railroad), such discretion was improperly exercised and that the ruling of the board on the subject was arbitrary and unreasonable.

The New Jersey Supreme Court also said (*italics ours*):

"The decrease in the number of train movements was a matter primarily under the control of the prosecutor, and hence required no statutory permission; if by such decrease the danger and congestion at the crossings were in fact eliminated or reduced to a negligible point that fact would doubtlessly be recognized by the board and dealt with accordingly. *It was for the prosecutor to make that fact appear* and its failure to do so involved no constitutional infirmity in the statute."

(Vol. IV, p. 2291, l. 35, to p. 2292, l. 2.)

What more could the plaintiff in error do to make the facts "appear" than was done when testimony was taken on the plaintiff in error's application for rehearing? As shown above, the plaintiff in error submitted detailed plans and maps, with a full explanation by its operating officials of the effect of the proposed changes. It is difficult to surmise what more the plaintiff in error could do, except possibly, to actually abandon that part of the railroad which passes over the crossings or to actually reduce the train movements at those points. Can it be said that it was necessary for the plaintiff in error to do either of these things before the board (or the court) was under any obligation to consider these proposed methods of eliminating the alleged danger and impediment? If train movements over these crossings were discontinued for a single day, the result in all probability would be an immediate application for a receivership under Sec. 86 of the General Railroad Law.

The plaintiff in error could not reasonably be required to do more than it actually did, namely, to show by testimony (which was *undisputed*) the probable effect of its proposals.

We submit that the refusal to permit the plaintiff in error to decrease or eliminate the "danger" and "impediment" in the manner proposed by it was arbitrary, unreasonably oppressive, and under the circumstances of this case was a violation of the due process clause.

IV.

In so far as the order requires the plaintiff in error to make certain changes in the properties of the Public Service Railway Company and in so far as it limits the proportion of the expense to be paid by the Street Railway Company to certain of the crossings to be eliminated, the order violates the due process clause for the reason that it takes the property of the plaintiff-in-error for the use of said Street Railway Company.

At three of the crossings involved in the proceeding, namely, (1) Park avenue and Market street, (2) Broadway, and (3) River and Putnam streets, the tracks of a street railway company known as Public Service Railway Company pass over the railroad tracks. The order under review, after reciting that the railway company uses these three crossings, continues as follows:

"The board, in accordance with the power and authority vested in it by said act, further orders the Public Service Railway Company to pay ten per centum of the expenses of the alterations, changes, relocating and opening required by this order, including damages to adjacent property, directly chargeable to the crossings and each of them, so used by the said street railway operated by it" (p. 1792, l. 10).

The order further directs that the plaintiff in error and the said railway company keep specific and complete

records of the expense directly chargeable to those crossings, and leave was given to apply to the board for further order in the event they could not agree upon the amount of such expenses. This part of the order was based upon section 2 of the statute of 1913, which provided that the entire expense be paid by the railroad unless a street railway uses the crossing, in which event the board may order not exceeding ten per centum of the expenses "directly chargeable to the crossing used by the street railway" to be paid by the company operating the same.

Another paragraph of the order directs that any telegraph * * * or other company or corporation, co-partnership or individual whose property or construction it may be necessary to change or remove, to change or remove the same according to the said plan. A further paragraph directs that the Public Service Railway Company (together with the plaintiff in error and certain other companies specifically named) "proceed with due diligence to the execution of this order" (p. 1791, ll. 1-18).

The plan shows that at the crossing of Market street and Park avenue a double line of trolley tracks approaches the railroad tracks from the southerly side of the right of way (Compass points according to railroad usage—Jersey City being east). A third track leads off from one of the trolley tracks at a point about 100 feet from the railroad tracks, and extends across the railroad tracks in a northerly direction, and thence as a single track through Market street, while the double line of trolley tracks, after crossing the railroad tracks, continues northerly as a double track along Park avenue. At the crossing of the railroad tracks there are three trolley tracks. The plan shows that the grade of Market

street on the southerly side is to be lowered, beginning at a point 90 feet from the present railroad tracks—the grade being one per cent.; on the northerly side of the railroad tracks the grades of Market street and Park avenue are lowered, beginning at a point about 200 feet northerly from the railroad tracks, on Market street, and at a point 250 feet northerly on Park avenue—the grade on Market street being 4 per cent. and on Park avenue 4.5 per cent.

At Broadway there is a double line of trolley tracks. The plan shows that the grade of the street is to be changed on the southerly side of the railroad tracks beginning at a point about 90 feet from the railroad tracks and passing thereunder on a 0.5 per cent. grade. On the northerly side the grade of street is to be changed beginning about 325 feet from railroad tracks, and passing under on a 5.0 per cent. grade.

At the crossing of River and Putnam streets there is a single line of trolley tracks passing over the railroad tracks at an acute angle. The plan and profile show that the grade of River street on the southerly side of the tracks is changed from the existing one and one-half per cent. grade to a level grade, beginning about 200 feet from nearest rail on present center line of street. On the northerly side of River street the grade is changed to a 5 per cent. grade, beginning at a point about 340 feet from the tracks. The plan calls for a change in the alignment of the trolley tracks as they pass over the crossing. By reason of these changes it will, of course, become necessary to reconstruct and relay the trolley tracks to correspond to the new grades. A summary of the necessary changes at these three crossings is given in Exhibit P. S. R. 1 (Vol. 2, pp. 1394-5), as follows:

1. Park avenue and Market street: Railroad tracks to be elevated 15 feet; street to be depressed 3 feet; total cost of changing trolley tracks (1895 feet) \$18,-816.12.

2. Broadway: Railroad tracks to be elevated the same as at Park avenue and Market street, and street to be depressed the same; total cost of changing trolley tracks (1379 feet), \$14,830.80.

3. River and Putnam streets: Railroad tracks to be elevated 14 feet; street depressed about 3 feet; total cost of changing trolley tracks (940 feet), \$8,659.

The details of these estimates are shown in Exhibit P. S. R. 2 (pp. 1403 to 1411). This exhibit shows that changes are required in the wires, rods, ballast, poles, feeders, derails and various other properties of the trolley company as specified in the estimate.

The order requires the Public Service Railway Company to pay 10 per cent. of the expense of the alterations required by the order which are "directly chargeable to the crossings and each of them *so used by the street railway operated by it*" (p. 1792, l. 10).

The objection to this part of the order is that it limits the expense of the cost of alterations to only three of fifteen crossings, notwithstanding the fact that, according to the conclusion reached by the state courts, it is necessary for all of the crossings to be considered in one general scheme of elimination. The order should have required the Public Service Railway Company to pay 10 per cent. of the entire cost; without such a direction, the plaintiff in error is required to spend more than a fair proportion at the other crossings. This objection does not involve the claims that in any event the limit of expenses so fixed by the statute is unreasonable and arbitrary, and that such limit impairs the

obligation of the contract between the plaintiff in error and the street railway company, as those matters will be discussed when we consider objections to the statute itself; but the present claim is that the effect of the order is to require the plaintiff in error to expend money at other crossings which are necessarily involved with the three crossings where the street railway company has tracks, and that, therefore, so far as relates to these other crossings, the plaintiff in error is required to spend its money for the benefit of the street railway company.

In the board's report of January 11, 1915, no reference was made to the percentum of expense to be paid by the trolley company. In its petition for further hearing presented after the filing of this report and before the making of the order under review, the plaintiff in error called attention to this omission and asked that a hearing be granted for the purpose of considering (*inter alia*):

“(e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the *total cost* of eliminating *all* of the crossings involved in said plan or scheme adopted by the board, in addition to all cost and expense legally chargeable to said Public Service Railway Company under section 4 of said statute.”

No hearing was given to the plaintiff in error on this point, but on the date of the making of the order under review the board filed a “report” denying this petition.

The order requires the railway to pay 10 per centum of the expenses “directly chargeable” to only three of the fifteen crossings ordered to be liminated; and yet in its report of January 11, 1915, the board said: “From the beginning to the conclusion of the hearings there was

no intimation from any one that a change at a particular crossing only should be considered. We will therefore deal with the proceeding as involving the adoption of one comprehensive plan or scheme covering all of the crossings" (Vol. 4, p. 1756).

If the board is correct in its conclusion that *all* of the crossings must be considered in any general plan for the elimination of any of them, then we submit that the trolley company should be chargeable with 10 per cent. of the entire cost rather than 10 per cent. of such part of the cost (to be ascertained by some method not suggested by the board nor by any party to this proceeding) as is directly chargeable to the three particular crossings. How is it possible to determine what proportion, if any, of the expense of eliminating the crossing, for example, at Ellison street, the next street north of Market street, is "chargeable" to the expense of eliminating Market street; and yet according to the board one crossing cannot be eliminated without at the same time eliminating the other. How is it possible to make similar determinations at the various other crossings, every one of which the board claims is involved in the elimination of the crossings at Market street, Broadway and River street. Where shall the dividing line be drawn? If it is not possible to draw any dividing line, then why should not the petitioner's request have been granted that the street railway company be ordered to pay 10 per cent. of the entire cost—at the very least the board should have given the plaintiff in error a hearing on this subject when its attention was called to the matter in the petition above mentioned. We submit that the refusal to grant such petition was arbitrary and unreasonable, and that the order of the board limiting the amount to be paid by the trolley company to

- * the expense directly chargeable to three crossings only, when according to the board's own report all of the crossings must be considered together, was equally arbitrary and unreasonable.

The case in this respect is somewhat similar to *Railroad and Warehouse Commission v. Litchfield, etc., Ry. Co.*, 108 N. E. 347, where an order of the commission, changing the terms under which the street railway was permitted to cross the tracks of a steam railroad, was set aside as unlawful and unreasonable on the ground that the order did not provide for a fair apportionment of the cost of protection.

In discussing this feature of the order, the New Jersey Supreme Court said (*italics ours*):

"The contention that the order is invalid in that it requires the prosecutor to do the physical work of removing and changing the property of the Public Service Railway Company is not well founded in fact. The order does not require the prosecutor to do that. It requires the Public Service Railway Company to change and remove such of its property and construction as is necessary to carry into effect the order, and further directs that both the prosecutor and the Public Service Railway Company keep specific and complete records of the expenses directly chargeable to the crossings, and each of them, so used by such street railway company. The order directs the Public Service Railway Company to pay 10 per centum of the expenses of the changes required by the order directly chargeable to the crossings used by it. This was the maximum amount allowed by the statute, and, of course, the prosecutor cannot complain that it was *so limited*" (p. 2283, ll. 10-30).

The obvious answer to this conclusion of the New Jersey Supreme Court is that, so far as affects the payment to be made by the trolley company, the order by

its terms as limited to the expenses "directly chargeable to the crossings, and each of them, so used by the said street railway company operated by it" (p. 1792, l. 15). The reference was to the three crossings, known as (1) Park avenue and Market street, (2) Broadway, and (3) River street. But, according to the views of the board and the opinion of the state courts, *all* of the crossings were properly considered in one proceeding because they were so related to one another that the consideration of the one "necessarily involved the consideration of the other" as a practical engineering problem (p. 2270, l. 30). If, therefore, all of the crossings are thus related one to the other, it follows that the percentage to be paid by the Public Service Railway Company should not be limited to three specific crossings, but should be a per centum of the entire cost.

The order in its present form by thus limiting the proportion of the expense to be paid by the Public Service Railway Company, necessarily imposes a greater burden of expense upon the plaintiff-in-error, and to the extent of such greater burden, takes the property of the plaintiff-in-error without compensation for the benefit of said street railway company.

V.

In so far as the order affects the side tracks indicated on the plan attached thereto, it impairs the obligation of the contracts between the plaintiff-in-error and the respective owners or lessees of said side tracks; if the order is construed to require the plaintiff-in-error to relocate or reconstruct said side tracks (either on or off its right of way), at its own expense, then it further operates to deprive the plaintiff-in-error of its property, without due process of law, while, on the other hand, if not so construed, it deprives the owners or lessees of said side tracks of their property, without due process of law.

By the statute of the state of New Jersey, by virtue of which the order under review was made by the Board of Public Utility Commissioners, the board is authorized, when certain conditions are found to exist, to order the company operating said railroad "to alter such crossing *according to plans* to be approved by said board." (See Section 1 of the statute, as quoted, *supra*, in "Preliminary Statement.")

Before the order of April 20th, 1915, was made, the board filed a report, dated January 11, 1915 (Vol. IV, p. 1748 *et seq.*). When the order was made, this report was included as a part thereof by reference (p. 1788, ll. 35-40). In this report, the board decided that the plan to be approved should be that generally outlined in Plan No. 2 of the city of Paterson, as modified in the respect hereinbefore referred to.

In discussing the plan submitted to the city, the report of the board says (*italics ours*):

"With Section D modified according to the Erie Railroad, no switch owners east of Newark Branch Junction would be affected, neither would the Newark Branch be affected. It appears, from

present plans, five industries would be left without any switch connections, and two industries would be moved to a new location with switching facilities equal to the ones they now enjoy. Alterations *will have to be made* in connections to 31 industries by Plan No. 1, and 26 by Plan No. 2, some apparently resulting advantageously and others not so much to their advantage; and 20 on Plan No. 1 and 25 on Plan No. 2 will have no change in their present accommodations. At present one has no siding" (p. 1764, ll. 20-38).

The board apparently intended to have somebody make the changes in the side tracks, indicated on what is described in their report as "Plan No. 2," as their report shows that the cost of this work is included in the board's report as a part of the total cost of the work of eliminating the crossings. (See city's estimate and details of same, Exhibit P. 55, Vol. II, pp. 919-931; railroad estimate of same items, Exhibits R. 101 and R. 102, Vol. IV, pp. 1305-1322; board's report as to cost, Vol. IV, p. 1765, ll. 5-15, and Schedules C and D attached to report, pp. 1770-1.)

When we examine the order, we find that it directs the plaintiff-in-error to alter the crossings "according to the plan therefor annexed to and made part hereof, entitled . . . and profile of same, also annexed to and made part hereof, entitled . . . which said plan and profile are hereby approved." The order further directs the plaintiff-in-error to alter the crossings "by reconstructing said railroad and highways and by performing all other work required according to and as shown on said plan and profile.

The order then proceeds as follows:

"Any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company or corporation, co-partnership or individual whose property or construction it may be necessary to change or

remove to carry said plan and this order into effect shall change or remove the same, according to said plan.

"It is further ordered that the said Erie Railroad Company . . . and all other parties to this proceeding and each and every of them, proceed with due diligence to the execution of this order, and comply with all the requirements thereof and the duties imposed upon them thereby, and by the said act under which this order is made, and the laws of this state."

By reference to the plan annexed to the order, it will be seen that numerous changes are indicated in the switches and side tracks and the leads by which the same are connected with the main line tracks. Some of these are indicated as destroyed in whole or in part, and others are relocated and reconstructed. (See reproduction of the plan, at pp. 51 to 56 in Vol. VI, with notations thereon in red, indicating changes in sidings, etc.)

The plaintiff-in-error, in the discussion of the case before the state courts, assumed that the changes in the switches, side tracks and leads were to be made by it, as indicated on the plan which was expressly made a part of the order, and argued that that part of the order was invalid for the reason that the necessary effect thereof was to take its property for private use; or for public use, without compensation, in violation of the due process clause of the Fourteenth Amendment. But the opinion of the Supreme Court of the State of New Jersey (afterwards adopted by the Court of Errors and Appeals), notwithstanding the plain language in the order, held that the railroad was not required to make changes in the private sidings. The Supreme Court said:

"Point VIII (of the brief filed in said court) is that the order of the board is invalid in so

far as it requires the prosecutor to make changes in switches, side tracks, leads, bridges, yards, structures and other facilities and property of the prosecutor and of other companies, co-partnerships or individuals.

We think in this respect the order properly interpreted is justified by the statute properly construed. The statute authorizes the board, in a proper case, to order the railroad to alter grade crossings according to plans to be approved by the board, by substituting therefor crossings not at grade, either by carrying the highway under or over the railroad, or by reconstructing the railroad under or over the highway, or by vacating, relocating or changing the lines, width, direction or location of the highway and the opening of a new highway in the place of the one vacated, and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings" (quoting from the order).

"It, therefore, appears, we think, that the order is confined in its direction to the company to the alteration of the crossings in question by changing the highways and by reconstructing the railroad and by performing such work as is required thereby. It does not require the railroad company to make changes in private sidings, and the like, not its property, and not within the limits of its right of way. The closing words of the order 'and by performing all other work required according to and as shown on said plan and profile' do not affect this conclusion as to the scope of the order. These general words follow specific provisions of the order and under an elementary rule of construction are limited thereby. Further, they refer back to the introductory general mandate of the order requiring the company to 'alter said crossings and each of them' and are limited thereby.

Neither does the order require the owners of such private sidings to reconstruct them. The plan which accompanies the order simply *suggests* to such owners a method by which their property may be conformed to the new conditions so as to admit of a continuance of the siding facilities theretofore enjoyed. The order only requires others than the railroad company to make such changes in, and removals of their property and constructions as are necessary to carry the order and plan into effect. In this it accords with Section 4 of the statute. Since the mandate of the order to the railroad company is limited to requiring the changing of highways and reconstruction of the railroad, the changes in, or removal of, such private sidings cannot be said to be necessary to carry the order to the railroad into effect. Of course, the plan does indicate a way in which, in part, existing siding facilities may be continued after the ordered changes in the highways and the ordered reconstruction of the railroad are made. It is appropriate that it should do so, for in the adoption of a plan, the effect thereof on existing industrial facilities should be taken into account, and this factor should also be taken into consideration in determining whether the plan adopted is reasonable or unreasonable.

As we have pointed out, in so far as the order directs the prosecutor to make changes in its own side tracks, and the like, it was within the power conferred by the statute if such changes were fairly incidental to the changes of grade of the main line tracks. We think that such ordered changes were of that character" (Vol. V, p. 2280).

Referring specifically to the changes indicated on the plan with reference to the buildings of Fuller's Express Company and Morris & Co. the court said:

"Point X (of the brief filed therein) is that the order is invalid in so far as it requires the prose-

cutor to construct structures upon its lands for the use of Fuller's Express Company and Morris & Co., in substitution for the structures now occupied by them as lessees and which will be rendered useless by the elimination work.

It is true that the plan adopted by the board has indicated upon it suggested possible locations upon the lands of the railroad company of substituted structures for these private companies, but it does not require the *railroad company* to provide such locations or to erect such structures, since neither the existing structures nor the suggested structures constitute *any part of the railroad*. This matter is sufficiently discussed under Point VIII" (Vol. V, p. 2285).

The details of the changes in the side tracks, leads and switches, as indicated on the plan attached to the order, are given in Reason 72 (Vol. IV, p. 1847 *et seq.*) and are repeated in Assignment of Error No. 34 (Vol. V, p. 2381). If these changes are required to be done by the plaintiff-in-error, at its own expense, the result would be a clear violation of the Fourteenth Amendment, by depriving the plaintiff-in-error of its property without due process of law.

Missouri Pacific Ry. Co. v. Nebraska, 164 U. S. 403, 41 L. Ed. 489;

Missouri Pacific Ry. Co. v. Nebraska, 217 U. S. 196, 54 L. Ed. 727;

Oregon R. R., etc. Co. v. Fairchild, 224 U. S. 510, 56 L. Ed. 863;

Union Lime Co. v. Chicago & N. W. Ry. Co., 233 U. S. 211, 58 L. Ed. 924;

Tap Line Cases, 234 U. S. 1, 58 L. Ed. 1185;

Northern Pacific R. Co. v. North Dakota, 236 U. S. 585, 59 L. Ed. 735;

Great Northern Ry. Co. v. Minnesota, 238 U. S. 340, 50 L. Ed. 1337;

Seaboard Air Line v. Railroad Commission of Georgia, 240 U. S. 324, 60 L. Ed. 669;

Chicago & N. W. Ry. Co. v. Ochs, 249 U. S. 416; 63 L. Ed. 679;

Lake Erie & Western R. R. Co. v. Public Utilities Commission of Illinois, 249 U. S. 422; 63 L. Ed. 684;

McLinnis v. New Orleans, etc. R. Co., 68 Southern 481, L. R. A. 1915 E, 682;

Mt. Hope Coal Co. v. White Oak Ry. Co., 65 W. Va. 15, 64 S. E. 630, 28 L. R. A. (N. S.) 1013;

Chicago, &c. Ry. Co. v. Public Service Commission of the State of Washington, 77 Wash. 529, 137 Pac. 1057, L. R. 1918, B., p. 786;

Matter of Grade Crossing Commissioners of Buffalo, 207 N. Y., p. 58;

Hatfield v. Strauss, 117 App. Div. 671, 189 N. Y. 208;

Matter of R. H. & L. R. R. Co., 110 N. Y. 119, at p. 126;

Fanning v. Osborn, 102 N. Y. 441;

Swift v. Delaware, etc. R. R. Co., 66 N. J. Eq. 34.

It will be observed that the opinion of the Supreme Court of New Jersey does not refer specifically to the changes in the sidings outside of the right of way of the plaintiff-in-error; if the plaintiff-in-error could not be constitutionally required to make such changes on its right of way, *a fortiori*, the changes could not be required off the right of way; and we assume that it will be argued and perhaps conceded, by the defendants-in-error, that the order under review, as construed by the state courts,

does not require the plaintiff-in-error to make these changes—whether they be on or off the right of way; and, if that be the proper construction of the order, then, of course, the plaintiff-in-error is not in a position to complain that its constitutional rights have been infringed in this respect. But another and very important question still remains, and that is whether the constitutional rights of the siding owners (or such of them as are complaining thereof) have been violated by the cutting off of their side tracks, without compensation, and without provision for the reconstruction thereof. Of course, this is a matter which does not directly concern this plaintiff-in-error, and it will be dealt with by counsel for such owners as have raised the point by appropriate proceedings in the state courts and by writ of error to this Court.

Assuming that the order, as construed by the state courts, does not require the reconstruction of the said side tracks or leads, the further question still remains—whether the order impairs the contracts between the plaintiff-in-error and the several siding owners, within the meaning of the Contract Clause of the Constitution. Such an order is a “law” of the state within the meaning of the Constitution. *Grand Trunk Ry. Co. v. Railroad Commission of Indiana*, 221 U. S. 400, 55 L. Ed. 786.

Probably the most striking examples of impairment of contracts are those between the plaintiff-in-error and Fuller’s Express Company and Morris & Co., respectively. The effect of the order upon the property of Fuller’s Express Company was described by the general manager (pp. 426 to 433). The lease of that company is printed in full at page 2018, Vol. IV (Erie 10). The effect of the order upon the property of Morris & Co. was described by the local manager (pp. 364 to 369). The lease is printed at page 2026, Vol. IV. (Erie 11).

According to the plan and profile attached to the order, the present buildings and facilities of these two companies are to be destroyed, and new buildings and facilities are to be provided for each of them in other parts of the city. At the present time, the building used by the express company is located on the westerly side of the railroad tracks and extends southerly from near the southerly side of Ellison street. There is a sidetrack leading to this building which is used by the express company for its business. According to the plan of the board a new building is to be constructed for the use of the express company at a point indicated on the plan on the southerly side of Market street and on the westerly side of the tracks. This new building is to be substantially in the present location of the Market street station, and will occupy land the title to which is in the Paterson & Hudson River R. R. See Map, Exhibit R-16, Sheet No. 8.

At the present time the building used by Morris & Company is located on the northerly side of Market street and the westerly side of the tracks; it is practically in the location which the plan orders for the construction of the *new* Market street station. The proposed new location for Morris & Company, as shown on sheet No. 3 of the plan, is on the easterly side of Railroad avenue between Greene street and Slater street on a plot of ground nearly 100 feet distant from the right of way. This is on property of the plaintiff-in-error, on which there are located at the present time several sidetracks and leads which form part of plaintiff-in-error's main freight yard in the city of Paterson.

The cost of the construction of the new building and facilities for the express company is the sum of \$12,000, and for Morris & Company is the sum of \$40,000. (Testimony of Mr. Bramheld, p. 1956; Ex. Erie 18, p. 2247.)

The general manager of the express company said that the business of his company was to handle express and fast freight between New York and Jersey City, Paterson and Passaic. The building which is now used is leased from the Erie Company. Between 20 and 25 carloads are received each day. There is a side track about 300 feet long between the main-line tracks and the express building; the building itself is about 200 feet long and 15 or 20 feet wide (p. 426). The land and building are owned by the railroad and are leased to the express company (see Ex. Erie 10, p. 2018). The lease provides that in case the railroad shall deem it necessary or convenient to provide the express company with facilities at points in Paterson or Jersey City other than those assigned to that service by the terms of the lease, the railroad may assign other locations suitable for handling the traffic of the express company, and the express company agrees, at its own expense, to vacate the premises theretofore assigned and to transfer its business to such other place as may be so assigned.

The lease further provides that if the railroad, at the request of the express company, shall place or deliver cars at any other points than the freight house at Jersey City and Paterson, assigned to the express company business in accordance with the lease, then the express company is to pay the railroad company a switching charge for such service in addition to the other payments. The express company agrees to pay to the railroad an amount equal to 30 per cent. of the gross revenue, which amount shall not in any event be less than \$35,000 per annum.

The lease was made for a period of one year from January 24, 1908, and thereafter until terminated by

either party giving to the other one year's notice of intention to cancel the same.

The building occupied by Morris & Company is on the property of and is owned by the plaintiff-in-error. Morris & Company, however, rebuilt the inside of the building and constructed a new platform and storage room (p. 368, ll. 10-15).

The business of this company in Paterson amounts to \$1,500,000 a year (p. 565, l. 20).

The agreement between the railroad and this company is dated May 14, 1910, and leases certain lands and a part of a building of the railroad located on the northerly side of Market street for the term of one year from February 1, 1910, and thereafter until terminated on sixty days' notice by either party. (Ex. Erie 11, p. 2026.)

The lease provides for a payment of \$1,000 per year as rent. The lessee agrees to keep the buildings in as good condition and repair as at the beginning of the lease and to put on such additions and repairs as it itself may require.

There has been no request to the railroad company on the part of either of these companies to change the location of the sidetracks and switch connections now used by them, and there has been no complaint that the present facilities are inadequate or improper; on the contrary, both of these companies appeared in this proceeding and objected most strenuously to the proposed changes so far as it affected them (see pp. 364-368; 426-433; 564-568).

The proposed site for the express company is already in use by the plaintiff-in-error or for its Market street station, and the proposed site of Morris

& Company is already in use as part of a freight yard. Hence both of the locations which the board assumes to be desirable for these two companies are already devoted to other public uses and the railroad company cannot be compelled to devote them to any other use, whether public or private. *New York, etc., R. R. Co. v. Paterson*, 61 N. J. L., 408.

Moreover, some of the land on the proposed new locations was conveyed or condemned for railroad purposes only; and if no longer used for such purposes, would of course revert to the original grantors or their successors in interest. See, for example, deed from Society of Establishing Useful Manufactures to Paterson & Ramapo R. R. Co., Vol. II., pp. 1037-8; deed from Colt to Paterson & Ramapo R. R. Co., p. 1041; condemnation of Paterson & Ramapo R. R. v. Cooke, p. 1043.

So far as concerns the proposed site for the express company the title thereto is not in the plaintiff-in-error, but in the Paterson & Hudson River R. R.; and even if the plaintiff-in-error could be compelled to devote its own land to the use required by this part of the order it is difficult to see on what theory it could be required to devote to that purpose land, the title to which is in another company and in which the plaintiff-in-error has only a leasehold interest. The order does not direct the Paterson & Hudson River R. R. to devote this part of its property to the use of the express company; and it may well be that if the Market street station is abandoned, the Paterson & Hudson River R. R. (or the plaintiff-in-error, if it has the right so to do under the terms of the lease with that company), might desire to use that land for some other purpose.

It is obvious that the proposed location for Morris & Co. in the centre of a freight yard is not as desirable as

its present location near Market street—which is in the centre of the city. No provision is made for access to the new location nor for the construction of side tracks or any of the other facilities that such company would require in order to continue to handle its business.

According to the plan attached to the order the new building for Fuller's Express Company is about 250 feet long and about 20 feet wide. The new building for Morris & Company is to be about 150 feet long by about 40 feet wide. On what theory does the board assume that the dimensions of these buildings are suitable for the purposes of their respective business? If they are not large enough, these two companies might reasonably complain; and if they are too large, the plaintiff-in-error might reasonably complain because it is obliged to construct buildings larger than are necessary for the purposes for which they are to be used.

It will be seen that under the order, the existing contracts between the plaintiff-in-error and Fuller's Express Company are cancelled without the notice provided therein, and the plaintiff-in-error is thereby deprived of the benefit of the payment of the rents provided for therein, without any compensating advantage, by reason thereof—indeed, the order does even more than this, because it compels the plaintiff in error to devote some of its own property to the private use and benefit of these two companies, notwithstanding the fact that there is no provision in either contract which can possibly be construed to require such action on the part of the railroad company.

So far as Fuller's Express Company is concerned, there is a further objection that this company in its contract specifically agreed that if any other location was required where it should carry on its business, then that company, *at its own expense*, would vacate the

leased premises and transfer its business to such other place (p. 2020, l. 15).

Furthermore, the order requires the permanent devotion of certain of the property of the plaintiff in error to the use of the Express Company and of Morris & Co., respectively, and does not even provide for the termination of their supposed rights in said property of the plaintiff in error by notice (as is now permitted by their respective leases), or otherwise. The direct result, therefore, is notwithstanding the provision of these contracts, the plaintiff in error is compelled to turn over to the use of these two companies certain of its property which is now used for other purposes, and does not even provide for the payment of any rent for the use of said property of the plaintiff in error, nor does it otherwise fix any of the terms upon which these two companies are permitted to occupy the said property.

In addition to Fuller's Express Company and Morris & Co., the order requires the destruction of certain other side tracks, or at least deprives the same of any connection with the main line, and we claim that the order, therefore, impairs the obligation of the contracts between the plaintiff-in-error and the owners or lessees of said side tracks.

While the state in the exercise of the police power may in some cases impair the obligation of contracts this rule is subject to the qualification that the police power must be *reasonably* exercised, and to the further qualification that it must appear that the destruction of, or changes in, the property are *necessary* in order to the proper exercise of police power.

In the present case both of these elements are lacking: it is neither reasonable nor necessary that these side

tracks be destroyed or reconstructed for the purpose of eliminating grade crossings on the main line. Entirely aside from the question of whether the Board of Public Utility Commissioners under the statute of 1913 has any power to order any changes in the railroad property other than the main line tracks, the evidence in the present case shows that that part of the order which relates to side tracks is unreasonable and unnecessary; and it, therefore, follows that the Court can and should consider the question of whether that part of the order impairs the obligations of existing contracts.

The contracts between the plaintiff-in-error and the switch owners appear in the record as Exhibits R. 50 to R. 73, pp. 1117-1203; also Exhibits Erie 10 and 11, pp. 2018-2026. The side tracks and connections therewith of some of these switch owners are not affected by the proposed order, and they may, therefore, be left out of consideration. Those who are affected are as follows:

Commercial Lumber Company, Ex. R. 51 (p. 1121.)

The siding leading to this company is destroyed and another siding is constructed in a different location. The order also requires the construction of a bridge across Taylor street for the purpose of carrying the new siding.

The agreement shows that the railroad company and the switch owners are each part owners of this siding; a portion of the land whereon the siding is constructed being owned by the switch owner. The cost of the construction is to be paid by the switch owner. The switch owner also agrees to pay the railroad the cost of all labor and material used in *repairing or maintaining* the side track and extensions.

David G. Rodgers, Exhibit R. 52 (p. 1125).

This siding is destroyed and no provision is made for the reconstruction thereof. The agreement shows that

it is located in part on the property of the railroad, and in part on the property of the switch owner.

P. S. Van Kirk, Exhibit R. 53 (p. 1128).

The plan requires the destruction of this siding and the construction of a new one in a different location off the right-of-way of the railroad. Under the agreement the switch owner agrees to pay the cost of the construction of the siding, and also the cost of *repairing and maintaining* the same.

A. H. Smith, Exhibit R. 54 (p. 1132).

The order requires that the present siding be destroyed and that the new siding be constructed at a different location and grade. The agreement provides that the switch owner shall pay the cost of the construction, and also the cost of *repairing and maintaining*.

Armstrong's Sons Company, Exhibit R. 55 (p. 1135).

The present siding is destroyed and a new one constructed about 17 feet above the present grade. The order also requires the construction of a bridge across Montgomery street on which the siding is carried. The agreement provides that the switch owner shall pay the cost of the construction and of *repairing and maintaining*.

Public Service Gas Company, Exhibit R. 56 (p. 1139).

The order requires the total destruction of the two sidings and the construction of a new siding in a different location. The agreement provides that the switch owner pay the cost of the construction and of *repairing and maintaining*.

Swift & Company, Exhibit R. 58 (p. 1147).

The leads and connections by which this siding is reached are destroyed. The agreement provides that the switch owner construct at its own expense that portion

of the siding track outside of the right of way—the railroad to construct at its own expense that portion within its right-of-way. The switch owner agrees to pay the cost of *repairing and maintaining*.

Ashley & Bailey Co., Exhibit R. 59 (p. 1151).

The leads and connections by which this siding is reached are destroyed. Under the agreement the switch owner furnishes the right of way outside of the railroad property and pays the cost of construction and also the cost of *repairing and maintaining*. The switch owner also agrees to build and maintain a trestle under a portion of the side track.

National Silk Dyeing Co., Exhibit R. 60 (p. 1154).

The leads and connections are destroyed. Agreement with the switch owner has the usual provision that the switch owner will pay the cost of construction and of *repairing and maintaining*.

Hygeia Ice Co., Exhibit R. 68 (p. 1185).

The lead by which this siding is reached is destroyed and a new and longer lead is required to be constructed. Switch owner agrees to do all the grading and furnish certain material and pay for labor. The material remains the property of the railroad.

Auger & Simon Co., Exhibit R. 70 (p. 1192).

The leads and connections by which the siding is reached are destroyed. The agreement has the usual provision that the switch owner shall pay the cost of construction; the railroad company agrees to keep the siding in repair and the switch owner agrees to pay on demand the market value of the material and labor.

Swift & Company, Exhibit R. 58 (p. 1147).

The leads and connections by which this siding is reached are destroyed. The agreement provides that the

switch owner construct at its own expense that portion of the siding track outside of the right-of-way—the railroad to construct at its expense that portion within its right-of-way. The switch owner agrees to pay the cost of *repairing and maintaining*.

Ashley & Bailey Co., Exhibit R. 39 (p. 1151).

The leads and connections by which this siding is reached are destroyed. Under the agreement the switch owner furnishes the right of way outside of the railroad property and pays the cost of construction and also the cost of *repairing and maintaining*. The switch owner also agrees to build and maintain a trestle under a portion of the side track.

National Silk Dyeing Co., Exhibit R. 60 (p. 1154).

The leads and connections are destroyed. Agreement with the switch owner has the usual provision that the switch owner will pay the cost of construction and of *repairing and maintaining*.

Hygeia Ice Co., Exhibit R. 68 (p. 1185).

The lead by which this siding is reached is destroyed and a new and longer lead is required to be constructed. Switch owner agrees to do all the grading and furnish certain material and pay for labor. The material remains the property of the railroad.

Auger & Simon Co., Exhibit R. 70 (p. 1192).

The leads and connections by which the siding is reached are destroyed. The agreement has the usual provision that the switch owner shall pay the cost of construction; the railroad company agrees to keep the siding in repair and the switch owner agrees to pay on demand the market value of the material and labor.

Paterson Consolidated Ice Co., Exhibit R. 71 (p. 1195).

The lead by which the siding is reached is destroyed.

Agreement provides that the switch owner shall pay the cost of *repairing and maintaining*.

It will be seen that the order requires in some cases the destruction of the siding; in other cases it requires the railroad to rebuild same. Such a result clearly impairs the contracts between the plaintiff-in-error and the various switch owners; it deprives the plaintiff-in-error of the benefit of having the sidings remain in use (as well as takes its property without compensation) and it compels the plaintiff-in-error to build other sidings for the benefit of such switch owners contrary to the provisions of these agreements, which require the *switch owners* to "repair and maintain" the sidings, so that from either standpoint the rights of the plaintiff-in-error in these contracts are violated and impaired.

The case is not like that where there is a custom to construct and maintain side tracks for the benefit of industries that may adjoin the main line tracks. Here we have express written agreements. In this respect, the case is very different from that of *Armour v. N. Y. C. & R. Co.*, 103 Atl., 1031, which held that the company for whose use the side track had been constructed could not restrain its removal under a statute authorizing the elimination of the grade crossings across which the track had been located. It appeared that the side track was part of the railroad system and that the delivery service which it had performed by means thereof, could be performed by the use of another track at the new location of the main line and that, therefore, there was no discontinuance of the freight service of the company that had formerly used the side track in its original location. It also appeared that there was no contract between the company which used the side track and the railroad company.

The present case is more like that of *American Malleables Co. v. Bloomfield*, 83 N. J. L., 728; 85 Atl., 167. In that case the company owned the land upon which its plant was located, abutting on a certain street which ran between the railroad and the company's plant, and enjoyed the use of a switch or industrial siding from the main line of the railroad across the street at grade to its lands. The town of Bloomfield passed a resolution providing for an agreement with certain railroads to eliminate grade crossings under the provisions of a state law of New Jersey, providing for the elimination thereof by contract between the railroad and the municipality, this agreement being supplementary to one that had already been authorized by ordinance. The plan called for the elevation of the tracks and required the vacation of the street wherein the side track was located and the substitution of an elevated siding to leave the main line and thence to be carried on abutments to the lands of the company. The resolution was set aside on the ground that it affected the property rights of the company that had the use of the said track and that it had received no notice of the changes made by this resolution in the original contract for the elimination of grade crossings. The Court of Errors and Appeals of New Jersey said:

"To permit the blotting out of the rights of the prosecutor, in this summary way, would be equivalent to appropriating property without compensation and without due process of law."

The principle of this decision should apply not only to the owner of a private siding, but also to a railroad company, in a case where the evidence shows that the railroad is either the owner of or has a property right in the side track which is altered or destroyed by virtue of

an order providing for the elimination of grade crossings on the main line.

It will be urged by the defendants-in-error that even though the order does impair the several contracts above recited, nevertheless the order is valid if it is found to be a reasonable exercise of the police power. We do not question the general rule that in the *reasonable* exercise of the police power contracts may be impaired or even cancelled. As the question of whether the order is a reasonable exercise of such power involves the further question of whether the statute itself is a reasonable exercise of such power, we have discussed this point in the second part of the brief where we consider the validity of the statute as distinguished from the order. (See Point X.) If the Court reaches the conclusion that either the statute or the order is an unreasonable exercise of the police power, then the order, in so far as it affects the sidetracks indicated on the plan attached hereto and hereinbefore described, is invalid for the reason that under the undisputed testimony the necessary effect of the order is to impair the obligation of the said contracts between the plaintiff-in-error and the several siding owners.

Furthermore, in dealing with the question of the effect of the order upon the sidetracks and the contract relations between the owners or lessees thereof and the plaintiff-in-error, the Court should also consider the point that if the order be construed to require the plaintiff-in-error to reconstruct or relocate the sidetracks in the manner indicated on the plan attached to and supposed to be a part of the order, then it obviously takes the property of the plaintiff-in-error for private use; or for public use, without compensation, and thereby violates the rights secured to the plaintiff-in-error under the Fourteenth Amendment. If, however, the order does not require the plain-

tiff-in-error to do this work (and, presumably, the construction of the state courts in that regard will be adopted by this Court), then the practical result is that either the siding owners themselves must relocate or reconstruct their respective sidetracks, or nobody will reconstruct them; and in either event, the said owners or lessees are deprived of *their* property in violation of such amendment.

CHAPTER TWO.

Objections to the Statute.

VI.

The statute, as construed by the state courts, violates the Fourteenth Amendment: (a) Because it takes the property of the plaintiff-in-error as the lessee of the Paterson & Hudson River Railroad Co. and of The Paterson & Ramapo Railroad Co., for the private use and benefit of said two companies; (b) Because the cost of complying with the order will greatly exceed the value of the interest of the plaintiff in error in the property of said two companies, without any compensating advantage to the plaintiff in error and will make its investment in said properties incapable of earning a fair and reasonable return upon the amount of its investment therein; (c) Because it deprives the plaintiff in error of the equal protection of the laws.

It is recited in the order that the several highways are each a public highway and that the said public highways and each of them "and the railroad of the Erie Railroad Company cross each other at the same level, and that

* * * * the said Erie Railroad is operating such railroad" (Vol. IV, 1789, l. 15). It was claimed by the plaintiff-in-error at the hearings before the Board of Public Utility Commissioners, and afterwards in the argument before the state courts, that the railroad in question was not operated by it within the meaning of the statute upon which the order was based, and that the statute should be construed to apply to the companies which, *in law*, were charged with the duty of operating the railroads which crossed the several highways in question.

The plaintiff in error is not the owner of the tracks which cross the several highways. All it does is to run some of its freight and passenger trains on the tracks and across the highways, in accordance with the terms of the leases given to its predecessor by the Paterson & Hudson River R. R. Co. and the Paterson & Ramapo R. R. Co.

The land upon which the main line tracks are built and over which plaintiff in error runs trains through the city of Paterson is owned in part by one of said companies and in part by the other of said companies. The title to this land was acquired by them in part by deed and in part by condemnation proceedings, (See Exhibit R-15, pp. 1036-1056); and is still owned by them.

The portion of the right of way owned respectively by said companies is shown in detail on the property map known as Exhibit R-16, consisting of seven blue prints with the general title "Lands owned or controlled by the Erie Railroad Co., Main Line, city of Paterson, N. J.," the several sheets being numbered 5 to 11 inclusive.

Sheet No. 5 shows the right of way, beginning at the city line in the centre of Crooks avenue and extending northerly to Michigan avenue. This is owned by Paterson & Hudson River R. R. Co.

Sheet No. 6 shows the right of way from Michigan avenue northerly to Madison avenue. This is also owned by Paterson & Hudson River R. R. Co.

Sheet No. 7, from Madison avenue northerly to Clay street, shows the right of way is owned by Paterson & Hudson River R. R. Co., except that a short distance southerly from Clay street the title to a portion of the right of way (designated in red) is in Paterson & Ramapo R. R. Co. The title to the freight yard adjoining the right of way on the easterly side is in the Erie Land & Improvement Co.

Sheet No. 8, from Clay street northerly to Market street, shows that the title to one-half of the right of way is in Paterson & Hudson River R. R. Co. and the title to the other half is in Paterson & Ramapo R. R. Co. The Paterson & Hudson River R. R. Co. also has title to the Market street depot and various side tracks in the vicinity thereof. The plaintiff in error has title to certain lands adjoining the right of way on which are constructed various freight tracks and a freight house (designated in purple).

Sheet No. 9, from Market street northerly to Fulton street, shows title to the right of way is in Paterson & Ramapo R. R. Co. The plaintiff in error has title to a tract of land adjoining the right of way (designated in purple).

Sheet No. 10, from Fulton street northerly to Lowe street, shows title in Paterson & Ramapo R. R. Co. The plaintiff in error has title to some lands on either side of the right of way (designated in purple).

Sheet No. 11, from Lowe street northerly to the Passaic River (which marks the city limits) shows title in the Paterson & Ramapo R. R. Co. The plaintiff in error

has title to some lands on either side of the right of way (designated in purple).

This abstract of title and the property map were described in detail by the Assistant General Tax Agent of the plaintiff in error (Vol. I, pp. 244-8.) Beginning at the south they show that the title is as follows at the several streets involved in this proceeding:

Name of Street	Title in
"A"—Madison Avenue.....	Paterson & Hudson River
"B"—Clay & Straight streets	{ Paterson & Hudson River Paterson & Ramapo
"C"—Cedar streets.	{ Paterson & Hudson River Paterson & Ramapo, Erie R. R.
"D"—Market St. & Park Ave.....	Paterson & Ramapo
"E"—Ellison street.....	{ Paterson & Ramapo Erie R. R.
"F"—Van Houten street.....	Paterson & Ramapo
"G"—Broadway	"
"H"—Fair street.....	"
"I"—Hamilton avenue.....	"
"J"—Lafayette street.....	"
"K"—Franklin street.....	"
"L"—Keen street.....	"
"M"—Warren street.....	"
"N"—River & Putnam streets....	{ Paterson & Ramapo Erie R. R.

Exhibit R. 15 contains copies of the charters and other laws affecting the Paterson & Hudson River R. R. Co. and the Paterson & Ramapo R. R. Co.; also the leases, agreements, etc., by virtue of which the plaintiff in error now runs over the railroads of these two companies.

The Paterson & Hudson River R. R. Co. was organized by act of January 21, 1831 (P. L. 1831, p. 24). For copy of charter, see Volume II, pp. 958-971.

Under section 7 of this charter the company was authorized to survey, lay out and construct a railroad, or lateral roads, "not exceeding sixty-six feet wide, with as many sets of tracks and rails as they may deem necessary," from one or more suitable place or places in Paterson to Weehawken, and thence to any other suitable place or places on the Hudson River, opposite the city of New York.

Under section 10 the company was to place on the railroad "all machine, engines, wagons, carriages and vehicles for the transportation of persons, or any species of property thereon that they may think reasonable, expedient and right"; and was further authorized to demand and receive tolls for the transportation of persons and property at certain rates, not exceeding a specified sum per mile.

Under section 14, the railroad was declared to be a highway, "for the passage of any railroad carriage thereon, with passengers or property, upon payment of the tolls prescribed by this act."

The Paterson & Ramapo R. R. Co. was authorized by act of March 10th, 1841 (P. L. 1841, p. 97. For copy of charter see Vol. 2, pages 1005-1018). Under section 7 it was authorized to survey, lay out and construct a railroad from a suitable place in or near Paterson to some suitable point or points in or near the division line between the township of Franklin, in the county of Bergen, and the state of New York, and locate and form said railroad, not exceeding sixty-six feet in width, with as many sets of tracks and rails as they may deem necessary.

Under section 12, the company was given power to construct passages or bridges and to place on the railroad, machines, engines, wagons and carriages for the transportation of persons and property.

Under section 21 the company was authorized to demand and receive certain tolls for the transportation of persons and property, and under section 16 the railroad was declared free for the passage of any railroad carriage thereon with passengers or property, upon payment of the prescribed tolls.

Both railroads were also given power to condemn lands.

These two railroads, on September 9th, 1852, were leased to a company called "Union Railroad Company," the last named in turn assigning the lease to the New York & Erie Railroad Company, and thereafter by various assignments, foreclosures and sales, the plaintiff in error, under the name of Erie Railroad Company, on November 4, 1895, acquired title to all the properties, rights, etc., of its several predecessors, including the leases made in 1852 by the Paterson & Hudson River Railroad Co. and the Paterson & Ramapo R. R. Co. to the Union Railroad Company.

The New York & Erie Railroad Co. was a corporation organized in the year 1832 under the laws of the state of New York. The assignment of Union Railroad Co. to New York & Erie Railroad Co. was ratified by an act of legislature of the state of New Jersey approved March 14, 1853 (pp. 977-9).

This statute recites that the New York & Erie R. R. Co. is in possession of the Paterson & Hudson River R. R. Co. and the Paterson & Ramapo R. R. Co. under certain leases and contracts and is carrying on the busi-

ness of said roads under said leases and contracts, and that the New York & Erie R. R. Co. "being a foreign corporation," and any other corporation or individual using said roads or either of them, and transacting the business of the same, ought to be liable for damages done in operating said roads as fully as the said companies are by their charters now liable, and to effect "that purpose" all doubts as to authority of said companies to make such leases and contracts ought to be removed; and whereas all persons having claims ought to be enabled to prosecute said foreign corporation in the courts of this state: therefore,

Be it enacted, etc.

Then follows a section declaring the New York & Erie R. R. Co. and any other corporation or individuals using the aforesaid roads or either of them to be liable for all claims for debts, etc., arising from the running or operating of said railroads, and carrying freight and passengers on the same as fully as the said Paterson & Hudson River R. R. Co. and Paterson & Ramapo R. R. Co. are now liable by the laws of this state.

Sections II and III provide for the service and the return of process.

Section IV enacts as follows:

"That the power and authority of the said Paterson and Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, to make such leases and contracts is hereby declared and affirmed, and the said leases and contracts are hereby declared legal and valid; provided, that said leases and contracts shall not be held to grant any power, privilege or right, not granted to said companies respectively by their charters, and the supplements thereto."

Section V enacts that the legislature may at any time alter, amend or repeal this act. (See pages 977-9.)

Each of the two charters of these companies above referred to requires the company to construct and keep in repair good and sufficient bridges or passages over and under the said railroad where any public or other road shall cross the same, etc.

It will be observed that the avowed purposes of the act of 1853 were: First, to make the New York & Erie R. R. Co. liable for claims for debts, etc., as fully as the two original companies; Second, to ratify the leases and contracts made by the two original companies to the New York & Erie R. R. Co. There is nothing in the statute which either expressly or impliedly relieves the original companies of their duty to the public imposed upon each of them by their respective charters.

It was urged by the plaintiff in error in the state courts, that the statutes under which it was authorized to run trains over these tracks, do not expressly provide that the lessor companies should be discharged from their public duties by reason of the leases, and that in the absence of any such express provisions, these duties still rest upon the respective lessors, citing:

Ryerson v. Morris Canal Company, 71 N. J. L. 381.

Hayes v. Northern Pacific Railroad Co., 74 Fed. Rep. 279.

Morris Canal Company v. State Board, 76 N. J. L. 627. Affirmed by this Court, 239 U. S. 126, 60 L. Ed. 177.

Rochester Railway Co. v. City of Rochester, 205 U. S. 236, 51 L. Ed. 784.

Braslin v. Somerville Railroad Co., 145 Mass. 64.

Driscoll v. Norwich, 65 Conn. 230.

Singleton v. Southwestern Railroad Co., 70 Ga. 464.

Balsy v. St. Louis Railroad Co., 119 Ill. 68.

Whitney v. Atlantic & St. Lawrence R. Co., 44 Me. 362.

Wabash, St. Louis & Pacific Railroad Co. v. Paton, 106 Ill. 534.

Central Railway v. Morris, 68 Texas 49.

Chollette v. Omaha & R. Valley Railroad Co., 26 Neb. 159.

Fisher v. Baltimore & O. C. O. R. Co., 3 Ohio N. P. 283.

The state courts overruled this point on the ground that the "dangerous conditions" were the result of the "operation" of the railroad by the plaintiff in error. (See opinion of Supreme Court, Vol. V, pages 2275-8.) The statute has, therefore, been construed to apply to the plaintiff in error as the *operator* of the railroad, and such construction having been adopted by the highest court in the state, will, we assume, be accepted by this Court.

Under this construction, the plaintiff in error now urges that the statute violates the due process clause of the Fourteenth Amendment because:

(a) It takes the property of the plaintiff in error for the private use and benefit of the two lessor companies; and

(b) Because the cost of complying with the order would greatly exceed the interest of the plaintiff in error in the property of said two companies and will make its investment therein incapable of earning a fair and reasonable return.

The charter of the Paterson & Hudson River Railroad Company has no limit for the period of the corporate existence of the company, but section 17 provides that at any time after the expiration of 50 years from the completion of the road the legislature may cause an appraisement to be made; and the value thereof is to be reported to the legislature in one year after the appointment of appraisers and thereupon "The state shall have the privilege for three years of taking said road upon the payment to the company of the amount of the said report within one year after electing to take said road . . . and the whole property and interest of said road, and the appendages thereof, shall be vested in the state of New Jersey upon payment of the amount so reported to the said company." It is further provided that it shall be the duty of the president of the company to lay before the legislature under oath on request a full and fair statement of the costs of the road and of the receipts and disbursements of the company, "provided always, that the aforesaid valuation shall be made without reference to the receipts or disbursements of the company, or advance of the stock, and the said valuation shall in no case exceed the *first* costs of the said railroad with the lands and appendages thereof" (pp. 969, 970).

A supplement to the charter passed February 27, 1835, repeals so much of the 17th section as authorized the legislature to cause an appraisement to be made at any time after the expiration of fifty years from the completion of said road; and enacts that the legislature may cause such appraisement to be made at any time after the expiration of fifty years from the 4th day of July, 1836 (pp. 973, 974).

An act approved February 21, 1856, authorized the New York & Erie Railroad Company to purchase and hold lands and to complete and finish the railroad of the Paterson & Hudson River Railroad Company. This gives the New York & Erie Railroad Company power to proceed in their own name to construct the railroad from any point in the railroad of the Paterson & Hudson River Railroad to any point on the Hudson river opposite the city of New York, according to the provisions of the act incorporating said Paterson & Hudson River Railroad and the several supplements thereto. Section 3 of this act provides that for the purpose of enabling the state to take the said railroad upon an appraisement of its value at any time after July 4, 1886, "the continuation of said railroad and its depots and appendages, constructed, purchased and acquired by virtue of the provisions of this act, shall be considered part of the road of the Paterson & Hudson River Railroad Company, and may and shall be taken by the state at the same time and in the same manner as the state may take the road of said company," except that the lands and appendages acquired or purchased by the New York & Erie Railroad Company shall be appraised separately from the residue and the value thereof paid to New York & Erie Railroad Company (p. 982).

The lease from the Paterson & Hudson River Railroad Company to the Union Railroad provides for a yearly rental of \$45,600. The lessee also agrees that they and their successors or assigns "will bear and pay to the state of New Jersey for taxes that may be laid by the authority of the said state on the parties of the first part or their property such amount of money annually as shall be equivalent to one-half of one per cent.

on the capital stock of six hundred thousand dollars of the parties of the first part."

The charter of the Paterson & Ramapo Railroad Company is also without limit as to the period of the corporate existence. Section 19 thereof has a provision similar to that in the charter of the Paterson & Hudson River Railroad Company providing that at any time after the expiration of fifty years from the completion of the road the legislature may cause an appraisement to be made, and the state shall then have the privilege for three years of taking the road upon payment of the amount of the report, and the whole property and interest shall then be vested in the state, "and the said valuation shall in no case exceed the first cost of the said railroad with the lands and appendages thereof" (pp. 1915-16).

By lease dated September 9, 1852, the Paterson & Hudson River Railroad Company leased all the railroad and appurtenances to Union Railroad Company, to have and to hold "from and including the fifteenth day of September, one thousand eight hundred and fifty-two, for and during the existence and continuance of the charter of the parties of the first part, and the legal existence of the said The President and Directors of the Paterson & Hudson River Railroad Company, by virtue and in pursuance of the act of incorporation of the legislature of the state of New Jersey, passed January 21, 1831, and all other acts of said legislature relating thereto" (p. 988). The parties of the second part agreed to keep and maintain the railroad in as good repair as it was at the date of the demise; and further agreed to keep and maintain and run the railroad and other premises in such manner, order and condition as the said parties of the

first part are bound to keep and maintain and run the same by the charter and supplements thereto (p. 992).

It was further agreed that if at the termination of the demise and on the "cessation of the interest of the parties of the second part" it should appear that there was any depreciation of the premises by the use or neglect thereof that the same should be appraised by three arbitrators and the value or amount of such depreciation should be paid and discharged by the parties of the second part. It was further agreed that if "any erections or improvements" should, during the said term, be made on the premises or pertaining thereto the same should at the termination of the term and the "cessation of the interest" of the parties of the second part be valued by arbitrators, and the party of the first part should pay and discharge the amount so valued to the parties of the second part or their assigns.

The Paterson & Ramapo Railroad Company also leased its railroad to the Union Railroad Company on September 9, 1852. The terms thereof were substantially the same as in the lease of the Paterson & Hudson River Railroad Company of the same date. The lessee agreed to pay a yearly rent of \$26,500; and further agreed "to bear and discharge all the taxes that may be imposed on them, the parties of the first part, or on their property and estate by the legislature of New Jersey, during the continuance of the demise or demises in this instrument made or agreed to be made." It was further agreed "that if during the existence of the lease or leases, made or to be made, to the parties of the second part, they the said last named parties shall make or construct any buildings or additions to the road herein mentioned, whereby additional taxes shall be charged or levied on

said road, then the parties of the second part shall bear and discharge the additional taxes" (p. 1030).

On September 10, 1852, these two leases were assigned by the Union Railroad Company to New York & Erie Railroad Company (p. 1031 and following). The assignment was from and including September 15, 1852, for and during the existence and continuance of the charter of the Union Railroad Company and the legal existence of said company (p. 1033). By sundry conveyances, foreclosures and assignments as set forth in detail in Exhibit R. 15, Abstract of Title—(p. 950 and following) all the rights, property and franchises of the above named companies on November 14, 1895, became vested in the plaintiff in error.

It will be seen from the forgoing summary of the various statutes and leases by virtue of which the plaintiff in error runs trains through Paterson over the tracks of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company that the legal title to the railroad property over which these trains pass remains in the original companies. If the plaintiff in error, the assignee or successor in interest of the leases made to Union Railroad Company by the two original companies, is obliged to expend the sum of three million dollars and upwards in the improvement of the properties of said two companies, the question at once arises whether such a forced expenditure takes the property of the plaintiff in error for the private benefit of said two companies. These companies under their respective leases (which have been duly authorized or ratified by the legislature) may be relieved from the obligation of running trains during the term of the lease, but under the order they are also relieved from the

burden of altering the crossings or even from making any financial contribution for that purpose; they are not even included as joint obligees, although the plaintiff in error requested that if any order were made it be made against these two companies and the plaintiff in error jointly, so that the question of the apportionment of the cost of eliminating the crossings might be determined by appropriate proceedings. As the landlord of the plaintiff in error, and as the owner of the real estate upon which the improvements required by the order are to be made they may sit back and receive the full benefit thereof in the vastly increased value of their property without the expenditure of one penny.

Suppose that the existing leases should in some way be terminated. There are several references therein to the possible termination thereof, and hence such a contingency was evidently in the contemplation of the parties thereto at the time the leases were executed. To mention some of the ways in which the leases might be terminated; suppose the lessee refused to pay the rent thereunder, or suppose the lessee, either under some existing or future law, should obtain permission to abandon the running of its trains on the ground that the income derived therefrom was not sufficient to give it a reasonable return upon the amount of the investment required to be made by this order. Again, suppose the plaintiff in error refused to pay the taxes as required by the terms of the lease; under the provisions of sections 14 and 15 of the Railroad Tax Act of 1884, as amended in 1888 (Comp. Stat. of New Jersey, 1910, p. 5271, Secs. 458-9), where any tax remains unpaid for ten days, judgment for the amount thereof shall be entered in the Supreme Court after due notice and the attorney general must then apply for an order to issue execution to a master in chancery, and the

latter is required to sell the franchise, real estate, rolling stock and property of the company and the estate and interest of any mortgagees for the purpose of making the amount due on such judgment. Such a sale would effectively end the leases.

It is true that under one of the sections of the respective leases of the original railroads to the Union Railroad, there is a provision that if "any erections or improvements" shall be made during the term of the lease the same shall be valued by arbitrators and the railroad shall pay and discharge the amount so valued. It is at least doubtful whether this provision would apply to a change in the grade of the tracks resulting from the alteration of grade crossings, but whether so or not, it would be ridiculous to expect that either railroad would be financially able to pay to the plaintiff in error the amount expended on its property. If we assume that the expression "erections or improvements" in the two leases is applicable to the reconstruction of railroad grades, made under compulsion, pursuant to an order of the kind under review, the fact still remains that the theoretical right of the plaintiff in error to recover from the original companies on the termination of the leases is of little practical importance for the obvious reason that neither of the underlying companies has resources sufficient to meet the cost of the construction required by the order. Suppose that by operation of law or by some action on the part of the state, or on the part of either or both of the parties to the respective leases the term thereof should be terminated. Under the leases the plaintiff in error then looks to the original companies for reimbursement. But in such a case how would it be paid? The only income of the Paterson & Hudson River R. R. is the yearly rental of \$45,600 specified in the lease from that company to

Union Railroad Company (see Exhibit R. 15, p. 988). The only income of the Paterson & Ramapo R. R. is the yearly rental of \$26,500 specified in the lease from that company to Union Railroad Company (see Exhibit R. 15, p. 1026). It is quite obvious that an attempt on the part of the plaintiff in error to collect from the two original companies the cost of the work required by the order under review would bankrupt said companies; and hence the plaintiff in error has no practicable method of obtaining reimbursement from these companies, on the expiration of leases, for the amount required to be expended by it for the reconstruction of the tracks, even if under the terms of the leases it would be entitled to such reimbursement.

It is quite apparent that the improvements required to be made by the plaintiff in error would add immensely to the value of the property both of the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad without any advantage or return to the plaintiff in error. This is the taking of property from one person for the benefit of another on a gigantic scale.

But if it be claimed that under the statute as thus construed the plaintiff in error is required to make this vast expenditure for public use rather than for the private benefit of the two original companies, still the statute is objectionable because such construction takes the property of the plaintiff in error without just compensation. It will be seen by reference to the above charters and leases that the state of New Jersey has the right to take over the properties of both of the old companies -- in the case of the Paterson & Hudson River Railroad at any time after July 4, 1886, and in the case of the Paterson & Ramapo Railroad at any time after the expiration of fifty years from the completion of

the road—which time has long since elapsed. But both of these charters further provide that if the state takes over the property the valuation to be paid by the state shall in no case exceed the *first cost* of the railroad with the lands and appendages thereof. The state would therefore have the right to take over the properties of the two old companies with all the interest of the plaintiff in error therein without reimbursement to the plaintiff in error for the great sum required to be spent by it under this order. The statute therefore not only deprives the plaintiff in error of its property without *just* compensation, but deprives it without *any* compensation. If it be said that the plaintiff-in-error is entitled to receive the value of the “first cost,” the point still remains that the first cost of the entire railroad of each of the two original companies—in the one case extending from Paterson to the Hudson river and in the other from Paterson to Suffern—could not by any possibility equal the amount required to be spent by the plaintiff in error in Paterson; and the first cost in Paterson, as distinguished from the other sections of the railroad of the original companies would be comparatively small. This is shown by the fact that under the original charter of the Paterson & Hudson River Railroad the total capital stock was only \$250,000, with permission to increase the same to \$500,000 (pp. 988-9). By act of March 3, 1837, that company was given permission to increase its capital stock the further sum of \$200,000. There is no provision for a bond issue except under the act of January 18, 1844, which permits bonds to be issued in the sum of \$100,000. It is safe to say that the first cost did not exceed the total amount of the issue of bonds and stocks.

As to the Paterson & Ramapo Railroad Company the original charter provides for a capital stock of \$400,000

(p. 1066). By act of February 9, 1858, it was allowed to issue bonds in the sum of \$100,000. This act recites that the company has heretofore issued bonds amounting in the aggregate to \$100,000. The total bond and stock issue of this company therefore does not exceed \$600,000, and all the stock and all the bonds of both companies together covering *all* of their respective railroads amount to less than half of the amount required to be spent by the plaintiff in error. On this point the New Jersey Supreme Court says:

“Such permanent erections or improvements and the moneys thereon expended are not, therefore, taken for the private use of the lessors in the sense contemplated by the constitution; upon the contrary, such improvements are to be used and enjoyed by the lessee during its term, and if taken at all by the lessor are to be paid for at their value, which may be greatly in excess of their cost” (p. 2288, ll. 25-30).

This assumes that the lessors have the means whereby to pay the value of these improvements in the event of a termination of the respective leases. As shown above, such an assumption is without any foundation in fact, as the actual cost of doing the work required by the order under review not only exceeds the value of the property of the respective lessors in Paterson but nearly equals the *total* value of their property. (See Ex. R-17, p. 1056; Ex. R-18, p. 1057; R-19, p. 1059.) The argument might be sound if there was any reasonable relation whatever between the actual cost of the improvements and the ability of the original lessors to pay for same. But when the difference is so vast as to make it obvious that by no possibility could the lessors make such payment, then we submit the reasoning fails.

The facts bring this feature of the case within the principle of the decision of this Court in *Myles Salt Co. v. Board of Commissioners*, 239 U. S. 478, 60 L. Ed. 392, which held that a drainage statute which, as construed and administered by the state, imposed an assessment for drainage charges upon land which did not itself receive any actual benefit from the assessment, violated the due process clause in that the said statute took the property of one for the benefit of another and thereby imposed a burden without any compensating advantage. The Court said:

"The case, therefore, is within the limitation of the power of the state as laid down in *Houck v. Little River Drainage Dist.*, *supra*, which cites *Norwood v. Baker*, 172 U. S. 269, 43 L. Ed. 443, 19 Sup. Ct. Rep. 187, and retains its principle. It has not the features which determined *French v. Barber Asphalt Paving Co.*, 181 U. S. 324, 45 L. Ed. 879, 21 Sup. Ct. Rep. 625, and the cases which have followed that case, and *Phillip Wagner v. Leser* (239 U. S. 207, ante, 230, 36 Sup. Ct. Rep. 66), decided coincidentally with *Houck v. Little River Drainage Dist.* and cited in the latter.

"It is to be remembered that a drainage district has the special purpose of the improvement of particular property, and when it is so formed to include property which is not and cannot be benefited directly or indirectly, including it only that it may pay for the benefit to other property, there is an abuse of power and an act of confiscation. *Phillip Wagner v. Leser*, *supra*. We are not dealing with motives alone, but as well with their resultant action; we are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore, arbi-

trarily exerted, imposing a burden without a compensating advantage of any kind."

Again, the statute violates the Fourteenth Amendment because the cost of complying with the order made by virtue thereof will greatly exceed the value of the interest of the plaintiff in error in the property of the Paterson and Hudson River Railroad Company and Paterson & Ramapo Railroad Company and will make its investment incapable of earning a fair and reasonable return upon such investment. The board in its report calls attention to the testimony offered by the plaintiff in error, that at the present time it expends \$14,736.87 for the wages of employees and \$2,101.59 for the cost of maintenance of the several grade crossings each year. (Vol. 4, p. 1754, ll. 1-10; Schedule "A" attached to board's report, pp. 1766-7); the board then says that this sum is the interest at five per cent. upon approximately \$350,000 (p. 1754, l. 8). Apparently the inference that the board desires to draw from this statement is that the elimination of the crossings amounts to a saving to the plaintiff in error of the sum of \$350,000. But the trouble with any such inference is that the plaintiff in error does not get the \$350,000; on the contrary, it is obliged to expend the sum of \$3,000,000 and upwards, which, at five per cent., amounts to the sum of \$150,000 a year, or nearly ten times the present annual cost of protecting and maintaining the crossings. This suggestion of the board also overlooks the fact that even if the grade crossings are eliminated there will be an annual charge against the railroad for repairs and maintenance of the bridges and abutments at the several crossings. There will also be an annual charge for the proper maintenance of the roadway and sidewalks within the limits of the right of way. These items will probably considerably exceed the sum

now expended for the wages of employes and for the maintenance of the several crossings at grade. There might be some force in this suggestion of the board if any compensating advantage would be obtained by the plaintiff in error in the way of increased income by reason of the changes of grade, but there is not a particle of evidence to suggest that there will be any such increase; on the contrary, the evidence indicates that there will probably be a very decided decrease in operating income due to the destruction of a large number of sidetracks and the consequent inability to handle freight to and from such sidetracks. A reconstruction of the kind required by the order is very different from original construction, and in the very nature of things, cannot be expected to result in any advantage to the plaintiff-in-error except the comparatively trifling saving of the cost of present protection and maintenance.

Not only is there no compensating advantage to the plaintiff in error by reason of the execution of this order but the great cost thereof so greatly exceeds the value of its interest in the Paterson & Hudson River Railroad and Paterson & Ramapo Railroad that it amounts to confiscation. The ordinary increased expenses, due to the necessity of providing protection at crossings as traffic increases, are incidental to the right of a railroad company to cross at grade; and we do not claim that the imposition of such expenses in any sense deprives the company of its property without due process or amounts to a confiscation of its property. But the present case is entirely different; according to the terms of the lease of the Paterson & Hudson River Railroad, the annual value of that lease is \$45,600 (p. 988), which at five per cent. would be \$930,000; the annual value of the lease of the Paterson & Ramapo Railroad is \$26,500 (p. 1026), which

at five per cent. would be \$530,000, or the two together would be \$1,460,000. But that represents the total value of both railroads and not merely the small portions thereof located within the limits of the crossings included in this proceeding. The cost to the plaintiff in error of carrying out this order, it will therefore be seen, is more than double the capitalized value of leases covering the entire railroads of the two original companies.

The assessed valuation of the properties of the Paterson & Hudson River Railroad, for the year 1912, between the city line and the terminus of that road near Market street, a distance of 1.978 miles, is \$593,290, of the Paterson & Ramapo Railroad from the northerly terminus of the Paterson & Hudson River Railroad near Market street to the city line, a distance of 1.647 miles, is \$495,474—a total of \$1,088,764—which is only a little more than one-third of the cost (without regard to property damage) to the plaintiff in error of complying with the order (See Ex. R-17, p. 1056). For convenience these valuations were taken within the city limits, although the particular portions of the property which are included within the limits of the crossings to be eliminated are somewhat less than the total length of the railroad lines as given in those valuations.

The *total* valuation of the "physical elements" in New Jersey of the Paterson & Hudson River Railroad, according to the affidavit of Mr. Hansel, the expert appointed to re-value railroad property in New Jersey under Chapter 307 of the Laws of 1910, is \$2,888,603 (Ex. R-18, p. 1057); and the total valuation of all the "physical elements" in the state of New Jersey of the Paterson & Ramapo Railroad, according to Mr. Hansel, is the sum of \$1,836,688 (Ex. R-19, p. 1059).

The assessed valuations by the State Board of Assessors for the year 1913 are slightly less than the figures of Mr. Hansel (See Ex. R-20, p. 1061). In this connection it is interesting to observe that the total capital stock and bonded indebtedness of the Paterson & Hudson River Railroad, as authorized by the legislature, is the sum of \$800,000 (See pp. 958, 959, 974, 976), and the total capital stock and bonded indebtedness of the Paterson & Hudson River Railroad is \$600,000 (See pp. 1006, 1025 and 1024). It will be seen that the cost to the plaintiff in error is approximately two-thirds the total value of all the property of both of the two original companies; if we add to the estimated cost of doing the work (which is nearly \$3,000,000) the property damage, which, under the statute, the plaintiff in error is also required to pay, it is probable that the total amount thus imposed upon the plaintiff in error will equal, if not exceed, the total value of all the property of both companies in the entire state.

The case in this respect is the converse of the ordinary rate case, where the rate depends upon and is adjusted to the value of the property. In the present case the expenditure required of the plaintiff in error is so greatly in excess of any possible income that might be derived from an increase in the rates over that part of the plaintiff in error's line which is affected by the change of grade that the same principle should apply as in a case where it is attempted to reduce a rate below what would bring a fair return upon the investment. Here the result of the order is to increase the investment of the plaintiff in error to such an extent that it is impossible to derive any reasonable return therefrom.

Even if there was any possibility of obtaining a reasonable return upon the cost of this improvement, that would

not effect the injustice to which the plaintiff-in-error is subject, by virtue of the construction of the statute which was adopted by the state courts. As the plaintiff-in-error is not the *owner* of the land whereon this costly improvement is ordered to be made, it is not in a position to capitalize the cost thereof, as, obviously, it could not borrow the necessary money merely on the security of a leasehold interest; and, hence, if the work is done at all by the lessee company it must be paid for out of current earnings—if there should happen to be any available for that purpose.

The plaintiff in error further urges that the statute deprives it of the equal protection of the laws, in violation of the Fourteenth Amendment. As we have above pointed out, the plaintiff-in-error argued in the state courts that the *legal* duty of operating trains over the railroad tracks in the city of Paterson still remains in the two underlying companies, notwithstanding the leases, by virtue of which the plaintiff in error runs trains over such tracks. But a different construction was adopted by the state courts, and the result thereof is that all sole expense is charged to the plaintiff in error, as the *operating* company, within the meaning of the statute, and the two underlying companies are not required to pay any part of such expense. The result, therefore, is that the real owners of the property pay nothing, and the plaintiff in error pays all—notwithstanding the fact that the improvement for which the plaintiff in error is obliged to pay does not result in any substantial advantage to it, but it merely enables it to continue to run trains on that part of its system. For all practical purposes the plaintiff in error can carry on its business in and through the city of Paterson under existing conditions, and without elevating its tracks as required by the order;

but the work undoubtedly adds very much to the value of the property, even though such value may not equal the actual cost thereof, considered purely from the standpoint of increased operating efficiency.

The plaintiff in error carries on its business in the state of New Jersey in accordance with the provisions of Chapter II, New Jersey Laws of 1898, page 23. Section 2 thereof reads as follows:

"After such approval and confirmation any railroad corporation duly created under the laws of the state in which the greater part of the mortgaged premises are situated and which shall have acquired or become possessed of the greater part of said mortgaged premises, may acquire, hold, possess, and operate the part of the mortgaged premises with their appurtenances, in this state, and the other property and rights covered by said mortgage, and shall have and possess all the rights, powers, privileges and franchises (subject to the duties and obligations attached thereto) theretofore possessed, in this state by the corporation executing the mortgage resulting in such judgment or decree of sale, and also all such as now or hereafter may be conferred upon railroad corporations organized under the general laws of this state."

Under this statute, the plaintiff in error has the same rights as any other railroad corporation doing business in the state of New Jersey. But, under the grade crossing statute, as construed by the state courts of New Jersey, the Paterson & Hudson River R. R. and the Paterson & Ramapo R. R. have the right to continue as railroad corporations, with the legal duty, *so far as the public is concerned*, of running trains, but are, nevertheless, not required to contribute one cent to an improvement which is designed to facilitate train operations. The *duty* to operate still rests upon the two underlying

companies; the mere fact that they have executed leases to some other company whereby the latter undertakes to perform that duty for them, does not relieve the original companies from their performance of such duty—it certainly does not have such effect in the absence of an express provision in the statute authorizing the lease, whereby the lessor company is *discharged* from such duty. All that the plaintiff in error does is to run trains as the *agent* of the original companies.

There is no valid reason for a distinction between a lessor and a lessee company which would reasonably justify the imposition of the entire cost of changes of grade upon the lessee company, without any contribution whatever from the lessor company; indeed, if any distinction is to be made between the lessor and lessee company it would seem that the cost should be imposed upon the lessor company, because it is the owner in fee of the property upon which the improvement is made, and, as such, would be in a position to capitalize the cost thereof and issue securities in payment therefor, whereas, the lessee company would be obliged to devote its current earnings to that purpose.

In the case of *New York & New England R. Co. v. Bristol*, 151 U. S. 556, 38 L. Ed. 269, the court held that a statute making certain provisions for the elimination of grade crossings did not deny the railroad the equal protection of the law, but this conclusion was based upon the premise that the statute in question made regulations which were "*applicable to all railroad corporations alike*"; and it may be observed that the statute in question in that case provided that the expense charged against the company was to be paid by the company "*owning or operating the road which crosses the highway.*"

The result, therefore, of the construction of the statute which has been adopted by the state courts of New Jersey is that the plaintiff in error is denied the equal protection of the laws of the state of New Jersey, in that it is compelled to pay an enormous sum in order that it may be in a position to continue to run its trains over that part of the leased lines which are located in the city of Paterson, whereas, neither of the owners of such lines is obliged to make any contribution whatever, notwithstanding the fact that such owners still owe to the public the duty of running such trains and still hold title to the land upon which the improvement is made.

VII.

The statute, as construed by the state courts, violates the contract clause of the constitution in that it impairs the obligation of the contracts between the plaintiff in error and the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company.

The relations between the plaintiff in error and the Paterson & Hudson River R. R. and the Paterson & Ramapo R. R. have been detailed at length under Point VI, wherein we attempted to show that the grade crossing statute of New Jersey violated the Fourteenth Amendment in certain respects.

We now make the further claim that the statute impairs the obligation of the contracts between the plaintiff in error and the Paterson & Hudson River R. R. and the Paterson & Ramapo R. R. in that the New Jersey statute having been construed to relieve the lessor company of the duty of constructing and maintaining highway crossings (notwithstanding the fact that the original charters of said companies expressly placed such duties upon

them) and to impose such duty upon the plaintiff in error as the operating company, the result is that the statute places upon the plaintiff in error more burdensome duties than the leases themselves require; because, such leases, when read in conjunction with the confirmatory act of 1853 (*supra*) still leave upon the respective lessor companies the duty of constructing crossings—whether they be at grade, above grade, or under grade.

Furthermore, under the terms of the leases, the plaintiff in error as the successor of the original lessee, is entitled to continue to use the railroad lines of the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad, in accordance with the terms of the original leases, to wit, by paying certain rental therefor. But, under the statute, the plaintiff in error cannot continue to have the benefits and advantages of the said leases without spending three million dollars or upwards for the improvement of the property of the two underlying companies, the real owners thereof. It is not necessary to this argument to hold that a railroad can postpone indefinitely the reasonable exercise of the police power with reference to the elimination of highway grade crossings, merely by leasing its property to some other company. That is not the point in question. We do not mean to assert that the state cannot exercise its police power in a reasonable way, but the difficulty with the statute under consideration (as construed by the state courts) is that it imposes upon the lessee company the expense of eliminating the crossings, whereas it should have imposed such expense upon the actual owners of the property. The necessary effect of such construction is to impair the obligation of the contracts as expressed in said leases.

VIII.

The statute, as construed by the state courts, violates the contract clause of the constitution, in that it impairs the obligation of the contracts between the State of New Jersey and the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, to whose rights the plaintiff in error has succeeded, by imposing upon the plaintiff in error a greater duty, with respect to the construction and maintenance of grade crossings, than was imposed upon said two companies.

Under this point the plaintiff in error claims that the charter duties of the two lessor companies to whose rights it has succeeded, as set forth under Point VI, so far as they relate to the construction and maintenance of highway grade crossings, have been altered to its disadvantage as a result of the statute in question under the construction thereof adopted by the state courts.

The state has the right to reserve the power to alter or amend the charter of a corporation or to alter or amend or repeal the laws under which the corporation is organized. *Berea College v. Commonwealth*, 211 U. S. 45, 53 L. Ed. 81.

Where the right is reserved, either by the constitution or by statute, the provision of the law to this effect becomes automatically a part of the charter of corporations thereafter organized.

In re College Hill Land Association, 157 Cal. 596, 108 Pac. 681.

Shiloh Turnpike Co. v. Bates, 80 N. J. L. 171, 76 Atl. 448.

But this reserved right does not authorize the confiscation or destruction of property of corporations, or the taking of such property without compensation, and it

must be construed subject to the restrictions of the State and Federal constitutions forbidding the taking of property without due process of law.

Delaware, etc., R. Co. v. Bd. of Pub. Util. Comm., 85 N. J. L. 28, 88 Atl. 849.

State v Bancroft, 148 Wis. 124, 134 N. W. 330, 38 L. R. A. (N. S.) 526.

Berea College v. Commonwealth, 211 U. S. 45, 53 L. Ed. 81.

Grand Trunk Western R. Co. v. City of South Bend, 227 U. S. 544, 57 L. Ed. 633.

Chicago, etc., R. Ct. v. Wisconsin, 238 U. S. 491, 59 L. Ed. 1423, and cases cited.

The statute upon which the jurisdiction of the Board of Public Utilities depends is general in its terms and on its face applies to every crossing at grade of a public highway by a railroad. It is not limited to highways which existed at the time the railroad was constructed. Under this statute, if it be valid, the board has the power, and in the present case, it has, by its order attempted to exercise the power, to enlarge the duty imposed upon the plaintiff in error by virtue of its alleged succession to the statutory duty of its predecessors with respect to the construction and maintenance of bridges or passages over or under the railroad at the said crossings. The statute therefore delegates to the board arbitrary power to alter or amend such charters so far as relates to the specific duty thereby imposed with respect to the construction and maintenance of such bridges or passages.

In its original answer the plaintiff in error set up that "certain" of said crossings were laid out and constructed by the city of Paterson across the existing tracks and right of way of the Paterson & Hudson River R. R.

Co., incorporated by act approved January 21, 1831 (P. L. 1830-1, p. 24) and of the Paterson & Ramapo R. R. Co., incorporated by act approved March 10, 1841 (P. L. 1840-1, p. 97), subsequent to the construction and commencement of operation of said railroads and that as to these crossings the Board of Public Utility Commissioners was without jurisdiction to order the plaintiff in error to alter or change the grade thereof or to construct another crossing in the place and stead thereof not at grade (Par. 24 of Answer, Vol. IV., p. 1671).

After the filing of this answer the board, at the request of counsel for the city, directed the plaintiff in error to file an amendment specifying which crossings were constructed subsequent to the construction and the commencement of operation of said railroads (pp. 132-4).

If our present claim is correct, that the plaintiff in error, as the successor in interest of the two original railroad companies, cannot legally be required to construct bridges or passages over or under the railroad tracks at the crossings where the streets were not in existence at the time the tracks were constructed, then this action of the board, in requiring the plaintiff in error to specify to which of the crossings the point was applicable, was unreasonable, as the burden of proof was upon the city to show that the streets were laid out at the time of the original construction of the railroad tracks, and not upon the plaintiff in error to show that they were not laid out at that time.

However that may be, the plaintiff in error pursuant to this direction of the board filed an amendment to its answer in which it alleged that Madison avenue, Cedar street, Putnam street, Straight street and Clay street were all laid out and opened subsequent to the construction of the railroad tracks; and further alleged that it had no knowl-

edge as to whether the other streets involved in the proceedings were laid out and opened before or after the construction of the railroad tracks (Vol. IV, p. 1678).

As the evidence in the case developed after the filing of this amendment, it appeared that this point was applicable to all of the streets—as is hereinafter shown.

The order under review requires that at all of the crossings except Madison avenue the crossings be altered by carrying the streets *under* the railroad; and in the case of Madison avenue by carrying the street *over* the railroad, according to the plan and profile attached to the order. The result, therefore, is that at Madison avenue the railroad is required to construct an overhead highway bridge above the tracks; and at all the other streets the railroad is required to construct railroad bridges above the several streets—the present grades, both of the streets and of the tracks, being partially changed in order to permit the streets to pass under the tracks. In both cases the entire expense of the work is ordered to be paid by the railroad company, less 10 per cent. to be paid by the Public Service Railway Company at three of the crossings. We therefore have a situation where in the one case the plaintiff in error is required to pay the expense of carrying a public street over its tracks, and in the other cases it is required to pay the expense of carrying several streets under its tracks.

Under the well settled law of the state of New Jersey as expressed in the line of authorities hereinafter cited, we submit that such an order is invalid—at least with reference to the streets which were not laid out and opened before the time when the railroad tracks were constructed, and the statute itself, having been construed by the state courts as applicable to all crossings regardless of whether the streets were laid out and opened before or after the time of the railroad construction, impair the obligation

of the contracts expressed in the charters granted to the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, for the reason that as thus construed the statute permits the board to enlarge the duty imposed upon such companies above that fixed by such charters by extending the duty, with reference to the construction or maintenance of overhead railroad bridges or highways, to include streets that were not laid out or opened until after the railroad tracks had been constructed.

In considering this point we will first refer to the charters of the original companies and will then cite the New Jersey decisions holding that the provisions in such charters relative to the construction or maintenance of highway crossings do not require the construction of crossings not at grade at streets laid out and opened *after* the construction of the railroad tracks.

The charter of the Paterson & Hudson River R. R. Co. provides in Section 9 as follows:

"It shall be the duty of the said company to construct and keep in repair, good and sufficient bridges or passages over and under the said railroad or roads, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle, on the said road shall not be prevented thereby; and also where the said road shall intersect any farms or lands of any individual, to provide and keep in repair, suitable wagonways over or under said railroad, so that they may conveniently pass the same." (Exhibit R. 15, p. 966; Laws of 1831, p. 29.)

The charter of the Paterson & Ramapo R. R. provides in Section 11 as follows:

"It shall be the duty of the said company to construct and keep in repair, good and sufficient

bridges or passages over or under the said railroad, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be prevented thereby, and where the road shall intersect any farm or lands, they shall provide and keep in repair suitable wagonways over or under the said railroad, so that persons may conveniently pass the same." (Exhibit R. 15, p. 1013, 14, Laws of 1841, p. 97.)

By virtue of the leases and statutes hereinbefore mentioned, the plaintiff-in-error has succeeded to the rights and duties of the two original companies. (See Exhibit R. 15, pp. 986-1005.) The railroad tracks were constructed and trains were running over some at least as early as the year 1835. (See testimony, Vol. I, pp. 325-335; Exhibit R. 43—Time table of trains between Paterson and New York—p. 326.)

The tracks of the New York & Erie Railroad Company (incorporated in the year 1832) were constructed previous to the year 1852 (see pp. 951-2).

Assuming for the purpose of the present discussion that the plaintiff-in-error is charged with the same duty as the two original companies relative to the construction and maintenance of "good and sufficient bridges or passages over and under the railroad," we now inquire what would be the duty of those companies under the charter provisions above quoted—and particularly with reference to crossings at highways which were laid out and opened after the construction of the railroad tracks.

On this point the New Jersey cases are clear. The most recent decision is that of the Court of Chancery in *West Jersey, etc., Railroad Company v. Woodbury*, 84 Atl. 1047, 80 N. J. Eq. 412, where that court had occasion to

construe a section of a railroad charter providing as follows:

"It shall be the duty of the said company to construct and keep in repair, good and sufficient bridges or passages over or under the said road where any public road shall intersect and cross the same, so that the passage of carriages, horses and cattle along the said road shall not be obstructed, and likewise when said railroad shall intersect any farm or lands of any individual, to provide and keep in repair suitable and convenient wagon ways over or under said road." P. L. 1853, p. 45.)

It was held that this section relates only to public roads which existed at the time the railroad was constructed. Leaming, *V. C.*, said:

"I am unable to reach the conclusion that this can be regarded in this court as an open question. In *Morris Canal & Banking Co. v. State*, 24 N. J. Law, 62, a somewhat similar provision contained in the charter act of the canal company was treated as a legislative provision contemplating a work about to be constructed, and imposing upon the company no duty in relation to highways laid out across the canal after it should be constructed. in the subsequent case of *Morris & Essex Railroad Co. v. Orange*, 63 N. J. Law, 252, 43 Atl. 730, 47 Atl. 363, it became necessary for the court to determine what compensation the railroad was entitled to receive as damages arising from laying out a highway across the railroad at grade. The charter act of that company contained a provision of almost exactly the same terms as the one here in question. Two justices construed the provision as including highways laid across the railroad at any time, and on that ground determined that substantial damages should not be allowed to the company except for injuries not usually incident to the mere crossing of the railroad by a highway.

With the provision there under consideration understood as imposing upon the company a statutory duty of maintenance of safe crossings where highways should thereafter be laid out across the railroad, it necessarily followed that no substantial compensation could be exacted by the company for expenses appropriately incident to such maintenance. The failure of the majority of the court to give recognition to the possible existence of such a statutory duty must, I think, be regarded as a repudiation of the views expressed to that effect in the minority opinion referred to. In a still later case before the same court (*Marino v. Central R. R. Co.*, 69 N. J. Law, 628, 56 Atl. 306), the latter part of a similar charter provision (that relating to intersected lands) was under consideration and was deemed to relate only to lands intersected by the railroad when the railroad right of way was acquired. With the charter provision above quoted, understood as contemplating only such public roads as were then in existence, the provisions of section 26 of the general railroad act of 1903 (P. L. 1903, p. 659), are also without application."

In *Delaware, etc., R. R. v. East Orange*, 41 N. J. L. 127, the Court said (*italics ours*):

"It is true that in the construction of their road the corporation could only be required to make such bridges, passages and crossings as were needed and suitable *at the time the railroad was built*, to accommodate the public in the use of highways *then existing*. The effect of this provision in their charter and in others, as applied to highways, is simply to enforce a common law obligation and guard against any nuisance by the company in the construction of their road. *Morris Canal and Banking Co. v. State*, 4 Zab. 62."

In *Morris & Essex Railroad v. Orange*, 63 N. J. L. 232, the charter provided:

"It shall be the duty of the said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad or roads, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby, and also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagonways over or under said road, so that he may pass the same."

The Court of Errors and Appeals held that under this charter the company, when a new street was laid out over its tracks, was not entitled to receive an allowance for damages to cover the expenses incident to the erection and maintenance of gates and sign boards, but was entitled to nominal damages for the use of its property for a highway crossing and was entitled to "adequate compensation" for the damage caused by structural changes—such as the removal of buildings or alterations in the tracks. There were four separate opinions. Dixon, *J.*, wrote an opinion (in which Ludlow, *J.*, concurred) wherein he reached the conclusion that this charter included highways laid across the railroad at any time. But it is obvious that the majority of the members of the court did not agree with this view, as only one of the judges voted for affirmance on the grounds stated by Dixon, *J.* (See 63 N. J. L. 275.) Three of the judges affirmed on other grounds, one on still another ground, and eight on the grounds stated by Mr. Justice Depue in the "opinion of the court." The question of whether the charter included highways laid across the railroad after the original construction, was not dis-

cussed or decided, but it is evident that the majority of the court were not willing to agree with the view of Mr. Justice Dixon—that the charter did include such highways. At this point, we may anticipate the claim made in the state courts by counsel for defendants in error that the view of the Court of Chancery, as stated in the Woodbury case, was unsound and that the rule set forth by Dixon, J., in the case of *Morris & Essex Railroad v. Orange*, *supra*, should be sustained. In view of the fact that only one member of the Court of Errors and Appeals agreed with such view, it is evident that it cannot be claimed that any such construction of the charter provisions has been adopted by the highest court of the state of New Jersey. Counsel for defendants in error also claimed that the Court of Errors and Appeals approved this view of Dixon, J., in the subsequent decision in *Erie R. R. Co. v. Paterson*, 79 N. J. L. 512, but, in that case, the point we are considering was not involved at all. That was a case in which the present plaintiff in error brought proceedings to review an ordinance of the city of Paterson for the opening of a certain street, known as Paxton street, which involved the construction of an overhead bridge at the street when thus opened. The opinion does not state, but the record of the case shows that that particular street was not located on the line of either the Paterson & Hudson River R. R. or the Paterson & Ramapo R. R., but on the line of an entirely different railroad, known as the "Newark Branch." The question of the duty of the plaintiff in error to construct a bridge at the street in question in order to comply with the terms of the ordinance did not turn at all upon the construction of the railroad charter, nor upon the question of whether the railroad was built prior to the opening of the street. The decision was

that the effect of the ordinance was to impose an "additional servitude" on the lands of the plaintiff in error and that, therefore, it was entitled to a hearing before it could be subjected to such burden (79 N. J. L. at p. 514). The court then concluded that no such hearing had been given and that, therefore, the ordinance was invalid.

Other cases in New Jersey on this point should also be mentioned. The case of *Morris Canal & Banking Co. v. State*, 24 N. J. L. 62, was an indictment against the company for failure to keep in repair a certain canal bridge at a public highway. The highway was laid out and opened after the canal was constructed and in use.

The section of the canal charter in question (12) provides:

"When the canal shall cross any road or farm, it shall be the duty of the company, at their proper expense, to make good and sufficient bridges across said canal, and to keep the same in repair, so as to prevent any inconvenience in the usage of the said road or farms, by reason of the said canal crossing the same."

The Court of Errors and Appeals entered judgment for the company, saying (italics ours):

"It is certainly true, as was contended by the counsel of the state, that where a canal and highway intersect each other, it is grammatically and mathematically correct to speak of the canal crossing the road, or the road crossing the canal. In describing an existing state of things, either form of expression might be adopted with equal propriety. But at the passage of the act, the canal had no existence. The legislature were making provision for a work about to be constructed, and they declared that when the canal shall cross any public road or farm, that is when the canal shall be constructed across any public road or farm, it

shall be the duty of the company to build and repair bridges. Such is the plain and obvious import of the language. To construe it to mean, when the canal shall cross *any* public road, or when any public road shall *hereafter be laid out across* the canal, the company shall build and repair bridges, is giving a broader meaning to the requirements than the language fairly imports, and one which could not have been intended to apply to farms. It never could have been the design of the legislature to require that in all future time, whenever a land holder should choose to unite two tracts of land, lying on opposite sides of the canal, into one farm, the company should build and maintain a bridge for his accommodation. If the language of the act will not bear this construction in regard to farms, neither can it in regard to highways. The same construction must, of necessity, be adopted in regard to both."

In *Marino v. Central R. R. Co.*, 69 N. J. L., 628, the Court of Errors and Appeals of the state of New Jersey had under consideration the question of the construction of the charter provision of the Somerville & Easton Railroad Co. of February 26, 1847, relative to the construction of crossings. This provision was as follows:

"That it shall be the duty of the said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad or roads where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby, and also where the said road shall intersect any farm or lands of any individual to provide and keep in repair suitable wagonways over or under said road, so that he may pass the same."

Certain lands have the right of way and were acquired by condemnation. Thereafter a subsequent owner of

the land on one side of the right of way brought suit to recover damages because of the alleged failure of the railroad to carry out this charter duty. It was held that the owner of the intersecting land had a right of way which was appurtenant to each of his divided tracts but that such right was not transmitted to a grantee of the portion of the lands which lay on one side only of the tracts.

It will be seen that the provisions in the several charters involved in these cases are substantially the same as those in the charters of the Paterson & Hudson River R. R. and Paterson & Ramapo R. R.—with the single exception that instead of the word “impeded” as used in the Morris and Essex charter and the Central R. R. charter, and the word “obstructed” as used in the West Jersey charter, the provisions in the charters of Paterson & Hudson River R. R. and Paterson & Ramapo R. R. contain the word “prevented.” But the charters under consideration are all alike in that none of them requires the construction of bridges or passages “over and under” the railroad where the public streets *hereafter laid out* shall cross the same.

In the state courts counsel for defendants in error cited four cases from Minnesota and one from Indiana for the proposition that at common law there is a duty upon a railroad to maintain crossings in condition for safe and convenient use, and that this duty applies both to highways which were in existence when the railroad was laid out and to those which were constructed later. Some of the Minnesota cases sustain these propositions, but in the cases wherein the common law duty was considered it appears there was no question of statutory construction involved. (*State ex rel. City of St. Paul v. Minnesota Transfer Railway Co.*, 80 Minn. 108, 83 N. W.

32; *State ex rel. City of St. Paul v. Chicago, etc., Ry. Co.*, 122 Minn. 280, 142 N. W. 312; *State ex rel. Village of Clara City v. Great Northern Ry. Co.*, 153 N. W. 879.) But the rule, we submit, is different when the charter of a railroad or a general statute *specifies* the duty of the railroad with respect to highway crossings. The question for consideration then is, not what is the duty of the railroad at common law, but how shall the charter or the statute be construed?

Thus, we find that in another case cited by counsel for defendants in error, namely, *State ex rel. City of Minneapolis v. St. Paul, etc., Ry. Co.*, 98 Minn., 380, 108 N. W. 261, 28 L. R. A. (N. S.) 298 (affirmed 214 U. S. 497, 53 L. Ed. 1060), the question of the duty of the railroad to construct and maintain a bridge over the railroad tracks was referred, not to any common law obligation, but solely to the terms of the charter of the railroad company, which provided as follows:

“The said company shall have the right and authority to construct their said railroad and branches upon and along, across, under, or over any public or private highway, road, street, plank road or railroad, if the same shall be necessary; but the said company shall put such highway, road, street, plank road, or railroad in such condition and state of repair as not to impair or interfere with its free and proper use.”

It was held that this provision applied to streets laid out after the construction of the railroad. The Minnesota court included the state of New Jersey in a list of several states, the decisions of which the Minnesota court says sustain the proposition that the state may compel a railroad to construct and maintain crossings at streets extended over the right of way subsequent to the construction of the railroad. But no case in New Jersey is cited in support of this statement; and, as we have

shown, a contrary rule has been declared by the courts of New Jersey in the Woodbury and other cases cited, *supra*.

Another basis for a distinction between the Minnesota rule and the New Jersey rule is found in the fact that in the Minnesota cases cited *supra* the state courts put the incidental annoyances from the movement of railroad trains in the same class with private nuisances, whereas in New Jersey the state courts have held that when a railroad company is not only authorized by its charter to run railroad trains, but is required to do so, then whatever annoyance to private persons follows from the exercise of this duty is *damnum absque injuria*, and must be considered as in contemplation when the railroad charters were allowed by the legislature of the state.

Beseman v. Pennsylvania R. R., 50 N. J. L. 235, affirmed 52 N. J. L. 221;

State v. Erie R. R., 84 N. J. L. 661;

Pennsylvania R. R. v. Jersey City, 84 N. J. L. 716, 49 L. R. A. (N. S.) 715;

Jersey City v. Erie R. R., 84 N. J. L. 761;

Kelly v. Erie R. R., 86 N. J. L. 379;

Roman Catholic Church of St. Anthony v. Pennsylvania R. R., 237 U. S. 575, 59 L. Ed. 1119, 207 Fed. 897.

Counsel for defendants in error may cite the decisions of this Court in *Cincinnati etc. R. Co. v. Connersville*, 218 U. S. 336, 54 L. Ed. 1060; *Lake Shore etc. R. Co. v. Clough*, 242 U. S. 375, 61 L. Ed. 374; *Northern Pacific Ry. Co. v. Duluth*, 208 U. S. 583, 52 L. Ed. 630; *St. Paul etc. Ry. Co. v. Minnesota*, 214 U. S. 497, 53 L. Ed. 1060; and *Chicago etc. Ry. Co. v. Minneapolis*, 232 U. S. 430, 58 L. Ed. 671, in all of which a railroad company was required to pay the expenses of the construction of bridges, even though the

highway was opened subsequent to the construction of the railroad tracks. The first two cases came to this Court from the state of Indiana. It was pointed out in the opinion in the *Clough* case that the courts of that state had held that the duty to construct overhead crossings was applicable not only to the original construction of a railroad across highways then in existence, but also where the highways are laid out and opened across a railroad after its construction. This being the settled law of the state this Court followed the construction of the state courts with reference to the charter obligations of the railroad.

So also in the three cases originating in Minnesota and reported in 208 U. S., 214 U. S. and 232 U. S. (cited *supra*), it appears that the settled law of that state required overhead crossings to be built at the expense of the railroad, regardless of the priority of railroad tracks as compared with the highway. But the settled rule in New Jersey under the authorities cited *supra* is directly to the contrary, and in that state railroads are not required to construct overhead bridges at crossings where the highways are laid out after the railroad has been built.

In view of the fact that in these several cases the rule adopted by the state courts was different from the rule adopted by the courts of New Jersey, it by no means follows that the same conclusion would be reached by this Court in a case originating in New Jersey—indeed, as the opinions are based upon the rule adopted in the particular state, it follows that a different conclusion should logically be reached by this Court in a case originating in a state where the settled law is that the railroad is not bound to build bridges or passages at highways laid out and opened after the railroad was constructed.

It will be observed that the charter in the Woodbury case, *supra*, involved the duty of the railroad to construct and maintain an overhead highway bridge. In the present case the only street in which literally the same condition exists is Madison avenue—at which point the plaintiff in error is required to construct an overhead highway bridge, leaving the railroad tracks at practically the present grade. There is, however, no difference in principle between the duty to construct a bridge for the purpose of carrying a highway over and above the railroad tracks and the duty to readjust and raise the grade of the railroad tracks for the purpose of carrying a highway under the tracks when thus raised.

The point for which we are now contending does not require the conclusion that there is no duty at common law on the railroad to provide reasonably sufficient passages for the use of the public at grade crossings, even though the particular highway may have been laid out and opened subsequent to the construction of the railroad. The argument in the present case involves only the duty to erect and maintain an *overhead* highway bridge with the railroad tracks underneath and an *undergrade* highway crossing with railroad tracks above. As was pointed out in the Morris and Essex case, *supra*, there is an important difference between the damages caused by *structural* changes, such as the removal of buildings or changes in the tracks, due to the opening of a street across a railroad, and *incidental* expenses arising by reason of the erection and maintenance of crossing gates, sign board, etc. In the latter case the company is not entitled to compensation, but in the former case it is; in the latter case the imposition of the cost upon the railroad is justified on the ground that it is a regulation adopted for public safety under the police power—in the former case it is

held that the railroad property cannot be taken without making just compensation: in the latter case the railroad must bear the expense of reasonable protection; in the former it is entitled to be paid for whatever damage it sustains. See *Morris and Essex R. R. v. Orange*, 63 N. J. L. at p. 259, *et seq.* To the same effect see:

Central R. R. v. Bayonne, 51 N. J. L. 428 (cited and approved in the *Morris & Essex* case at p. 257);

Paterson, etc., R. Co. v. Nutley, 72 N. J. L. 123;

Freeholders v. New York Bay R. R. Co., 84 N. J. L. 354.

Under the statute now in question the railroad is not only compelled to submit to the structural changes required by the order without receiving any compensation therefor, but it is required *at its own expense to make these changes.*

This does not involve the question of what duty may be imposed upon a railroad at common law to take reasonable care to enable the public to use highways whether laid out before or after the construction of the railroad tracks. Section 26 of the Railroad Act of 1903 expressly provides that said section shall not enlarge the duty imposed by its charter upon any railroad company incorporated by special act and whose railroad was constructed before April 2, 1873. This section does not apply to the present case, as the evidence hereinafter cited shows that the railroad in question here was constructed many years before the date specified in that section.

Attention should now be called to several other cases in New Jersey upon which counsel for defendants in error may rely. Thus counsel may urge that under the decision in the case of *Central Railroad v. State*, 32 N.

J. L. 220, "the duty prescribed is, to keep at all times, and under all circumstances, the public highways, at the point where they cross the railroad, in a condition fit for safe and convenient use." It should be observed, in the first place, that it is at least doubtful whether this language correctly expresses the law of the state of New Jersey. We presume that if a railroad were prevented from performing its duty by act of God or the public enemy, it would be excused. But in the next place a railroad crossing cannot be kept safe. The approach of a train must and does make it a place of danger. That it is a place of danger is charged in every crossing accident case and is the foundation of great numbers of judgments of non-suit. Thirdly, a level railroad crossing is never convenient. To stop, look and listen is and must be inconvenient. Even if the crossing is not at a grade it must often be inconvenient by making travelers go up or down a hill.

The statement in *Central R. R. v. State*, *supra*, is a mere dictum. The point at issue was, whether the railroad in digging up a street to depress it under the tracks was guilty beyond a reasonable doubt of committing a public nuisance. The court answers that there is such a doubt. That is all the case decides. And it should be noted that the case says that any change of grade of the highway by the railroad is done at its peril; "if such act has been done unreasonably and without any proper cause, the result would be different."

The same judge who in 1866 delivered the opinion that "at all times and under all circumstances" crossings should be "safe and convenient," wrote the opinion in the Matthews case in 1873, which holds that the obligation upon the railroad to place a flagman at a crossing only arises when the railroad itself so constructs its

road as to make the crossings unnecessarily dangerous, as by building through a cut. *Penna R. R. v. Matthews*, 36 N. J. L. 531. If other parties by placing buildings alongside the railroad make the crossing unnecessarily dangerous, the obligation is not incurred. *Kyle v. Lehigh Valley R. R.*, 81 N. J. L. 186. So as respects private persons there are some circumstances that do not demand of the railroad that they should keep the crossing "safe." Again, on a foggy day when the view of a train is prevented, one would think that if the railroad's duty was at all times and under all circumstances to keep a crossing "safe and convenient," the fog was a circumstance that might require a special warning signal. But when this was charged, at circuit, Chief Justice Beasley concurred in the opinion of the Court of Errors and upset the verdict. *N. Y., etc., R. R. Co. v. Leaman*, 54 N. J. L. 202.

The rule that the railroad, unless it created obstructions to view making the crossings dangerous, is not obliged to take measures to make it safe, is the same as respects the public and as respects private persons. The point came up in *Philadelphia & Reading R. R. v. State*, 61 N. J. L. 71. This was an indictment against a railroad for maintaining a grade crossing more than ordinarily dangerous to the public on account of the surroundings of the crossing itself and the manner in which the defendant operated its trains. The company requested the court at the trial to declare the law as laid down in the *Matthews* and *Leaman* cases. This was refused and writ of error taken. The New Jersey Supreme Court held that the Trial Judge should have substantially charged without qualification that the railroad was only required to give the statutory signals unless the crossing had some peculiarly dangerous feature occasioned by act of the company itself in constructing its road and buildings.

This case cannot be reconciled with *Central R. R. v. State*, and as a later opinion must be taken to overrule it, if *Central R. R. v. State* is held to mean that railroads must eliminate crossings *because of circumstances beyond their control*.

So also in *McCullough v. Franklin*, 59 N. J. L. 106, an ordinance for the establishment of flagmen at highway crossings was, on the facts, set aside as unreasonable. The court held that two of the crossings were more than usually dangerous, and that as to a third, its dangerous character was demonstrated. Yet because of the infrequent passage of trains and travelers at night, the ordinance, so far as it required flagmen at that time, was set aside. But night increases danger. There was some travel at that time. Yet here again an exception was made to the rule as laid down in the *Central R. R.* case, that the company must keep "at all times and under all circumstances the highway in a condition fit for safe and convenient use."

We have shown that by the decisions of the state of New Jersey the courts have overruled and disregarded the *Central R. R.* case; nothing remains of it except that if a railroad crossing *by the action of the railroad* in running frequent trains, etc., becomes "almost impassable," the *railroad* is justified in eliminating the grade crossing, and if such elimination is not done unreasonably, the public cannot complain. The case does not say, nor can it be inferred, except from general statements in the opinion, that because of circumstances arising from other causes than the railroad's construction or operation (such as increase of population, new buildings close to the railroad, etc.), the public can *compel* the elimination of the crossing; and under the *Philadelphia and Reading* case that claim is denied.

The case of *Metuchen v. Penna. R. R.*, 73 N. J. Eq. 359, approves *Central R. R. v. State*, so far as to say that the imposition of the duty to maintain and keep in repair "carries with it the power to perform that duty in exact accordance with the prescription. This, as we understand its opinion, was the view expressed by the Supreme Court in *State v. Central R. R.*"

The Court of Errors and Appeals of New Jersey has said that a railroad in bridging a highway must from time to time as traffic grows, enlarge the width of the bridge until it shall reach the full capacity of the highway. See *State v. Lackawanna R. R. Co.*, 84 N. J. L. 289. But this is quite another matter from attempting to define the duty prescribed by the statute. That court has never adopted the definition of the duty laid down in *Central R. R. v. State*.

It should further be observed that in the *Metuchen* case the existing highway crossing was under the railroad tracks, and the question was whether the company under its charter had the right to substitute such undergrade passageway in the place of a grade crossing, and if so, whether the undergrade passage should be constructed the full width of the highway. A holding that the railroad has the right to make such a change is very different from a holding that it is charged with the legal duty of so doing.

In *Reed v. Camden*, 53 N. J. L. 322, the court said: "The duty is continuous and changing, as travel and traffic increase and vary in their demands for public accommodation" and quotes the *Central R. R.* case as authority. In the Court of Errors opinion reversing the case below the case of *Central R. R. v. State* is not referred to. 54 N. J. L. 347.

In *Clark v. Elizabeth*, 61 N. J. L. 565, the Central R. R. case is cited by the majority opinion of the court, 61 N. J. L., 575, as authority for the proposition that the railroad has the power to change grade. The obnoxious definition of the railroad's duty is only quoted in the dissenting opinion, p. 538, and then on the point of the authority of the railroad to make the change.

The case of *Palmyra v. Pennsylvania R. R. Co.*, 62 N. J. Eq., 601, quotes the words of Chief Justice Bensley above referred to, but states that the ruling was challenged, and argues the question at some length. The Vice-Chancellor, p. 615, evidently doubts that the decision can be reconciled with other decisions, notably the *Leaman* case, and finally bases his decision, not on the Central R. R. case, but on the *Matthews* and *Leaman* cases, that hold that when the railroad increases the danger it must increase the warnings. The Court of Errors adopted this opinion as its own (63 N. J. Eq. 799), and in so doing based their judgment, as the Vice-Chancellor did, on the *Matthews* and *Leaman* cases and not on *Central R. R. v. State*.

It will be seen that the Central Railroad case sustained the right of the railroad company to alter the grade of a highway so as to pass under the track, provided the change is necessary for the convenience or safety of the public; but it does not discuss the question of under what circumstances the company can be compelled to make such a change. From 32 N. J. L. 225 we quote (italics ours):

"In order to accomplish this end, the power to alter the grade of the road as public emergencies require, so as to pass it, if necessary, under the track, must reside in the corporation."

So, also, in the case of *Metuchen v. Pennsylvania R. Co.*, 73 N. J. Eq. 363, the court decided, among other things, that the *right of the company* to construct an undergrade crossing was clear; citing *Central Railroad case, supra*.

There is a great difference between the *right* of a railroad company to construct an undergrade crossing and its *duty* so to do. In the one case the company may do so, if in the judgment of its officers and directors it is advisable, and in the other case it must do so when and if required by proper authority.

Granting that there is what has sometimes been called a "continuing duty" on the part of the railroad to perform the charter obligations with respect to highway crossings, this does not mean that the grades of the railroad and of the highway must be separated, but only that in a proper case the existing facilities for a crossing may be required to be enlarged by widening the highway crossing. It is well known that in many grade-crossings the planking is not the full width of the highway. This is illustrated by several of the cases cited hereinbefore. In the event that the highway traffic increases it may become the duty of the railroad to widen the planking, but it by no means follows that because of such increased highway traffic it becomes its duty to separate the grades. The "continuing" duty relates to the capacity of the crossing and not to the form thereof. Moreover, even if the duty may be said to be "continuing" in the sense that a railroad, as long as it exercises its franchise, cannot at any time lawfully avoid the performance thereof (except, of course, on the vacation of the street or some similar proceeding), it by no means follows that the duty is continuously enlarging as to capacity or changing as to form.

If we are right in our contention that the legal rules applicable to the present case are as above stated, then the next inquiry is whether there is evidence to show that any of the several streets involved were laid out and opened *before* the railroad tracks were constructed.

WILLIAM MCGILL testified as follows:

I have lived in Paterson 57 years. Among my father's papers I find a time table left by my grandfather. (Time table offered as Exhibit R. 43, pp. 325-6.)

This time table is dated June 15, 1835, and provides for what is called a "summer arrangement" Paterson and New York Railroad line. Then follows schedule of the trains. Certain trains leave "by steam," others leaving "by horses" (p. 326, ll. 10-30). It was admitted that this was a time table of the Paterson & Hudson River R. R. at that time (p. 326, 35).

WILLIAM H. LEVI. I have lived in Paterson since about 1841, except the four years during the Civil War. In 1841 I was 3½ to 4 years old, having been born in 1837. When I came to Paterson there was a railroad running from Paterson to New York. In 1847 or 48, at the age of 10 or 11, I went to New York with my parents, starting from the Main Street Depot (p. 327). The depot where we started was located on Main street. The railroad ran with an "S" curve with a junction in the vicinity of Straight street (p. 328, ll. 1-30).

I recall the construction of the Paterson & Ramapo R. R. When I was a boy I went on the locomotive with the fireman as far as Suffern. This was a short time either before or after the trip to New York. I think it was after, but about the same time (p. 328, ll. 30-40; p. 329, ll. 1-10).

Before I made my trip to New York in '47 or '48 I knew of the railroad to New York. We used to play there after school. If we went on "that section" we would be apt to be chased out of the yard by old Daddy Claxton, who was the general yardmaster. If we got thirsty we would go to the railroad spring and get a drink of water (p. 329, ll. 10-20).

I don't remember the building of the Market street station and railroad, but I remember after it was there. It was a common place for young men 14 to 16 years old to go and see the train go through. The station at Market street was maintained at the same time as the station on Main street. The last I remember of using a railroad from the old station was in 1861 when 300 of the boys joined Sickles' Brigade in New York on the 5th day of May, '61 (p. 329, ll. 30-40).

When we watched the trains go through we walked around on the platform. The trains came from Suffern and went through to New York.

I don't know what year the Erie Railroad got possession of the old Paterson & Hudson River Railroad, but previous to that the trains ran to the junction and there the passengers and baggage would be transferred to the Paterson & Hudson River Railroad because the Paterson & Ramapo was a six foot gauge road-bed, and the Paterson & Hudson River Railroad is a four foot eight and a half. That is why the junction was built there, to transfer passengers and freight to the old line (p. 330, ll. 20-30).

PETER DOREMUS, 85 years old, a director of the Second National Bank and has been for fifty years nearly. Have lived in Paterson since 1844. When I came to Paterson

the Hudson River Railroad was there. The depot was down near the court house.

They used to run the cars from there up to the corner of Main street with horses. The road ran to a connection with the Pennsylvania road and took us to Jersey City.

I remember the construction of the Paterson & Ramapo Railroad. It formed a junction with the Hudson River Railroad. It ran up to Suffern where it became the Union road to connect with the old Erie. The road was building from 1847 to '49, and was running not later than 1850.

At the time the Paterson & Hudson River Railroad was running it did not cross any streets; there were no streets laid through.

At the time the Paterson & Ramapo Railroad started to run it crossed Market street, Broadway and River street. It did not cross any other streets because there were no streets to cross (pp. 330-332).

I am not sure whether Straight street was laid out before the railroad as laid out on its present right of way. I am not so familiar with conditions south of Market street. It was all a "wilderness." So far as I know it is possible that Straight street or some other street may have been laid out over the railroad before the railroad started to operate. I am not positive about that (p. 333, ll. 1-40).

To the north, beside Market street, Broadway and River street, I think Godwin street was laid out. Van Houten street was not open. Ellison street was open from Main street. It did not cross the railroad. It was open only from Main street to Church street (p. 334).

The above testimony shows that at least as early as 1835 railroad trains were running, some by steam and some by horses, from Main street, Paterson, to Jersey City, and that at least as early as 1850 trains were running from Paterson to Suffern. Of the streets involved in the present proceeding the only ones that were open up to 1850, were Market street, Broadway and River street, although there is a possibility that Straight street may have been opened over the railroad tracks.

The dates of the deeds and condemnation proceedings for the right of way are also some evidence as to the date of construction. Abstracts of these are included in Exhibit R. 15 (pp. 1036-1056) as follows:

Powleson to P. & H. R. R.....	July 25, 1831
S. U. M. to P. & H. R. R.....	Sept. 9, 1856
S. U. M. to P. & R. R. R.....	June 14, 1850
Van Houten to P. & R. R. R.....	Nov. 26, 1847
Van Houten, <i>et al</i> , Receivers, to P. & R. R. R.....	May 1, 1848
Colt to P. & R. R. R.....	June 14, 1850
Seudder to P. & R. R. R.....	Sept. 12, 1848
P. & R. R. R. <i>vs.</i> Cooke.....	Dec. 30, 1847
Forbes to P. & R. R. R.....	Oct. 7, 1847
P. & R. R. R. <i>v.</i> Cummings.....	Nov. 30, 1847
Donnelly to P. & R. R. R.....	Nov. 27, 1847
Monerief to P. & R. R. R.....	Aug. 30, 1848
Hastings to P. & R. R. R.....	July —, 1848
Cass to P. & R. R. R.....	Oct. 7, 1847
Danforth to P. & R. R. R.....	Nov. 27, 1847
Jackson to P. & R. R. R.....	Sept. 16, 1847
Sweet to P. & R. R. R.....	Feb. 11, 1848
Mason to P. & R. R. R.....	Jan. 3, 1848
P. & R. R. R. <i>v.</i> Blackwell.....	Dec. 30, 1847
Van Houten, <i>et als</i> , to P. & R. R. R.....	Sept. 27, 1847
Van Blarecom to P. & R. R. R.....	Sept. 13, 1847

The above deeds, together with a number of others, are listed in the property map showing all lands owned or controlled by the plaintiff in error in the city of Paterson. This shows the original right of way of the Paterson & Hudson River R. R. and Paterson & Ramapo R. R. Most of the main line tracks lie wholly within this right of way. See pages 246-8, Exhibit R. 16. Map entitled "Lands owned or controlled by Erie Railroad Company, Main Line, city of Paterson, N. J."

On this map is indicated in detail the source of the title of the plaintiff in error and its predecessors to all of the lands within the city limits including not only the land at and near the crossings in question, but other lands within the city limits. On the several sheets comprising this map is an index showing the dates of the deeds or condemnation award, the name of the grantor or owner from whom the property was acquired and the date and place of record. These maps show a number of ancient deeds in addition to those above listed. Thus, on sheet numbered 5 are listed five deeds to the P. & H. all dated in June or July, 1831.

On sheet numbered six are listed four deeds to P. & H. all dated June or July, 1831.

On sheet numbered 7 are listed three deeds to P. & H. dated in July, 1831, and one deed to P. & H. dated in November, 1833.

On sheet numbered 8 are listed two deeds dated respectively May, 1848, and June, 1850, to P. & R., and two deeds dated Sept. 1856, to P. & H., one deed dated May, 1864, to Erie Railway Company.

On sheet numbered 9 are listed four deeds to P. & H. dated from 1847 to 1850, and four deeds to Erie Railway Co. dated in 1864 and 5.

On sheet numbered 10 are listed fifteen deeds to P. & R., all dated in 1847, and 8, and one deed to same company dated in 1849, besides three deeds dated in 1864 to Erie Railway Company, and one dated in 1864 to New York & Erie Railroad Company.

On sheet numbered 11 are listed one deed to P. & R. dated in 1849, two deeds to the same company dated in 1847, three deeds to Erie Railway Company dated 1864 and one deed to New York and Erie dated 1864.

There was no evidence offered by the city to show the dates of the opening of any of the streets, but the plaintiff in error undertook to present to the board all the evidence it had been able to gather on that subject. Thus, Mr. Dawley testified as to certain maps and Mr. Achenbach as to certain ordinances and street "Returns." Mr. Dawley identified two old maps known respectively as the Map of 1850 (Exhibit R. 76) and the Map of 1852 (Exhibit R. 77).

The map of 1850 purports to show the city of Paterson as it was at that time "from actual surveys by J. C. Sidney" (p. 457, l. 10).

On this map the present main line tracks appear under the name of "Paterson and Hudson River Railroad." At the intersection of this line of railroad with the streets designated on said map as Straight street and Washington street there is a branch leading to "Paterson Railroad Depot." The location of this depot is apparently that described by Mr. Levi and Mr. Doremus, as "near the court house" and "at the corner of Main street." After passing the junction point the main line, according to this map, continued in a northerly direction. So far as this map indicates the only streets (of those involved in the present proceeding) actually opened across the railroad were Straight street, Market street and

Willis street (one crossing)—the location of the latter street apparently being the same as that of the present Park avenue; Broadway and Lafayette street. There is also a street on said map called "Williamson street," which apparently crosses the railroad tracks. From its location this street is probably the same street that afterward was known as Van Houten street. Mr. Doremus, however, says that at the time the railroad was built Van Houten street was not open.

Of the other streets involved in the present proceeding, Madison avenue on the south and Keen street, Warren street, River street and Putnam streets on the north are apparently beyond the limits of the map of 1850.

There is no street on the map under the name of Clay street; Cedar street is indicated on the map in dotted lines, indicating that it was not open across the railroad tracks; Ellison street appears as running between Prospect street on the west and Church street on the east, but not as crossing the tracks; Fair street is on the map in dotted lines; Hamilton avenue does not appear under that name, but its location is the same as "Division street" which is on the map in dotted lines. Franklin street appears on the map in dotted lines.

The map of 1852 purports to have been surveyed by order of the Council (p. 459, l. 30). The date of the map is October 20, 1852, and on it appears the following legend: "Date of Ordinance, March 30, 1853." The map purports to show the courses of the several streets indicated thereon, but the only reference to the location of the railroad is two lines, one starting at "Township Line" and running in a general northerly direction marked "Paterson and Hudson River now Union R. R."; the other branching from the first named at its intersection with Straight street and running northeasterly, indicated

on the map as "Paterson & Ramapo now Union Railroad."

Following is a statement as to the streets involved in this proceeding so far as the same are referred to on said map:

- (A) Madison avenue does not appear.
- (B) Clay street does not appear.
- (B) Straight street is indicated on map under that name.
- (C) Cedar street does not appear.
- (D) Market is indicated under that name.
- (D) Park avenue is indicated on map under name of Willis street.
- (E) Ellison street indicated under that name.
- (F) Van Houten street indicated under name of East Van Houten street.
- (G) Broadway indicated under that name.
- (H) Fair street indicated under that name.
- (I) Hamilton avenue does not appear, but is probably the street indicated as "Division street."
- (J) Lafayette street indicated under that name.
- (K) Franklin street does not appear.
- (L) Keen street does not appear.
- (M) Warren street does not appear.
- (N) River street indicated under that name.
- (N) Putnam street does not appear.

The ordinance referred to by this map was discovered by Mr. Achenbach among the miscellaneous records of the Passaic County Register's Office. A certified copy was offered in evidence and marked Exhibit R-78 (p. 463, l. 30 to p. 464, l. 5). This ordinance *vacated* all the then existing streets in Paterson which are included in the present proceeding and then relocated and relaid out

the streets according to the map. A detailed statement as to the history of each of the streets in question was then received in evidence. This refers to the 1850 map under that description and refers to the map of 1852 as the Allen map (pp. 464, 5). The official returns of the several streets were also offered (pp. 466, 469—Exhibits R-81 to R-100 inclusive).

By reference to Exhibit R-78, as printed at length in Vol. II, p. 1208, *et seq.*, it will be seen that *all of the streets included in this proceeding were by Section 1 ordered to be vacated.*

Exhibit R-80 (Vol. II, p. 1276, *et seq.*), is a detailed history of each of the several streets based upon the maps of 1850 and 1852 as well as upon other maps on file and upon the official records of the city of Paterson and the county of Passaic. By reference to this exhibit the following information appears as to the streets in question:

(A)

MADISON AVENUE.

Earliest evidence of intention to open was filing of "Return" March 27, 1871; earliest map showing location is dated 1869.

(B)

CLAY STREET.

Earliest evidence of intention to open was filing of "Return" dated January 14, 1856—which did not show the street crossing the railroad tracks; earliest map showing this street across the tracks is dated November, 1873.

(B)

STRAIGHT STREET.

Is shown on map of 1850, but earliest evidence of intention to open same across the railroad appears in the road records and the survey of Allen, dated October 20, 1852.

(C)

CEDAR STREET.

Did not exist across the tracks in 1850. Vacated by Section 1 of ordinance of 1853 and by Section 21 opened in accordance with map of 1852.

(D)

MARKET STREET.

Appears on the 1850 map; vacated by Section 1 of said ordinance; by Section 13 of same ordinance laid out across the tracks in accordance with the Allen map.

(D)

PARK AVENUE.

Formerly Willis street. Also appears on the 1850 map; vacated by Section 1 of said ordinance and by Section 14 was laid out across the tracks.

(E)

ELLISON STREET.

Did not extend across the railroad tracks at the time the 1850 map was made; vacated by Section 1 of said ordinance and by Section 9 as laid out across the tracks.

(F)

VAN HOUTEN STREET.

Was originally known as Williamson street. Appears on the 1850 map; vacated by Section 1 of said ordinance; laid out across the tracks by Section 4 thereof.

(G)

BROADWAY.

Existed at the time the 1850 map was made; vacated by Section 1 of said ordinance; laid out across the tracks by Section 6 thereof.

(H)

FAIR STREET.

Did not exist across the tracks at the time of the 1850 map. On the west side of the railroad was open between certain points by Return dated July 2, 1839; is shown on the 1850 map as a *proposed* street; on the Allen map of 1852 did not extend across the tracks; earliest evidence of intention to open it across the tracks is in the Return of March 7, 1864.

(I)

HAMILTON AVENUE.

Formerly known as Division street, appears on maps of 1850 and 1852 between certain points but not across the railroad tracks. Earliest evidence of intention to open it across the tracks in Return of December 19, 1859.

(J)

LAFAYETTE STREET.

Existed when 1850 map was made; was vacated by Section 1 of said ordinance; by Section 56 thereof was

opened across the railroad in accordance with the Allen map.

(K)

FRANKLIN STREET.

Appears on the 1850 map across the railroad as a proposed street; on the Allen map of 1852 does not appear. Earliest evidence of intention to open it is in Return of February 11, 1870.

(L)

KEEN STREET.

Earliest evidence of intention to open is found in Book B of Road Records, but the map therein shows the street entirely east of the railroad. It does not appear on the Allen map of 1852.

(M)

WARREN STREET.

Earliest evidence to open the street is found in Book B of Road Records, p. 436. The map therewith shows street east of the tracks. It does not appear on the map of 1852.

(N)

RIVER STREET.

Appears on the 1850 map; vacated by Section 1 of said ordinance and by Section 17 opened across the railroad tracks.

(N)

PUTNAM STREET.

Earliest evidence of intention to open street is February 11, 1870.

The foregoing statement of the evidence shows that the Paterson & Hudson River R. R. Co. was constructed and in operation at least as early as 1835; and that the Paterson & Ramapo was constructed and in operation at least as early as 1850. Both dates are prior to the ordinance of 1852, whereby *all* of the then existing streets in Paterson were *vacated*. The legal effect of this, we submit, was to close (even though only temporarily) all of the streets in question in this proceeding that were then laid out, and to open them again as from the date of the several returns of courses—all of which were subsequent to the ordinance. It therefore follows that not one of the said highways was legally laid out and opened *before* the construction and operation of either of the two early railroads.

The majority of the streets involved in this proceeding were not actually in use until long after the railroads were in operation. Mr. Doremus says that the Paterson & Hudson River R. R. did not cross any streets and that the Paterson & Ramapo R. R. crossed only Market street, Broadway and River street (pp. 330-2). So far as concerns all of the other streets in question (outside of Market street, Broadway and River street), the claim of the plaintiff in error that they were not laid out and opened until after the railroads were in operation does not depend upon the legal effect of the vacation of the Paterson streets by the ordinance of 1852. With the exception of these three none of the other streets were actually in use at and across the railroad tracks; and even as to those three streets the ordinance of 1852 operates to close them and thus brings them within the class of streets that were *legally* laid out and opened *after* the railroad tracks had been constructed and the

railroads were in operation. Hence, the principle laid down in the Woodbury and the other cases, *supra*, we submit, applies with equal force to all of the streets in question; and it follows that there is no legal duty on the part of either the Paterson & Hudson River R. R. Co. or the Paterson & Ramapo R. R. Co., or on the part of the Erie R. R. Co. as the successor of these two companies, to construct the bridges required by the order under review.

In the state courts counsel for defendants in error said on this point: "From the evidence it is certain that some of the streets were opened before the railroad was laid out, and there is much uncertainty about the others." They took the position that the burden of proof was upon the railroad to show that the tracks were constructed before any particular street was laid out and opened rather than upon the city to show that the street was laid out and opened before the tracks were constructed. This, we submit, is erroneous; under the cases cited under this point it is necessary for the party alleging the duty on the part of a railroad to construct a bridge over a highway to prove the fact that the highway was constructed before the railroad. No reason has been suggested why the ordinary rule that the burden of proof of any particular fact rests upon the party alleging it should be modified in a case of this kind. It is true that the plaintiff in error undertook to put in evidence its abstract of title and all the information that it was able to secure relative to the dates of the opening of the various streets and of the construction and operation of the railroad at and across the streets. But it did this only because the Board of Public Utility Commissioners ordered it to specify which of the several crossings were constructed subsequent to the construction and operation

of the railroad (pp. 132-4 of Vol. I). If there is "uncertainty" about the date of the opening of the several streets or some of them, it is not the fault of the plaintiff in error, which produced all the evidence it found available. Ample opportunity was afforded the city to produce further evidence on this point, if it had any; and none was produced.

We do not concede, however, that there is "uncertainty" on this question. All available maps and records were examined in great detail by a representative of the plaintiff in error, and, without objection on the part of the city, an "abstract" was offered giving the history of the several streets so far as the same could be determined by an examination of the maps and records (see Vol. I, p. 465, Ex. R. 80; Vol. II, pp. 1276 and following).

Counsel for defendant in error also argued in the state courts that on the vacation of the old streets by the ordinance of 1852 (Ex. R. 78, pp. 1208 and following) these streets were then "immediately declared opened according to the lines of the Allen Map by the succeeding sections." This is not an accurate statement of the legal effect of said ordinance. The succeeding sections thereof did not "open" the streets that had been vacated by the first section thereof. All the latter sections did was to provide that each street (mentioning each by name) "be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen, City Surveyor, dated the twentieth day of October, eighteen hundred and fifty-two." According to the records in the County Clerk's office, the "returns of the courses and distances" of several of the streets in question were not filed until some time after the ordinance of 1852. Following is a statement of the dates of the filing of these returns:

(Date of Vacating Ordinance, October 20, 1852.)

<i>Street.</i>	<i>Date of Filing Return</i>	<i>Exhibit</i>
Madison avenue	March 27, 1871	R. 81
Straight street	Oct. 20, 1852	R. 82
Clay street	Feb. 11, 1870	R. 83
Clay street	July 14, 1856	R. 84
Cedar street	Oct. 20, 1852	R. 85
Market street	Oct. 20, 1852	R. 86
Willis street	Oct. 20, 1852	R. 87
(Later known as Park avenue)		
Ellison street	Oct. 20, 1852	R. 88
East Van Houten street.....	Oct. 20, 1852	R. 89
Broadway	Oct. 20, 1852	R. 90
Fair street	Oct. 20, 1852	R. 91
Fair street	March 7, 1864	R. 92
Division street	Dec. 19, 1859	R. 93
(Later known as Hamilton avenue)		
Division street	Oct. 20, 1852	R. 94
Lafayette street	Oct. 20, 1852	R. 95
Franklin street	Feb. 11, 1870	R. 96
Keene street	Feb. 11, 1870	R. 97
Warren street	Feb. 11, 1870	R. 98
River street	Oct. 20, 1852	R. 99
Putnam street	Feb. 11, 1870	R. 100

(See Vol. 2, pp. 1282 to 1305.)

If we are right in our contention that the vacation of the streets in question by the ordinance of 1852 operated to close all of them for the time being, then the present point applies to *all* of the highway crossings which are ordered to be eliminated. But if we are wrong in this contention, nevertheless, the point applies to all of the streets that were not actually in use until after the railroads were put in operation; and, as we have above

pointed out, the point would then apply to all streets except Market street, Broadway and River street, as those streets were the only ones that were actually in use by the public before and at the time of the construction and the first operation of the railroads.

It may be urged by the defendant-in-error that the point should be further limited to those streets which are crossed by the Paterson & Hudson River R. R. and should not apply to the streets which are crossed by the Paterson & Ramapo R. R., as the charter of the latter company expressly provides that it shall be lawful for the legislature, at any time thereafter, to alter, amend, or modify the act whenever, in their opinion, the public good may require it. (See page 1018.)

In the year 1846, the legislature of the state of New Jersey passed a statute which provides:

“The charter of every corporation shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature.” (See Nixon’s Digest, page 151.)

This statute of 1846 does not affect the charter rights of the P. & H. R. R., as that charter was granted in 1831. It differs from the charter of the P. & R. R. R. in that in the former there is no provision for repeal or alteration. If, therefore, it should be concluded that this point does not apply to the crossings over which the tracks of the P. & R. R. R. pass, because of the provision for the alteration of said charter, the point is still good as to the crossings of the P. & H. R. R. The evidence shows that that company is the owner, either in whole or in part, of the right of way at Madison avenue, Clay street, Straight street and Cedar street. So far as these streets are concerned, the effect of the statute,

as construed by the state courts, is to enlarge the duty imposed upon the Paterson & Hudson River R. R. by its charter. Of course, if the argument under Point X is correct, that the charter duty of the P. & H. R. R. to construct and maintain passages at public highways has not passed to the plaintiff-in-error, then it will not be necessary to consider the present point. But, if it should be held that such charter duty has passed to the plaintiff-in-error by virtue of the several leases, foreclosures, and conveyances heretofore recited, then it becomes important to consider whether the statute upon which the order is based, as construed by the state courts, operates to modify the obligation of the contract between the state of New Jersey and the Paterson & Hudson River R. R. with reference to the construction and maintenance of highway crossings.

The evidence which we have cited above shows without dispute that Madison avenue, Clay street, Straight street and Cedar street, were not laid out and opened at the time of the construction of the tracks of the Paterson & Hudson River R. R., and, hence, the present point is at least applicable to those four streets, even if it does not apply to the street crossings over which the tracks of the P. & P. R. R. pass.

The result of the construction of the statute which has been adopted by the courts of the state of New Jersey is to change the charter duties imposed upon the Paterson & Hudson River R. R. and thereafter transferred to the plaintiff-in-error, by requiring the construction of bridges (in one case a highway bridge above the railroad track, and in other cases railroad bridges above the highway) at streets which were laid out and opened subsequent to the construction of the railroad tracks; in other words, the statute changes the charter obligation to the disad-

vantage of the company operating under said charter and to that extent impairs the obligation thereof.

With respect to the charters of both the P. & H. R. R. and the P. & R. R. the statute further impairs the contracts express therein because it permits the board to order the elimination of crossings that may be found to be dangerous to public safety. There is nothing in either charter which requires the construction of bridges or passages at streets in such a way that they shall not be "dangerous to public safety." All that is required by the charters is that the bridges or passages be constructed so that the passage of carriages, horses, and cattle on the said road shall not be prevented thereby. (See Exhibit R. 15, 966 and 1013.)

The statute further impairs contract rights for the reason that there is nothing in the original charters which requires bridges or passages (whether at grade or other than at grade) to be constructed *the full width* of the highway. If the statute be construed to permit the board to order such construction, then the statute enlarges the charter duty. If there ever was any doubt on this question, it is now settled by the decision in the case of *State of New Jersey v. Lackawanna R. Co.*, 84 N. J. L., 289, which disapproves the dictum in *Township of Raritan v. Port Reading R. R.*, 49 N. J. Eq., 11, where it was said that when the railroad is so built as to cross a highway above grade it must bridge the entire width of the highway. The Lackawanna case holds that there was no hard and fast rule requiring the construction of a bridge the entire width of the highway, but that under Section 26 of the railroad law, the bridge must be of a width and character "suitable to the locality." While the precise point decided in the Lackawanna case was that Section 26 of the Railroad Law of 1903 did not require a con-

struction the entire width, yet the reasoning thereof applies equally to crossings constructed under the early charters. The same principle was applied to the charter of the New Jersey Railroad & Transportation Co. of 1832 in the case of *Metuchen v. Pennsylvania R. R.*, 73 N. J. Eq., 359, holding that the *company* had the right to substitute an undergrade passageway in the place of a grade crossing, but that the charter did not require such undergrade passage to be constructed the full width of the highway unless that width was required for the accommodation of public travel at the place of its location.

If it be urged that Section 26 of the General Railroad Law of 1903 has changed the law in this regard by providing that the bridges and passages shall be of such width and character as shall be "suitable to the locality," the answer is, first that this section does not enlarge the duty imposed by its charter upon any company incorporated by special act whose railroad was constructed before April 2, 1873, and second, there was no proof before the board and no finding by the board that it was necessary to have the bridges constructed the full width of the highway (as required by the board) in order that they should be suitable to the locality. Likewise, there was no proof before the board and no finding by the board that it was necessary to construct the subways passing under the railroad tracks the extent of full width of the highway in order to accommodate public travel.

IX.

The statute violates the contract clause and the due process clause, in that it impairs the obligation of the contracts between the plaintiff in error and the Public Service Railway Company by altering their respective rights and duties as fixed by said contracts; in that it fixes a maximum proportion to be paid by the said Public Service Railway Company, without regard to the terms of the said contract and without regard to the proportion of the danger or impediment created by the Public Service Railway Company.

By agreement dated February 26, 1892, between Paterson Railway Co., one of the predecessors of Public Service Railway Co., and the New York, Lake Erie & Western Railroad Co., the predecessor of the Erie Railroad Co., the street railway company is given the right to maintain tracks across the steam railroad at Market street, Broadway and River street. Under this agreement the Erie Company agreed that the Paterson Company might continue to maintain the street railway across the present tracks or any other track or tracks within the city. In the second paragraph the street railway company agrees "at their own cost and expense" to "construct said crossings at the points shown upon said diagram and in the manner agreed upon with the representatives of the Erie Company, *and will thereafter keep and maintain such crossings* and their tracks thereat in good and safe condition, satisfactory to the Erie Company, during the continuance of this agreement, and so as shall from time to time be best adapted to secure safety at such crossings under the supervision and direction of the Erie Company."

The sixth paragraph provides that the flagmen and gatemen shall be employed by the Erie Company and that the street railway company shall pay one-third of the expense thereof.

The seventh paragraph provides that if gates are erected the same are to be built at the expense of the Erie Company, and the street railway company agrees to pay one-third of the cost of erection and of repairs and renewals thereof and of maintaining the same.

This contract was changed by an amendment dated May 20, 1898, whereby it was agreed that the provision for payment by the street railway company of one-third of the expenses of flagmen and gatemen should be suspended for ten years, but should thereafter be in full force and effect (Exhibit Erie 13, pp. 2034-8).

There is also a supplemental agreement dated February 6, 1912, between the plaintiff-in-error as successor of the New York, Lake Erie & Western Railroad Company, and the Public Service Railway Company (successor to the Paterson Railway Company), amending the agreement of February 26, 1892, so as to permit the construction of a single trolley track across the railroad company's tracks at Park avenue. The third paragraph thereof specifically confirms all of the provisions of the previous agreement and extends them to the additional track "to the same extent and as fully as though said additional track were specifically referred to therein" (Ex. Erie 13 and 14, p. 2039).

Under these agreements the trolley company was required not only to construct the trolley crossings in the first instance, but to keep and maintain the same in good and safe condition. There is nothing in this agreement which places any burden of construction or maintenance

upon the railroad company; on the contrary, all such cost is to be borne by the trolley company. If under the orders of the Board of Public Utility Commissioners it becomes necessary to conform the trolley tracks to a change of grade of the streets, or if it becomes necessary to take up and relay the trolley tracks, in the course of the reconstruction of the railroad tracks and appurtenances, the duty of so doing clearly rests upon the trolley company under this agreement; and hence any such order of the board (and any statute which permits or requires such an order) impairs this contract to the detriment of the railroad company.

Further the statute arbitrarily limits the proportion of the expense to be paid by a street railway using a grade crossing to not exceeding ten per cent. It may be that this provision is invalid in any event for the reasons submitted by the Public Service Railway Company in the brief filed by it on its writ of error—which is to be heard at the same time with the present writ. In that event the entire statute must fall, as the provision for the payment of 10 per cent. is an integral and essential part of the statute, and it cannot be presumed that the legislature would have passed the rest of the statute without including therein the provision for the payment of a certain proportion of the cost by a street railway company.

But however that may be, if any proportion at all is to be chargeable to the street railway company, why limit it to 10 per cent. or any other specified amount? The jurisdictional facts upon which the elimination of a particular grade crossing is supposed to be ordered are, danger to public safety, or impediment to public travel. It may well be that in many cases the proportion of danger and impediment directly attributable to the use of the crossing by a street railway company largely ex-

ceeds 10 per cent. In the case of Market street the record shows an average of 580 to 590 trolley cars for the period between 5 A. M. and 11 P. M., or 18 hours, which is an average of about 32 trolley cars each hour, or one every two minutes. According to this count there were nearly half as many trolley cars as there were automobiles or horse-drawn vehicles passing over this crossing. At Broadway there was an average of 600 trolley cars per day of 18 hours—which was considerably in excess of the number of automobiles or horse-drawn vehicles. At River street there was an average of 190 to 230 trolley cars per day of 18 hours, or considerably over half of the number of automobiles or horse-drawn vehicles. When we consider that the average trolley car carries a large number of passengers or compared with an automobile or a horse-drawn vehicle, it is obvious that a very large proportion—much in excess of 10 per cent.—of the travel at these three crossings is by trolley. For example, if we estimate the average number of passengers at 50 for each car, the result would be at Market street (580x50) 29,000 trolley passengers; at Broadway about 30,000; at River street about 10,000. In the case of Market street the trolley passengers on this basis would be practically equal to the number of pedestrians; at Broadway the trolley passengers would be 3 or 4 times the number of pedestrians, and at River street the trolley passengers would equal, and according to two of the counts, would considerably exceed, the number of pedestrians.

It is also a matter of common knowledge that a trolley car obstructs the use of a crossing to a considerably greater extent as it passes over the same than an automobile or a horse-drawn vehicle, as it generally takes

longer to pass over, due to the larger size and comparatively slower movements of the trolley cars.

The unreasonableness of fixing a limit of 10 per cent. as the maximum amount to be paid by a street railway company is illustrated by the decrees that have been made by the Court of Chancery of New Jersey in cases where that court has been called upon to exercise its jurisdiction to determine the method of the use of conflicting easements and the apportionment of the cost thereof by and between steam railroad companies and street railway companies. That court has exercised such jurisdiction both under its common law power to regulate easements and under the provisions of Chapter 241, p. 462, Laws of 1895, and the supplement thereto known as Chapter 111, p. 248, Laws of 1899 (repealed by Chapter 176, Laws of 1904), and now incorporated in sections 32 and 33 of the General Railroad Law of 1903.

Thus, in the case of *In Re Atlantic Highlands, etc., R. Co.*, 35 Atl. 387, 389, the court ordered the electric railway to give bond in the sum of \$5,000, conditioned to pay salaries of towermen at crossing to be constructed, "and such other expenses as shall be necessary to the efficient maintenance and management of signals and cut-offs mentioned, during the continuance of said crossing," and also "erect Gibbs signal system, including the power cut-off and the scotch block or derailling switch." Also, "The electric company must bear whatever expense shall be necessary to adopt those gates (at crossing) for continued use after their wires shall be erected." (Reversed 55 N. J. Eq., 522, on another point not now material.)

In the case of *In Re Saddle River Traction Co.*, 41 Atl. 107, a like decree was ordered as in the case last above cited.

In *West Jersey, etc., R. R. Co. v. Atlantic City, etc., Traction Co.*, 65 N. J. Eq., 613, it was held:

(Headnote)

"Where a newly organized (railway) company is authorized to lay its railroad tracks at grade across existing tracks of another railroad, and the construction proposed involves only such a crossing, the new company should pay the expenses incident to the safe construction of its tracks across those of the senior company."

The expenditure involved was \$1,800.

In *J. C., etc. Ry. Co. v. N. Y. S. & W. R. R. Co.*, 62 N. J. Eq., 390, 396, the Court said:

"If the signal system is considered sufficient, I shall direct that the defendant company (railroad) pay two-thirds of the cost of installing and maintaining it, and the street railway company one-third. The terms of the decree may be similar, so far as applies, to those in the Bloomfield avenue case." In this case "The first cost (for installation) will be about \$1,800 and it will require about \$1,000 a year to maintain it." The court decreed on March 10, 1902, "the expense of installing the signal system and of maintaining and operating the same shall be divided between the complainant and defendant in the proportion of two-thirds thereof to be paid by the defendant (railroad company) and one-third by the complainant (railway company)."

In the *Watchung Railroad case* (unreported), the Court of Chancery of New Jersey assessed two-thirds of the cost of installing and maintaining a crossing for a street railway over the steam railroad upon the steam railroad, and one-third upon the street railway.

There are also several other unreported cases in which the Court of Chancery has decreed that street railway

companies should pay all or part of the expense incurred in changing railroad crossings so as to permit their street railways to pass over same.

In the case of *In Re Application of The West End & Long Branch Railway Co.* to define a mode of crossing the West End Railroad in Long Branch (decree filed May 7, 1896), Chancellor McGill decreed "that said crossing shall be constructed wholly at the expense of said West End & Long Branch Railway, and shall thereafter be maintained by it in good order." Also, "the expense of constructing and maintaining said protecting apparatus shall be borne by the petitioner, The West End & Long Branch Railway Company." Also, "the said protecting apparatus shall be operated by signalmen to be selected and employed by the corporation owning and operating said steam railroad, and the amount of wages of such signalmen, the usual wages for such occupation, shall be paid by the petitioner, The West End & Long Branch Railway Company." On May 23, 1904, the decree was modified so as to permit the installation of certain iron poles at the crossing, in place of wood. The court then decreed "The said Electric Railway shall install said iron poles at said crossing in place of wood, as shall be necessary to guard against the electric and other wires of the Electric Railway falling thereon."

In the case of *Re Application of the Jersey Central Traction Co.* to define the mode of crossing the Freehold and Atlantic Highlands Railway Company's tracks in the Township of Raritan, decree filed Sept. 14, 1904, Chancellor Magie decreed "that the crossing of said Jersey Central Traction Company's electric railway over its tracks and right of way of the said Freehold & At-

lantic Highlands Railroad, a steam railroad in the township of Raritan aforesaid, shall be overgrade and shall be constructed and hereafter maintained by the petitioner (railway company) at its expense and in the following mode, and in accordance with the following provisions."

In the case of *Re Application of The New Jersey & Hudson River Railway & Ferry Co.* to define the mode of crossing the Bergen County Railroad Company, decree filed December 24, 1902, Chancellor Magie decreed, "that the crossing by the said applicant (railway company) with its two tracks be constructed under the grade of said steam railroad company, and that for that purpose the grade of the highway called Broadway," etc., and the Court outlines how the work is to be done. So far as can be ascertained from the decree the railway company was to bear the entire expense of depressing its tracks.

In the case of *Re Application of the Bergen Turnpike Co.* to define the mode of crossing by its electric railway line of the steam railroad, the New York, Susquehanna & Western Railroad Co. in the village of Hackensack, decree dated July, 1916, it was decreed that the cost of laying and maintaining the track crossing frogs of the petitioner across the tracks of the defendant be paid and borne by the petitioner. It was also decreed that each party pay one-half of the cost of operating and maintaining the gates, switches, tower and interlocking system of signals.

The above summary of the several cases which may be found in the New Jersey reports or which may be found in the final decrees of the Court of Chancery wherein that court has determined the proportion of ex-

penses to be paid by a street railway company when its tracks cross the tracks of a steam railroad company, shows that there is no fixed rule whereby this proportion may be determined. In some cases the Court of Chancery directed that the entire expense both of construction and maintenance be paid by the street railway company; in other cases that two-thirds of the cost be paid by the street railway; in other cases that one-half be paid by the street railway; in other cases one-third. In no case has there been any decree which requires the street railway company to pay as small a proportion as 10 per cent.

Furthermore, when the question of a division of expense has been left to the railroad company and the street railway company to determine by contract between themselves, no such proportion as 10 per cent. has been fixed as the share of the street railway company. This is illustrated by the contract between the plaintiff-in-error and the Public Service Railway Company involving the crossings in question in this very case, whereby the street railway company agreed to construct the trolley tracks across the crossings at their own expense and to keep and maintain same in good and safe condition; and to pay one-third of the expense of flagmen or gatemen—and if gates should be erected, to pay one-third of the cost of construction and maintenance of same. See Exhibits Erie 13 and 14, p. 2034-9.

The statutory limitation of 10 per cent. of the expense directly chargeable to the crossing used by a street railway company is also invalid because it gives the Board of Public Utility Commissioners arbitrary power to decide in any case whether the amount to be paid by the street railway company shall be 10 per cent. of the ex-

pense or any less amount down to zero. The expression in Section 2 of the statute is "the board *may* order not exceeding ten per centum of such expense," etc. In the present case, for example, if the total expense chargeable to the crossings used by the street railway turns out to be the sum of \$3,000,000, then the board may order the street railway company to pay \$300,000, or any less amount, or nothing at all. There is no standard prescribed by the statute by which the amount of expense to be paid by the street railway company is to be determined. If the statute had provided that the board should order 10 per cent. of the expense directly chargeable to the crossings to be paid by the street railway company, the statute would not be open to the present criticism—as in that event the amount of such expense could be ascertainable. But under this statute the board is not *required* to order 10 per cent. of such expense but *may order not exceeding* ten per centum. This delegates to the board an arbitrary power to determine according to its own discretion, and even according to its own caprice, what amount the street railway company is to contribute, without any regard whatever to the nature and extent of the danger to public safety and the impediment to public travel created by and chargeable to the street railway company. The delegation of such power, without fixing any standard upon which the exercise of the power depends is illegal.

The legislature cannot give to an administrative body, such as the Board of Public Utility Commissioners, arbitrary power to order or to refuse to order the street railway company to participate in the cost of eliminating the crossings. *Yick Wo v. Hopkins*, 118 U. S., 356, 30 L. Ed., 220.

While the courts will not ordinarily pass upon the question of whether a statute enacted pursuant to the police power is wise or unwise, nevertheless the states cannot exercise that power in an arbitrary and unreasonable manner. *Chicago, etc., Ry. Co. v. Arkansas*, 219 U. S., 453; *Pennsylvania R. Co. v. Ewing*, 88 Atl., 775.

In the state courts counsel for defendants argued that the danger which the statute sought to eliminate was not attributable to the railroad alone nor to the street railway alone, but to both of them. But admitting this to be true, it does not follow that the legislature can impose some part of the cost of changing the crossing upon the street railway—still less does it follow that the legislature has the power to impose an arbitrary *limit* upon the proportion of the cost to be paid by the street railway company.

So far as concerns the question of whether the legislature can impose *any* proportion of such expense upon a street railway, we need only to refer to the brief filed in behalf of Public Service Railway Company, and to say that if for the reasons advanced by that company this part of the statute is unconstitutional, then the entire statute must fall, as this provision of the statute is inseparable from the remainder thereof. (See Point XI.)

But the plaintiff-in-error urges that this provision of the statute is unconstitutional—not because it requires a payment of not exceeding 10 per cent., but because it limits the payment on the part of the street railway to 10 per cent.

Whatever danger there may be at a railroad grade crossing where a street railway also crosses is due in part to the street railway, and therefore the street railway should be required to contribute a substantial pro-

portion of the cost of the elimination—such proportion to be an equitable amount commensurate with the proportionate use of the highway by the street railway. For many years past it has been the policy of the state of New Jersey to require street railways to pay a substantial proportion of the cost of protection at highways where they cross steam railroad tracks. See illustrations in the cases above cited. In the case of the very crossings in question in this case the street railway company has agreed to pay a certain proportion of the cost of protection.

There would be no practical difficulty in establishing a standard whereby the proportion of expense to be paid by the street railway company and the steam railroad company at a trolley crossing could be determined. For example, the cost might be apportioned according to the *use* of the crossing for trolley traffic as compared with its use for the railroad traffic. No such standard is attempted to be made in the present statute. This statute merely fixes an arbitrary limit of 10 per cent. regardless of whether the proportionate use of the crossing by the street railway company equals or exceeds such percentage, and regardless of the proportion of danger or impediment created by the street railway company.

X.

The statute violates the Fourteenth Amendment in that it is an unreasonable exercise of the police power.

By this statute there is imposed upon the plaintiff-in-error the "entire expense" of the alterations, changes, relocation or opening of the public highways, including damages to adjacent property, less 10 per cent. of the expense directly chargeable to certain crossings used by

a street railway company. Conceding that the legislature in the exercise of the police power may have the power to require protection at, or the elimination of grade crossings, the question still remains in any such case whether such power has been exercised in a reasonable manner. This question must be determined by the courts. We quote from the case of *Sanitary District of Chicago v. Chicago & Alton R. R. Co.*, 108 N. E., 312, 267 Ill., 252, as follows:

"The legislature may determine when the exigency exists for the exercise of the police power, but it is for the courts to determine what are the subjects of the police power and what are reasonable regulations thereunder, and whether there is any real or substantial relation between the avowed objects of the law and the means devised therein for attaining those ends. *People v. Steele*, 231 Ill., 340, 83 N. E., 236, 14 L. R. A. (N. S.), 361, 121 Am. St. Rep. 321; *City of Belleville v. Turnpike Co.*, 234 Ill., 428, 84 N. E., 1049, 17 L. R. A. (N. S.), 1071."

In that case the court further said:

"Counsel for applicant argues that the appellee railroad company accepted its franchise from the state to acquire its right of way and build and operate its railroad subject to the exercise, at any and all times, by the state, of this police power for the public health, safety, morals, and welfare; that the exercise of this power by the state and the observance of such duty by the railroad company ever exists and continues, and cannot be contracted away. Beyond question, this is the general rule. Counsel argue, further, that at common law the railroad company must at its own expense conform its road and the operation thereof to the conditions made necessary by the construction and use of works by the city or the municipality, such as public highways or canals; that this

duty rests upon the railroad company regardless of statute, and applies not only to the conditions at the time the railroad was built, but also to those existing thereafter. With this we cannot agree. In this and other jurisdictions it has been held that questions of this kind are frequently regulated by statute. In *Illinois Central Railroad Co. v. City of Bloomington*, 76 Ill., 447, this Court held that where a city had laid out a street within its corporate limits across the right of way of a railroad company prior to the passage of Section 8 of the present Railroad Fencing Act (the statute at that time not requiring railroads to construct and maintain crossings outside of villages), such city could not, by ordinance, direct the railroad to construct a crossing and approaches thereto. The doctrine of that decision, under the law as it then existed, has been quoted with approval in *People v. Illinois Central Railroad Co.*, 235 Ill., 374, 85 N. E., 606, 18 L. R. A. (N. S.), 915, and *City of Bloomington v. Illinois Central Railroad Co.*, 154 Ill., 539, 543, 39 N. E., 478, 479; it being stated in this last case that:

“If either a natural person or corporation has a right of way across lands, and the public or municipal authorities afterward locate and open a highway or street across such right of way, then there is no rule or principle of common law that would compel such person or corporation to construct and maintain the crossing of the highway or street over the right of way, or the approaches thereto, at his or its own expense.”

“We know of no decisions in this state that construe the rules of the common law on that question in any different way than as just stated.”

In that case the District sought to condemn the right-of-way for a canal across railroad property. The trial court allowed damages of \$100 for the property actually

taken and made a further allowance of about \$50,000 for certain items for the cost of the construction of a bridge on which to carry the railroad tracks and for the maintenance thereof; also for the expense of diverting traffic during the construction of the bridge. The District claimed that the only damage that should be allowed was the item of \$100. The action of the trial court was affirmed, and thus in effect it was held that there was no legal duty on the part of the railroad to construct or maintain the bridge *at its own expense*.

In *Dobbins v. Los Angeles*, 195 U. S., 223, 49 L. Ed., 109. the Court said:

“It is now thoroughly well settled by decisions of this Court that municipal by-laws and ordinances, and even legislative enactments undertaking to regulate useful business enterprises, are subject to investigation in the courts with a view to determining whether the law or ordinances is a lawful exercise of the police power, or whether under the guise of enforcing police regulations there has been an unwarranted and arbitrary interference with the constitutional rights to carry on a lawful business, to make contracts, or to use and enjoy property.”

In *Lawton v. Steele*, 152 U. S., 133, 38 L. Ed., 585, the Court said (*italics ours*):

“To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, requires such interference and second, that the means are reasonably necessary for the accomplishment of the purposes, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business

or impose unusual and unnecessary restrictions upon lawful occupations. *In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."*

In *Holden v. Hardy*, 169 U. S., 366, 42 L. Ed., 780, the Court said:

"The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression or spoliation of a particular class."

In *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540, 46 L. Ed., 679, the Court said:

"The question of constitutional law to which we have referred (the equal protection of the laws) cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the state, which, as often stated by this Court, were not included in the grants of power to the general government, and therefore reserved to the states when the constitution was ordained. But as the constitution of the United States is the supreme law of the land, anything in the constitution or statutes of the states to the contrary notwithstanding, a statute of a state, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the constitution of the United States can be impaired or destroyed by a state enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the constitution is produced by the declaration that the constitution is the supreme law.' The state has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by

their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be deemed unconstitutional and void."

In *Otis Elevator Co. v. City of Chicago*, 263 Ill., 419, 165 N. E., 338, 52 L. R. A. (N. S.), 192, 198, the Illinois Supreme Court said (*italics ours*):

"In the exercise of the police power the city had a right, *within reasonable limits*, to require the railroad to elevate its track so as to avoid grade crossings upon streets, and protect the lives and property of its citizens."

So far as railroad grade crossings are concerned, the defendants-in-error will no doubt cite the case of *New York & New England R. Co. v. Bristol*, 151 U. S. 556, 38 L. Ed. 269, where this Court held that the imposition upon railroad companies, in particular instances, of the entire expense of the performance of acts required in the public interest, did not deprive the railroad of property without due process of law "by statutes under which the result is ascertained in a mode suited to the nature of the case, and not merely arbitrary and capricious." There are many important differences between the statute involved in that case and the New Jersey statute now under consideration, as pointed out hereinafter (p. 275). But under the principles declared in that case we submit that the New Jersey statute is invalid.

If ever there was an "arbitrary and capricious statute, this one comes within such description. It is, we submit, subject to this criticism for several reasons:

First. Because it throws the entire expense of eliminating grade crossings upon the railroad company (regardless of whether the proceedings are instituted by

the railroad or by the municipality, or by the board itself—see sec. 5)—except in certain cases specified in section 2 of the statute, wherein the street railway is to contribute not exceeding 10 per cent.

Second. Because it limits the amount to be paid by the the street railway to not exceeding 10 per cent. of the expense “directly chargeable to the crossing used by the street railroad company,” regardless of any existing contracts between the street railway and the steam railroad company, and regardless of whether or not this percentage is a fair proportion of the danger to public safety and the impediment to public travel, which in any particular case may be reasonably chargeable to the use of such crossing by the street railway company.

Third. Because it does not even *require* that the street railway company pay ten per cent. of such expense. It simply fixes that proportion as the maximum amount to be paid and leaves it to the Board of Public Utility Commissioners to decide arbitrarily whether in any particular case the maximum shall be paid by the street railway or whether nothing at all shall be required of it; and does not fix any standard by reference to which the board is to decide whether, or what part of the ten per cent. is to be paid.

Fourth. Because it imposes upon the railroad the cost of damages to adjacent property, without providing for any proportion thereof to be paid by the municipality, and without establishing any standard by which such damages are to be determined, and without making any provision for assessment of any *benefits* that may accrue to adjacent property by reason of the elimination of the crossings and without providing any method for determining the amount of such damages.

Fifth. Because it imposes upon the municipality *no* expense whatever, except the expense of removing, relaying or relocating municipal water or sewer pipes or other municipal pipes, conduits or subways; and except, also, the expense of *paving, curbing and flagging* the highway constructed as the result of the change of grade. A large proportion of the expense resulting from the change of grade of highways is the cost of *fill and excavation*. In this case the cost thereof is \$56,849.72. (See city's estimate, pp. 919-931.) No logical reason can be suggested why the municipality should be relieved from the burden of the cost of fill and excavation, due to change of grade of streets. This obnoxious feature of the statute is particularly oppressive in the present case, where the board has directed that the grades of every one of the fifteen highways be changed—in one case, that of Madison avenue, by elevating the street across the railroad tracks, and in all the other cases by a partial depression of the street and a partial elevation of the tracks.

Sixth. Because the statute as originally drawn, and under which the proceedings under review herein were instituted makes no provision for giving notice to interested property owners. The value of such properties that may be affected in this case as we have shown elsewhere, is nearly \$10,000,000.

Seventh. Because it permits the Board of Public Utility Commissioners "of its own motion" to take proceedings for the elimination of a grade crossing—even without, or in some cases perhaps, even against, the wish of the municipality in which the crossing may be located, thereby imposing certain expenses upon such municipality against its protest, or at least without its consent. Further, in such a case, it constitutes the board the plain-

tiff to bring the proceeding, the judge to determine the law, the jury to decide the facts, the witness to prove the facts; and, in the event of a decision against the railroad, the hangman to execute the sentence.

Eighth. Because it gives to said board an unlimited and arbitrary power, even after it finds the existence of the jurisdictional facts prescribed in section 1, to order or not to order the elimination of crossings without fixing any standard of reasonableness or necessity or financial practicability, or indeed, any standard whatever—thus vesting in the board power to decide questions of vast importance both to the railroad companies and to the public without limit upon their discretion, and without affording any reasonable standard whereby the same must be guided.

Ninth. Because, if section 4 of the statute of 1913 is construed to apply to companies, corporations, co-partnerships or individuals other than those coming within the description or definition of public utilities, then such *private* companies, etc., are required, "at their own expense," to move or change the grade or location of their property or constructions.

Tenth. Because, as construed by the state courts, the statute gives said board practically unlimited power to change a public highway or to change a series of such highways that may happen to intersect railroad tracks and to relocate the same and to change the grade thereof, in disregard of the restrictions and limitations imposed by municipal charters or other laws and without notice or hearing to property owners who may be affected thereby.

Eleventh. Because under the construction of the statute adopted by the state courts, there is no limit

upon the number of crossings which may be considered at one and the same time, if any municipality sees fit to institute proceedings for the elimination of all crossings within its limits, or if the board, of its own motion, ~~sees~~ fit to institute proceedings for the elimination of all the crossing in the entire state in one and the same proceeding. According to the construction of the statute in the present case, either proceeding could be followed, notwithstanding that each crossing presents its own individual problem. If proceedings were instituted for the elimination of all, or a large number of crossings, on any one railroad within the state (and under the construction of the statute adopted by the state courts there is no limit to the number of crossings that may be considered in any one proceeding), the board, by instituting same of its own motion, might cause substantial interference with the operations of the railroad—even to the extent of making it necessary for the railroad to cease operations entirely pending the fulfilment of the board's order for the elimination of crossings.

Twelfth. Because, it gives said board practically unlimited power to enlarge the duties imposed upon railroad companies by their charters, and in effect repeals section 26 of the General Railroad Law of New Jersey, which required nothing more than that the "bridges and passages" at public highways should be "of such width and character as shall be suitable to the locality in which the same are situated."

Thirteenth. Because it confiscates the property of the railroad by compelling the expenditure of enormous sums against the protest of the company and contrary to the judgment of the board of directors without any compensating advantages, and without any prospect of receiving a reasonable return upon such an investment.

Fourteenth. Because there is no reasonable or other limit imposed upon the discretion of the board, as to the financial conditions under which grade crossings are to be eliminated; and in the absence of such limitation, the board has power, under the statute, to order the elimination of grade crossings regardless of the financial ability to the operating company to meet the burden of the cost thereof.

Fifteenth. Because, as construed by the state courts, it requires the entire expense to be paid by the operating company and takes the property of a lessee company as the company "operating" the railroad, for the benefit of the lessor company, which has title to the land upon which the railroad is constructed, and which owns the franchise by which the railroad has the right to do business, without making provision for a reasonable or for any apportionment between the lessor company and the lessee company; and without making any provision for reimbursement to the lessee company of the amount thus expended for the benefit of the lessor company, and without giving the lessee any further interest or estate in the lessors' property—and this without regard to the terms of the contracts between the lessor and the lessee; and thus makes it impossible for the lessee company to capitalize the expenditure, and, in effect, compels the cost thereof to be paid out of current earnings, even though the evidence may show that there are no such earnings available for that purpose.

Sixteenth. Because it makes no provision for eliminating the danger to public safety and the impediment to public travel by reducing the number of train movements or by abandoning the operation of trains when and if it appears that the cost of eliminating the cross-

ings is so great as to make it unprofitable to continue the operation of trains over the railroad or that part thereof where the crossings are ordered to be eliminated.

Seventeenth. Because it makes no provision whereby the discretion of the Board of Public Utility Commissioners is required to be reasonably dependent upon the financial possibility or feasibility of complying with an order directing the elimination of crossings.

Eighteenth. Because it gives the said board arbitrary power to order changes in or the removal of the property or constructions of other companies, corporations, co-partnerships or individuals without requiring that said changes be found to be reasonably necessary or appropriate for the elimination of any crossing or crossings, and without making any provision for making compensation for the cost of such changes, or the damages occasioned thereby, and without making any provision to compel such changes, if they are found to be necessary or proper.

Nineteenth. Because it does not permit the said board to eliminate highway crossings by depressing or elevating the public highway in part and by depressing or elevating the railroad tracks in part, but limits the power of the board to alter the crossing either by carrying the highway under or over the railroad (leaving the tracks at the same level) or by reconstructing the railroad under or over the highway (leaving the highway at the same grade).

These objections to the statute are discussed in detail in other parts of the brief but they are here summarized for the purpose of showing that the statute is "arbitrary and capricious" and is not a reasonable exercise of the police power.

Furthermore, the question of whether a statute is a reasonable or an unreasonable exercise of the police power, depends, to a certain extent upon the course of legislation, as well as upon general public opinion.

In the case of *Muller v. Oregon*, 208 U. S., 412, 419, 52 L. Ed., 551, the question arose as to the right of a state to regulate the working hours of women; the law under consideration limited the employment of females, in laundries, to not more than 10 hours during any one day; the statute was attacked on the ground that it was in violation of the Fourteenth Amendment. In coming to the conclusion that the statute was valid, this Court said:

"In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation as well as expressions of opinion from other than judicial sources. In the brief filed by Mr. Louis D. Brandies, for the defendant in error, is a very copious collection of all these matters, an epitome of which is found in the margin.

"While there have been but few decisions bearing directly upon the question, the following sustain the constitutionality of such legislation: *Commonwealth v. Hamilton Mfg. Co.*, 120 Massachusetts, 383; *Wenham v. State*, 65 Nebraska, 394, 400, 406; *State v. Buchanan*, 29 Washington, 602; *Commonwealth v. Beatty*, 15 Pa. Sup. Ct., 5, 17; against them is the case of *Ritchie v. People*, 155 Illinois, 98.

"The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify

special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge."

In *Merrick v. Halsey Co.*, 242 U. S. 568, 61 L. Ed. 498, this Court sustained the validity of a "Blue Sky Law" and in the course of the opinion pointed out, by way of argument in favor of the law, that twenty-six other states had agreed with the state of Michigan in expressing their judgment by means of such a law, that the business of dealing in securities should have "administrative supervision" (p. 586).

See also *Bosley v. McLaughlin*, 236 U. S. 385, 59 L. Ed. 632.

The same principle was applied in the case of *People v. Charles Schweimler Press*, 214 N. Y., 395, in which the New York labor law prohibiting night work for women was sustained. In the course of the opinion the Court said (*italics ours*):

"In the decision by the legislature whether determination by us whether the legislature was justified in adopting it, it was and we are entitled to take into account the report made by the commission, such facts tending to *support it as were*

matters of common knowledge, and the widespread and long-continued belief evidenced by statutes and in other manners that night work by women in such a place as a factory is so injurious that grave dangers therefrom are to be apprehended."

In referring to and distinguishing the case of *People v. Williams*, 189 N. Y., 131, the Court said (*italics ours*):

"While theoretically we may have been able to take judicial notice of some of the facts and of some of the legislation now called to our attention as sustaining the belief and opinion that night work in factories is widely and substantially injurious to the health of women, actually very few of these facts were called to our attention, and the argument to uphold the law on that ground was brief and inconsequential.

"Especially and necessarily was there lacking evidence of the extent to which during the intervening years the opinion and belief have spread and strengthened that such night work is injurious to women; of the laws, as indicating such belief, since adopted by several of our own states and by large European countries, and the *report made to the legislature by its own agency*, the factory investigating commission, based on investigation of actual conditions and study of scientific and medical opinion that night work by women in factories is generally injurious and ought to be prohibited."

If under the principle laid down by this Court and by the New York Court of Appeals, *supra*, the courts have the right to consider the "course of legislation" in order to sustain the constitutionality of a law passed in the exercise of the police power, can not the same principle be applied in considering whether a particular law is *un-constitutional*?

Following the suggestion in the above cases let us examine "the course of legislation and expressions of opinion" upon this subject. Beginning with New Jersey we find that the statute of 1913 is a complete reversal of the policy that has prevailed in that state ever since the first railroad was constructed. It was the original contemplation of all parties to the construction of railroads that highway crossings should be at grade; as the number of trains and the rapidity of their movement increased and as highway traffic developed the question naturally suggested itself as to whether it was practicable to eliminate grade crossings either in whole or in part.

This was pointed out by Reed, V. C., in the case of *In re West Jersey Traction Company*, 59 N. J. Eq., 63. That was an application to define the mode of crossing a steam railroad by a trolley company. As it appeared that an undergrade crossing could be built for the trolley company at a comparatively small expense and with but little inconvenience to all interested parties, he decreed an undergrade crossing. In the course of the opinion he said (italics ours):

"The question then is whether the trolley shall be compelled to cross the railroad otherwise than at grade.

"No one suggests that it should be compelled to build a structure which will permit the passage of the trolley cars above the railroad tracks.

"The insistence is that it should build a tunnel so as to permit its cars to pass underneath the railroad. The argument in favor of such a crossing is grounded upon the danger of collision which arise from a grade crossing. It cannot be denied that there is an element of danger in every grade crossing of a steam railroad. Every public road that crosses a steam railroad at grade presents a point of possible peril. If all persons were con-

stantly vigilant danger would disappear or be reduced to infinitesimal proportions. So long however, as men are careless, as they always will be, the instances of collision on grade crossings will engage the attention of courts and create the wish that grade crossings may be abolished. The policy of the state in fostering the building of railroads as instruments for the transportation of persons and merchandise has not required elevated or underground crossings. The expense which would attend the construction of railroads, if so compelled, would be a practical prohibition against the opening up of new sections of the country by new railroads. So grade crossings have been permitted, and where such crossings are, by their environments, exceptionally perilous, such dangers have been guarded against by such provisions as gates, flagmen and signals.

"It cannot be said, therefore, that because there is an element of danger in a grade crossing, some other method is to be provided. The question is whether, taking into account *the degree of such danger* in the particular instance, and also the *facility and economy* with which such danger may be avoided by adopting some crossing other than at grade, the latter method should be required. The statute in the present case fixes the conditions upon which a crossing other than at grade may, in the discretion of the Chancellor, be ordered, namely, first, when such other method is reasonably practicable, and second, where the public safety so requires. The discretion of the Chancellor must be controlled by the conditions attending the particular crossings."

This was also pointed out by Stevens, *V. C.*, in the case of *Newark v. Central R. Co.* (67 Atl. Rep. 1009, 73 N. J. Eq. 469), in which he says (*italics ours*):

"If safe and convenient use will not permit of a grade crossing, then it is its (the railroad's)

duty to cross in some other way. In determining this question, however, the court cannot start out with the assumption that all grade crossings are unsafe; for the legislature has said otherwise. The charter of this company, and the charters of other companies and the General Railroad Act itself, as it stands today, *contain an implied assertion that grade crossings are or may be safe*, unless some peculiarity in the situation—for instance, a crowded thoroughfare with frequently passing trains or a multiplicity of tracks—makes them unsafe.”

In that case the city filed a bill to compel the railroad, among other things, to cross a certain street in some manner other than at grade. This part of the prayer in the city’s bill was denied.

The same matter was further discussed by Stevens, *V. C.*, in *Newark v. Erie R. Co.*, 75 N. J. Eq., 20. In that case the Court of Chancery gave careful consideration to the question of the circumstances under which it should exercise its power to order the elimination of grade crossings. After citing the various statutes providing for the elimination of grade crossings, either by agreement between the railroad and the municipality or by petition to the Supreme Court, Stevens, *V. C.*, said (italics by the Court):

“In view of this legislation it is quite impossible to hold that grade crossings are, *per se*, illegal structures, even in cities, or that streets are not *safe* in the legislative sense of that word, merely because they are crossed at grade by railroad tracks. There must be something in the situation so peculiar as to compel the court to say that gates will not adequately protect the public; that flagmen will not; that nothing but track elevation will. • • •

"The question, then, must be, as I have said, whether gates and flagmen and other expedients are, in the given case, so inefficacious that nothing but track elevation will give to the public, in fact as well as in name, the joint use of the highway" (pp. 28, 29).

The Court of Chancery on the facts of that case refused to order the elevation of the tracks, but did order that three of the six tracks at the crossing in question should be taken up and the "unlawful" use of one other track enjoined, saying:

"If the three tracks first spoken of, where they cross the highway, be eliminated and the unlawful use of the other enjoined, I do not think that the crossing, properly guarded, will be more dangerous in an absolute sense than most of the other grade crossings in the cities and many of the other municipalities of the state" (pp. 31, 32).

Both parties appealed to the Court of Errors and Appeals. The city appealed from so much of the decree as denied a mandatory injunction directing the railroad to effect its grade crossing in some other manner than at the grade of the street. This part of the decree was unanimously affirmed, Voorhees, *J.*, speaking for the Court, saying:

"Taking up the appeal of the city, we agree with the learned Vice-Chancellor in his conclusion that the facts of the case do not warrant so drastic a remedy as track elevation or depression, and that therefore on the merits of the case the appeal of the city should be dismissed, and the decree affirmed so far as that appeal has questioned it" (76 N. J. Eq., 319).

That part of the decree which ordered the removal of certain of the tracks and the cessation of the use of one

other track was reversed on the railroad's appeal because it was not within the scope of the bill.

When railroads were first constructed it was the view of all the parties interested therein that crossings should be at grade—in fact, the only way in which railroads could have been constructed in the first instance was to have the crossings at grade, as the income that was expected from the operation thereof was not enough to justify the expense of construction crossings other than at grade.

Moreover, under the charters themselves such construction was *required*.

In the cases of the two railroads that own the right of way in Paterson used by the Erie Railroad Co., the charters specifically provide that each road authorized thereby is declared to be free for the passage of *any* railroad carriage thereon, with passengers or property upon payment of the tolls prescribed by the charter; and in the case of the P. & H. R. R. R. there is the proviso that the said carriages so used shall be of the same description as those used by the company and shall be so regulated as to time of starting, rates of travelling and rates of tonnage, as not to interfere with the carriages of the company or injure the said road, and in the case of the P. & R. R. R. there is a like provision except that the "carriages" are not required to be "of the same description" as those used by that company. See Sec. 14 of P. & H. R. R. R. charter, Vol. II, p. 969; Sec. 16 of P. & R. R. R. charter, Vol. II, p. 1015.

The time table in evidence in this case shows that in the year 1835 some of the "carriages" were drawn over the line of the P. & H. R. R. R. "by steam" and others were drawn "by horses" (p. 326, ll. 10-25). Hence, at

the time of the original construction of this railroad it was not only to the mutual interest of the public and the company to have the crossings at grade, but it was necessary to have them so constructed in order that horse-drawn carriages might enter thereon at highway crossings, and in order that the members of the general public might drive their own "carriages" thereon, if they so desired.

That grade crossings, as such, are not "dangerous" in the contemplation of the legislature, is shown by the course of legislation ever since the first railroad was built in this state. The statutory history of the state abounds in illustrations of legislative recognition of the legality and necessity of grade crossings if railroads are to be built and operated at all. Reference to many of these statutes will be found in the opinion of Stevens, V. C., in *Newark v. Erie R. Co.*, *supra*.

A recent illustration is Chapter 181, Laws of 1914, p. 340. This provides for certain forms of protection at grade crossings in the way of safety gates, flagmen, electric bell, electric signs or other recognized system of alarm or protection which shall receive the approval of the Board of Public Utility Commissioners. This statute applies to every public road or street crossing railroad tracks at grade, meaning thereby all roads or streets which have been improved by joint action of the state and a municipality, county or township, under the laws of the state relative to the improvement of public roads; as to other roads the power of compelling "protection" remains. (See Section 7 of statute.)

This statute also recognizes that whatever danger to public safety there may be at grade crossings may be reduced or eliminated by methods of protection other than the elimination of the crossing itself by altering such crossing to a crossing not at grade. It so happens

that in the present case every one of the crossings involved is already provided with one of the forms of protection specified in this statute.

The right to cross streets *at grade* is also recognized, and expressly conferred upon the municipal railroads authorized to be constructed and operated by the legislature of 1915. (See Chap. 350, p. 647, Laws of 1915, Sec. 6; Chap. 412, p. 860, Laws of 1915, Sec. 1.) The same right is impliedly recognized in the very act under which the Board of Public Utility Commissioners is organized; Section 21 of the statute of 1911 permits the construction of grade crossings on obtaining the permission therefor from the board; Section 22 permits railroads and street railways to cross each other at the same level on making "reasonable provision for the protection of the travelling public," and gives the board power to order the adoption of such provision as the board deems necessary.

Under this Section 22 the question to be considered is whether the safeguards "measure up to the danger to be encountered." See *Erie R. R. Co. v. Board of Public Utility Commissioners and Hudson County* (Re Belleville Turnpike), 90 N. J. L. 271, 95 Atl. 177.

The course of legislation in New Jersey from the time when the elimination of grade crossings became a practicable matter for consideration is shown by the following summary of the New Jersey statutes on this subject.

1874, p. 45.

Authorized any city to enter into contracts with railroad companies whose roads enter corporate limits, whereby said companies may re-locate, change or elevate their railroads and when necessary for that purpose

gives power to vacate, change the grade of or alter the lines of any streets or highways therein.

Repealed by ch. 176 Laws of 1904, p. 317.

1893, p. 157.

Supplement to the above act. Amends section 1.

Repealed by ch. 176, Laws of 1904, p. 317.

186, p. 139 (3 Comp. St., p. 4262).

An act for the abolition of railroad grade crossings in cities of the first class.

Section 5 provides for certain expenses to be borne by the city.

1900, p. 312.

Supplement to 1874, p. 45, *supra*, providing for the issuance of bonds to pay the city's portion of the cost of a contract entered into under the provisions of said prior act.

Repealed by ch. 176, Laws of 1904, p. 317.

1901, p. 116 (3 Comp. St., p. 4266).

Authorizes any town or city to enter into contracts with railroad companies whose roads enter their corporate limits, to change or elevate their railroads, and, when necessary for that purpose, to vacate, change the grade of, or alter the lines of any streets or highways therein.

1902, p. 402 (3 Comp. St., p. 4266).

Amends section 2 of the act, 1901, p. 116, prescribing the method by which the town or city shall provide the necessary money.

1903, p. 645 (3 Comp. St., p. 4234).

An Act concerning railroads (Revision of 1903), Section 30, p. 661, authorizes any "municipality or town-

ship" to enter into contracts with the railroad companies for the construction or maintenance of crossings other than at grade.

Provides that nothing herein shall repeal or in any-wise effect the act of 1901, p. 116.

1903, p. 645 (3 Comp. St., p. 4234).

An Act concerning railroads (Revision of 1903), Section 31, provides that the Board of Chosen Freeholders may make contracts for changes in the grade of county roads.

1903, p. 645 (3 Comp. St., p. 4235).

An Act concerning railroads (Revision of 1903), Sections 32 and 33 provide for the crossing of steam railroads by trolley roads at points "not within the limits of any city" and gives power to the Chancellor to define the mode of crossing. Also gives the company power to alter grades and to take such land as may be necessary; requires it to pay the damages for the change of grade.

1904, p. 372 (3 Comp. St., p. 4258).

An Act to provide funds to enable any city or other municipality in this state to meet its obligations under any contract heretofore or hereafter made with railroad companies whose roads enter its corporate limits, for the change or elevation of their railroads, and, when necessary for that purpose, for vacating, changing the grade, or altering the lines, of any street or highway therein.

1912, p. 914.

Amendment to an Act concerning public utilities, etc., provides for division of expense in certain proportions and requires the removal of one grade crossing each year for every 30 miles.

This statute was held invalid by the Supreme Court in opinion reported 83 N. J. L., p. 303, and judgment to that effect was entered Nov. 26, 1912 (see Laws of 1913, pp. 894-6).

1915, p. 98.

Amends Section 30 of the Revision of 1903 and retains proviso as to the act of 1901, p. 116.

1915, p. 100.

Authorizes municipalities to contribute to expense of changing grade crossings, etc.

It will be seen that the legislative policy of New Jersey has been to provide for the elimination of grade crossings by *contract* between the municipality and the railroad company. From the first of the statutes on this subject, that of 1874, to the most recent, that of 1915, there is none which provides that the entire expense must be borne by the railroad.

On the contrary, they all provide either that certain of the expense be paid by the municipality or that the municipality may make contracts with the company. As it takes two to make a bargain the necessary implication from these statutes is that the municipality is expected to pay a reasonable part of the cost—and that, in fact, in many cases has been the result of the elimination of crossings under such statutes. See, for example, the case of *Morris & Essex R. R. v. City of Newark*, 76 N. J. L. 555, where a contract was made between the city and the railroad for the elimination of tracks in that city, pursuant to the provisions of the act of 1901, p. 116. Several of these statutes are still in effect and operations thereunder are now in progress in various municipalities, such as Morristown, Summit, Madison,

Chatham, South Orange, Orange, East Orange, Ridgewood and Rahway.

So far as concerns public opinion in the state of New Jersey, it is difficult to get a fair statement thereof from any of the municipalities who may be interested in having the crossings eliminated. Of course, if they can, they want to force the railroad to assume the entire burden, but if we take the Board of Public Utility Commissioners (and its predecessor, the Board of Railroad Commissioners) as representing the consensus of impartial opinion, then it is significant that both of these boards in their official reports to the legislature have repeatedly committed themselves to the view that in considering the problem of grade crossings the fact must be recognized that the elimination thereof is a benefit to the general public as well as to the railroads, and that, therefore, a reasonable division of the cost should be made between the railroads, the municipalities and the state.

We quote from these reports as follows:

From First Annual Report of Board of Railroad Commissioners for 1907, pp. 12, 13:

"To invest the board with direct authority on its own initiative or to make it the duty of the board to abolish all crossings where railroad tracks traverse highways at grade under conditions which create a menace to life or an obstruction to travel might be of doubtful wisdom. It might be suggested that the power thus conferred is extraordinary if not excessive; that its unreasonable or arbitrary exercise might create hardship and perhaps unnecessary financial embarrassment to the companies affected; and that a safer and perhaps a more judicious method would involve a plan somewhat akin to that adopted in Massachusetts and other states. How this subject of vital public interest has been dealt with elsewhere will appear from an examination of the brief summary

of the statutes of a number of the states which have thus far legislated upon the matter. This summary will be found under separate heading and attached to this report. The commission would suggest the following as a method which seems just and safe: That whenever a certain number of citizens (number to be fixed by statute) who in fact make use of a particular grade crossing, or the governing body of any municipality, shall deem such crossing a menace to life or obstruction to public travel, they may set forth the facts in a formal petition addressed to the Chancellor of the state who shall thereupon make an order directing the commission to inquire into the allegations set forth in the petition and report in writing with promptness to the court the result of its investigation. This method would involve a full hearing before the commission, not only of the petitioners but of the railroad affected. The report of the commission must, of course, embody its finding of fact and upon it, after review, by the court, the Chancellor will make his order, either ordering the crossing to be abolished or permitting its maintenance under conditions shown or such modified conditions as the court may deem proper.

"It will be observed that this plan leaves, generally, the initiative with the communities immediately affected by the presence of the crossing; that the finding of the commission in every instance, must pass in review before the Court of Chancery and that thus any unreasonable or arbitrary exercise of power will be rendered impossible, and finally, that the order disposing of the matter is made by a court, which is able promptly to enforce its commands by attachment for contempt or other methods.

"It is thought by the commission that the problem of dealing with grade crossings can best be met by this or some kindred method.

“Furthermore it would seem that the law should provide clearly that the cost of the elimination of grade crossings should either be borne wholly by the railroads concerned, or it should ordain a consistent division of the expenditure involved between the railroads and trolley companies and the state and the benefited municipalities as is done in certain other states. If the latter plan is adopted the law should state the local cost which should be proportionate to the population, or wealth, or both, of the municipalities involved.”

From same Report, p. 291:

“Believing that the legislature will consider the enactment of additional legislation upon this subject the board has prepared a digest of the laws of a number of states, relating to grade crossings, in which there may be found methods worthy of consideration and adoption by our own state.”

(The laws of other states, referred to, are New York, Massachusetts, Connecticut, Vermont, New Hampshire, Maine, Rhode Island and Ohio—in none of which is the entire cost of eliminating grade crossings imposed upon the railroad.)

From First Annual Report of Board of Public Utility Commissioners for the year 1910, pp. 5 and 6:

“While some advance has been made in the protection of grade crossings, and the method whereby protection can be obtained has been simplified, it is a matter of regret that no comprehensive law has been enacted providing for the elimination of such crossings, and that satisfactory progress in this direction cannot be noted.

“A consideration of the laws of other states, and of the effect of these laws, convinces the board that the most progress is made in this direction where there is a frank recognition of the fact that the elimination of grade crossings is beneficial to

the general public as well as the railroads, and a provision is made, as in New York, Massachusetts and other states, for a division of the cost of elimination between the railroad companies, the state and the municipalities. It is our opinion that a law giving the board power to order the abolishment of dangerous grade crossings and providing for an equitable division of the cost between the companies, the state and the municipalities should be enacted.

"The railroad companies being the more directly benefited, should, under such a law, bear the greater part of the cost.

"The sum to be paid by the state should be limited by law, and municipalities which are found to have excessive or dangerous crossings should be required to pay for the same a certain percentage of the cost. The sum to be paid by any municipality in any one year must not exceed a certain percentage of its income from taxation. This sum should be so limited as to prevent any unreasonable disbursement of the municipality funds for this purpose, and the interest of the municipalities could be further protected by providing that no order of the Board of Public Utility Commissioners requiring the abolishment of a grade crossing shall be issued except after hearing on the application of the governing body of the municipality where the crossing is located, or of a certain number of citizen taxpayers thereof."

To prevent undue burdens falling upon municipalities, the law, while naming the proportion of the cost to be borne by them in the event of orders being issued for the elimination of one or more crossings within their limits, should provide that the sum to be paid by any municipality in any one year must not exceed a certain percentage of its income from taxation. This sum should be so limited as to prevent any unreasonable disbursement of the municipality funds for this purpose, and the interest of the municipalities could be further protected by providing that no order of the Board of Public Utility Commissioners requiring the abolishment of a grade crossing shall be issued except after hearing on the application of the governing body of the municipality where the crossing is located, or of a certain number of citizen taxpayers thereof."

From Second Annual Report of Board of Public Utility Commissioners for the year 1911, pp. 21-22:

"The problem of eliminating grade crossings in such fashion as to minimize most rapidly the existing danger they present, cannot be successfully attacked in desultory or haphazard fashion. Not only must a census of existing grade crossings be made, but of even more importance is a classification of crossings with respect to the relative hazard which they create. A mere mechanical requirement that carriers must eliminate yearly a certain number of grade crossings might easily result in expense without a commensurate diminution of danger. It is evident that a great difference exists in the financial ability of the different carriers to provide funds for defraying the requisite expense. This is wholly apart from the question whether the carriers, including trolley companies, are to be required to bear the whole cost or only part thereof. Moreover, many other factors enter to complicate the matter. The elimination of grade crossings may adversely affect adjacent property. If, for example, tracks are elevated in eliminating a crossing at grade so as to transform a street into a blind alley, the loss of immediate accessibility may result in depreciating the property on the street in question. Similarly the construction work might often require a relocation of sewers or pipe systems to the financial detriment of a municipality, a public utility or an individual. These things tend to increase the cost of grade crossing elimination which, as a state-wide proposition must be very great.

"This is illustrated by the experience of Massachusetts where conditions are not dissimilar to those in New Jersey. There was expended in that state for grade crossing elimination from the time its grade crossing act became effective in 1890, until the close of 1910, the sum of \$24,372,048.03. Of this total the different railroad companies expended \$21,400,841.76, the state \$8,800,021.74; the different cities and towns, \$4,414,995.60, which sum of \$34,615.94 was paid from the Metropolitan Park Loans Fund.

"The magnitude of the task of planning for the elimination of grade crossing elimination makes it imperative that the state, the railroad companies, the cities and towns, should cooperate in the work and that the burden of the cost should be shared by all.

"It is the opinion of the committee that the state should not undertake the work of elimination of grade crossings, but that it should provide for an equitable division of the cost between the railroad companies, the state and the municipalities.

"So far as the elimination of a grade crossing lessens damage costs, and the costs of protecting the crossing, it rebounds directly to the financial benefit of the railroad. So far as it permits greater speed and facility of operation it also helps railroad earnings. But the carriers must make a capital outlay on this elimination work; and so far as the annual charges on the outlay are not met by the economies and facilities provided by track elevation, the railroads are bound to obtain the residue of the increased annual charge from rates and fares. If the public owned and operated the roads, track elevation would necessarily be a public charge in its entirety. While it is argued that private ownership and operation for gain transfers the responsibility from the public

to the carrier, the interests of both are so closely related that in the final analysis, no matter what provision is made for its immediate assumption, a part of the charge must be borne by the public.

"If a law is passed which provides that grade crossings shall be eliminated without cost to the municipalities, it is not unreasonable to assume that, no public burden being apparent, an agitation will start for the elimination of grade crossings wherever they exist, for all grade crossings are objectionable and possess some element of danger.

"But to remove all these crossings must be necessarily the work of years; disappointment would ensue to those who had been led to look for immediate results, and doubt would arise as to the efficacy of the law, no matter how earnest and intelligent the efforts made for its application.

"If, on the other hand, the law provides that a part of the cost, which may be small, in proportion to that paid by the railroads, shall be borne directly by the municipality sharing the benefit, local movements for the abolition of grade crossings would be accomplished by a sense of direct financial responsibility, which would tend to concentrate public attention on efforts for the elimination of crossings where the danger and annoyance are greatest.

"It would seem that this concentration of attention would lead to more practical results than could be reasonably looked for if the efforts for crossing elimination are based upon the general public impression that all grade crossings in the state are to be eliminated without cost to any municipality in which such crossings exist. Any law providing for a division of the cost of eliminating grade crossings should be so framed that the municipalities would be protected against any extravagant or disproportionate expenditure of public funds for this purpose."

From Third Annual Report of Board of Public Utility Commissioners for the year 1912, pp. 10-12:

"In its report last year the board expressed its opinion on the elimination of grade crossings. The board reaffirms the views there outlined. The rational solution of the railroad grade crossing problem requires three things. It requires first of all an appreciation of the difference in hazard existing in the various classes of the 3,000 or more grade crossings now extant in this state. Grade crossings that girdiron a populous city section are immeasurably more perilous than a similar number of grade crossings intersecting a sparsely inhabited rural section, a scrub pine warren, a stretch of sea meadow or a strip of desert sand dunes. Evidently an intelligent estimate of the danger to be guarded against depends on a careful examination of the hazards presented by the various kinds of grade crossings, and a scientific classification of the crossings with respect to the hazards they offer.

"The solution of the problem demands, second, a realization of the magnitude of the work of elimination, and of the time and money that will be required for its completion. The state will be more than fortunate if by the end of two decades it sees the removal of all the really dangerous crossings at grade. The cost alone would prevent much speedier elimination. In the case of a few of the smaller carriers it will prevent any immediate removal of grade crossings whatever. To require them annually to eliminate a certain number of grade crossings per mile might easily bankrupt several of the smaller roads in the state.

"It is difficult now for some of these smaller railroads to maintain their tracks, bridges and equipment in such condition as to satisfy this board that their trains may be safely operated. Several years ago the lessees of one line cancelled their lease and passed out of existence as a railroad company, because they were financially un-

able to spend on the track and bridges the sum necessary to meet the reasonable requirements of the then Board of Railroad Commissioners. An arrangement was subsequently effected with other lessees, whereby the road was put in safe condition, and operation was resumed. But recently, and against the protests of those living along the line, the board has most reluctantly given its consent to discontinuance of daily passenger service on this road during part of the year. The board was satisfied from a careful consideration of the revenue and operating expenses of the road that it was being conducted at a material loss, and that a requirement of continued daily passenger service might and probably would result in its abandonment, with little prospect of any other company affording even the limited service the present operating company provides. It is not difficult to see what would happen if a road like this and a number of others barely able to keep their tracks and bridges safe for operation should be directed to spend thousands of dollars to eliminate their crossings at grade.

"In all railroad operations there are elements of danger, not alone in the crossing of highways at grade, but to those who travel on trains. It is the duty of railroad companies by good management, the installation of mechanical devices, proper system of signaling and strict enforcement of salutary rules, to eliminate these dangers so far as practicable, it is the duty of the state, and of railroad and utility commissions to whom power is delegated by the legislature to require railroad companies to take measures for the protection of the public and of their employees where reasonable protection is not voluntarily provided. There is a limit, however, to such requirements which cannot be passed if the railroad company is to continue to supply service.

"In the third place, a solution of the problem of grade crossing elimination will be hastened by

a recognition of the justice of distributing the cost between the carriers and the public, as represented by the state and the municipalities. There are cases where the grade crossings within the past two years have been forced on the carriers against their will. It is indisputable that in such cases the entire cost of removal could not be put upon the carrier without a gross violation of the dictates of common fairness. Where progress has been most marked in eliminating grade crossings, as in Massachusetts, there has been an equitable partition of the cost of elimination.

"Moreover, it must not be forgotten that the investment in grade crossing elimination cannot be had for nothing. If the companies are to spend the vast amounts such elimination requires, the consumer must expect in rates and fares to contribute to the cost. If the companies at their own expense exclusively pay the cost, the indemnity they may reasonably exact will be heavier than if the public contribute in the first instance to the project, and thereby obtain some rightful control over the process of elimination."

This same policy was approved by Governor Wilson in his veto message relative to Chapter 412, Laws of 1912. (See Laws of 1912, page 918.)

We quote therefrom as follows:

"The circumstances which surround this problem are not the same for any two railways of the state, but what might be a reasonable enough requirement for one of the railway systems of the state might be a very impossible situation and breakdown of the law, and that is certainly not the purpose of the people of this state. The bill does not forbid the creation of new grade crossings, neither does it attempt any classification of those already in existence. I take the liberty of quoting the following from the 'Comments of the Board of Public Utility Commissioners on Grade

Crossings' in the report of the board for the year 1911."

(Here follows extract from board's report of 1911—see above.)

"This quotation makes very clear the possible complexity and engineering difficulty of the whole matter.

"What is needed is an adequate enlargement of the powers of the Board of Public Utility Commissioners. That board can be empowered, and should be empowered, to push the elimination of such crossings as fast as is possible to push it without bringing hopeless embarrassment upon the railways. The law could easily establish a principle by which it might be determined when it was equitable that the several communities affected should participate in the expense and to what extent, if any, they should participate. In this way all the results that could possibly be attained by the present bill would be attained without the risk and perhaps the discouragement and discredit of attempting a thing, in itself inequitable and impracticable.

"The non-enactment of this bill into law will, of course, be a serious disappointment to the people of the state, but it will only concentrate their attention upon the just and equitable way of accomplishing the end in view. I do not believe that the people of the state as in such haste as to be willing to work a gross injustice, either to the railroads or to private owners of the property or to the several communities affected.

"Respectfully,

"WOODROW WILSON,

"Governor."

The policy of the state of New Jersey, as it existed prior to the statute now under review, that the municipality or other parties in interest should have a substantial share in the expense of the elimination of grade crossings, is not peculiar to that state. Thus, in the state of Indiana the Railroad Commission of that state suggested the enactment of a law for the elimination of grade crossings, the cost to be "divided between the railroad and the counties, cities and towns wherein the crossings are located, according to some fair basis to be determined by the Railroad Commission" (see Report of 1909, p. 13).

Likewise, in California the Railroad Commission, referring to the law of that state authorizing the commission to determine the proposition in which the expense or alteration or abolition of grade crossings should be divided between the railroad or street railways and the state, county or other public authority, stated as the general policy of the commission that:

"In the determination of applications presented under the above section of the law, the commission is addressing itself to the problem of safeguarding against accidents. And with the assured construction in the future of many new roads and of increased traffic, this problem promises to grow in importance.

"While the protection of the public demands and is being given every consideration, the commission, in imposing requirements, unavoidably must act within the limits of commercial feasibility. It manifestly would be unwise, by denying a projected road the right to cross highway at grade, to render its construction financially improvident, and, therefore, impossible by reason of the great additional expense of constructing over or under crossings. Nor should such additional cost be required of a county which desired to construct a new public highway across existing tracks, if the crossing at grade may be reasonably safeguarded.

"In each proceeding the applicant must establish a *prima facie* case of necessity to construct at grade. The proposed crossing is inspected by the commission and its engineer and the manner and point of crossing approved or modified and the terms of installation, operation, maintenance, use and protection prescribed in the other in accordance with the circumstances of each particular case.

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"Underlying its decision is the constant endeavor of the commission so to exercise its powers as not only to protect the public against those corporate practices which have led to state regulation, but to foster and encourage the development of public utility enterprises and the investment of capital therein. The best interests of the public imperatively demand the observance of this general policy."

(See Report for period January 1, 1911, to June 30, 1912, pp. 97, 98.)

In Massachusetts the Board of Railroad Commissioners and the State Highway Commission made an elaborate investigation of the whole subject in accordance with the direction of the legislature of that state (see Chapter 125 of Resolutions for year 1912). Under date of January 9, 1913, a report was made to the legislature "on the advisability of changing the present basis of the apportionment of the cost of abolishing grade crossings."

The report recites that the joint board made a careful study of the statutes relating to the elimination of grade crossings in other states and of the history of the work of abolishing grade crossings in Massachusetts. The report then calls attention to the Massachusetts statute of 1890, providing for the cost to be apportioned on the basis of 65 per cent. to the railroad and the remaining 35 per cent. between the commonwealth and the city or town in

which the crossing is situate—provided that no more than 10 per cent. should be apportioned to such city or town. This method was amended in 1902, whereby a street railway company was assessed not exceeding 15 per cent. The report further calls attention to the fact that, in certain cases, the apportionment has been changed by special statutes, for example, in Boston, in one case the railroad paid but 55 per cent., in another 39 per cent., and in another 50 per cent.

The report then concludes that after a comparison of the law and practice in other states the percentage of the cost is apportioned on an equitable basis and that payment by the railroad company of substantially two-thirds of the entire cost was generally regarded as reasonable. The report further says:

“As the benefits of grade crossing elimination are not merely local, but are of great benefit to the whole travelling public, the assessment of 25 per cent. to the state does not seem unreasonable, especially as this amount may be greatly decreased where a street railway company is a party to the proceedings. The provision requiring an amount not exceeding 10 per cent. to be paid by the city or town seems also to be reasonable, as recognizing the peculiar local benefits received, but limiting the maximum amount which may be paid in any case.”

We have added to the brief as Appendix A further quotations from the report discussing the practice in other states.

As bearing upon the question of whether the statute of New Jersey now under review is unreasonable and arbitrary, we also beg leave to call attention to the course of legislation in other states on the subject of elimination of highway grade crossings at railroad tracks. Attached hereto as Appendix B will be found a summary of the

statutory law of the forty-seven states other than New Jersey. By reference thereto it will be seen that there are fifteen states, namely, Florida, Georgia, Idaho, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, Tennessee, Texas and Virginia, in which there is no legislation on the subject.

In the remaining thirty-two states where the matter is covered by legislation, practically every statute provides for a partial payment of the cost either by the state or by the municipality, and in none of them is the entire cost imposed upon the railroad company, unless the statutes of Alabama and West Virginia might be so construed. In several of the statutes the proportion of the cost which is to be paid by the state or the municipality and the proportion which is to be paid by the railroad is fixed by the statute itself, but in most of them it is left to the discretion of the administrative body which is charged with the authority to order or to supervise the elimination of crossings.

This entire subject was thoroughly investigated by a committee appointed by the National Association of Railway Commissioners—the membership of which was made up of the railroad and public utility commissioners of all the states where such commissioners have been appointed. At the twenty-third annual convention of this association, held at Washington in October, 1911, the committee on grade crossings presented a full report on the subject (see p. 57), which after an elaborate discussion, was adopted (see p. 60) with an amendment on a minor point which does not affect the matter now under consideration. In this report the committee said (*italics ours*):

"We fear that we would prove unworthy of the confidence reposed and justify your questioning the sincerity of our effort if as the result of all our investigations we have nothing to offer looking to a solution of the problems under consideration, and though it may be in part a repetition of what has previously been recommended, we believe that as to grade separation we should renew our efforts to have the legislatures of our respective states pass a law requiring that each railroad operating therein should be required to eliminate a given number of grade crossings each year, and at such points as the commission having authority in such states shall direct *the expense to be apportioned between the state and county, township or village, as the case may be, and the railroad company, as the commission shall determine, believing that the varying conditions under which grades are separated do not make it advisable that any inflexible rule or statute shall govern as to the manner of division of expense; that the commission of the state in which such crossings are separated, making an inspection of the premises and being thoroughly conversant with the conditions is in a better condition to determine the reasonableness of the apportionment of expense than any other body, legislative or otherwise.*"

Of course, these statutes and reports are not conclusive upon the question of whether the New Jersey statute is a reasonable exercise of the police power, but they do show that New Jersey has either taken a very long step in advance (as will no doubt be claimed by Paterson) or else it has taken a very long step backward—as compared with the trend of the legislation and opinion throughout the country.

There are also other elements which the court should consider in determining whether the police power has

been exercised in a reasonable manner; thus attention must be paid to the element of cost and the practical effect of the statute under consideration—although, as stated in the case of *Erie Railroad Co. v. Williams*, 233 U. S. 685, 58 L. Ed. 1155, “cost and inconvenience would have to be very great before they could become an element in the consideration of the right of a state to exert its reserved power or its police power.”

In *Wisconsin R. R. Co. v. Jacobson*, 179 U. S. 287, 45 L. Ed. 194, an order made under the laws of Minnesota directing two railroad companies to establish certain track connections was sustained as a valid exercise of the police power. In the course of the opinion the Court said (*italics ours*):

“Taking the facts which we have already enumerated into consideration, we think there is no justification furnished for the argument that the judgment, if enforced, would violate any of the constitutional rights of the plaintiff in error. In so deciding we do not at all mean to hold that under no circumstances could a judgment enforcing track connections between two railroad corporations be a violation of the constitutional rights of one or the other, or possibly of both such corporations. It would depend upon the facts surrounding the cases in regard to which the judgment was given. The reasonableness of the judgment with reference to the facts concerning each case must be a material, if not a controlling factor, upon the question of its validity. A statute, or a regulation provided for therein, is frequently valid, or the reverse according, as the fact may be whether it is a reasonable or an unreasonable exercise of legislative power over the subject matter involved. And in many cases *questions of degree* are the controlling ones by which to determine the validity, or the reverse, of legislative action.

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The court in *Chicago, &c., Ry. v. Chicago*,
166 U. S. 226, 236; *Missouri Pacific Ry. v. Ne-
braska*, 164 U. S. 403, 416. So that where the
taking is under an administrative regulation the
defendant must not be denied the right to show
that as matter of law the order was so arbitrary,
unjust or unreasonable as to amount to a deprivation
of property in violation of the Fourteenth
Amendment. *Chicago, &c., Ry. v. Chicago*,
166 U. S. 226, 236; *Missouri Pacific Ry. v. Ne-
braska*, 164 U. S. 403, 416. *Chicago, &c., Ry. v. Chicago*,
166 U. S. 226, 236.

6. Since the decision in *Wisconsin, &c., R. R. v. Jacobson*, 179 U. S. 287, there can be no doubt of
the power of a state, acting through an admin-
istrative body, to require railroad companies to
make track connection. But manifestly that does
not mean that a commission may compel them to
build branch lines, so as to connect roads lying
at a distance from each other; nor does it mean that
they may be required to make connections at every
point where their tracks come close together in
city, town and country, regardless of the amount of

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order of the public utility board. The question in each case must be determined in the light of all the facts, and with a just regard to the advantage to be derived by the public and the expense to be incurred by the carrier. For, while the question of expense must always be considered (*Chicago, &c., R. R. v. Tompkins*, 176 U. S. 167, 174), the weight to be given that fact depends somewhat on the character of the facilities sought. If the order involves the use of property needed in the discharge of those duties which the carrier is bound to perform, then, upon proof of the necessity, the order will be granted, even though "the furnishing of such necessary facilities may occasion an incidental pecuniary loss." But even then the matter of expense is "an important criteria to be taken into view in determining the reasonableness of the order." *Atlantic Coast Line R. R. v. North Carolina Commission*, 206 U. S. 1, 27; *Missouri Pacific Ry. v. Kansas*, 216 U. S. 262. Where, however, the proceeding is brought to compel a carrier to furnish a facility not included within its absolute duties, the question of expense is of more controlling importance. In determining the reasonableness of such an order the court must consider all the facts and circumstances, and the interests of the public, the carrier and the shipper, the volume of business to be affected, the saving in time and expense to the shipper, as against the cost and loss to the carrier. On a consideration of such and similar facts the question of public necessity and the reasonableness of the order must be determined. This was done in *Wisconsin R. R. v. Jacobson*, in which, for the first time, it was decided that a state commission might compel two competing interstate roads to connect their tracks."

Under the authorities cited under Point II the question of whether an order of an administrative board, directed to a public utility requiring changes or improvements, de-

pende in large part upon the cost of compliance therewith as compared with the necessity therefor and the advantage supposed to be derived therefrom. The authorities thus cited are:

Houston, etc., Ry. v. City of Dallas, 98 Tex. 396, 84 S. W. 648;

Northern Central Ry. Company's Appeal, 103 Pa. 621;

Pennsylvania, etc., R. Co. v. Philadelphia & Reading R. Co., 160 Pa. 227;

Cleveland, etc., Ry. Co. v. Street Public Utilities Commission, 273 Ill. 210, 112 N. E. 689;

Connecticut Company v. Town of Stamford, 110 Atl. 554;

Chicago, etc., Ry. Co. v. City of Minneapolis, 238 Fed. 384;

Chicago & N. W. R. Co. v. Ochs, 249 U. S. 416, 63 L. Ed. 679.

So likewise the question of the validity of a statute depends in large part upon the question of whether the expenditure directed to be made thereunder is reasonable or arbitrary; for, as we have shown above, the validity of such statute depends not merely upon what is in fact done but what might be required to be done by virtue of its authority. The rule as to expense is conveniently summarized in the *Ochs* case, *supra*, as follows:

"The expense is an important element to be considered in determining whether the requirement is within the bounds of reasonable regulation or is essentially arbitrary."

We have heretofore shown that the cost to the plaintiff in error of complying with the order under review will be not less than \$3,000,000, and will probably be

considerably more than that sum. We have also shown that if all grade crossings within the state be held to come within the class of "dangerous" the expense to the plaintiff in error of complying with orders made under this statute will be over \$15,000,000. We have also discussed the details of the financial circumstances of the plaintiff in error as presented to the board on the hearing of the city's petition and on the application for a further hearing. Without referring further to this testimony we urge that the conditions are so extraordinary that in the language of this Court, in the *Jacobson* case, *supra*, "regard being had to the facts" this order "unduly, unfairly and improperly affects the pecuniary rights and interests" of the plaintiff in error. Under the *Williams* case, *supra*, it is stated that the cost and inconvenience must be very great in order to justify the conclusion that the regulation under review is an unreasonable exercise of the police power. If ever there was a case to which that principle applies, this is it. Not only does the evidence show that the cost to the plaintiff in error will be very great, but it goes even further, and shows that it will be *so* great that it is impossible to comply with the provision of the statute.

In examining the question of whether a statute which imposes the entire burden of the elimination of the grade crossings is a reasonable exercise of the police power, let us also consider the practical effect of such a statute. We have already called attention to the fact that there are not less than 2,500 grade crossings in the state of New Jersey, and that the cost to the railroad companies if all were paid by them, would be \$137,500,000; and the cost to the plaintiff in error in the state of New Jersey to eliminate its 256 crossings would be over \$15,000,000. But let us go one step further, and see

what the cost would be over the entire Erie system, covering the states of New Jersey, New York, Pennsylvania, Ohio and Indiana—provided that in every state the legislature saw fit to exercise its “police power” in the same manner that New Jersey has attempted to do. The total number of grade crossings subject to elimination on the Erie system on May 1st, 1913, was 2,410; the number in each State being as follows:

New York	931
New Jersey	256
Pennsylvania	417
Ohio	589
Indiana	189
	<hr/>
	2,382

(p. 281, line 40; p. 282; line 49). The total as given in the foregoing table varies slightly from the total number of grade crossings, as in Indiana there are certain crossings which are not subject to elimination under the present law (pp. 282, 283).

If a law imposing the entire expense on the railroad company is valid in New Jersey, such a law is equally valid in every other state. Taking the total number of crossings as 2,410, and the average cost of eliminating each at the sum of \$55,000 (p. 289, line 30), it will be seen that the total cost to this one company would be \$132,550,000 (exclusive of property damage)—or about one-third of its present total capital stock and bonded indebtedness, of approximately \$493,000,000 (p. 1359). It may be said that there is no likelihood that the railroad company will call upon to meet this enormous burden for many years to come, if ever, but that does not affect the general proposition that if a statute like the one under consideration is valid in one state, it is equally

valid everywhere. If the present statute is sustained, what is more probable than that other states will modify existing statutes to accomplish the same result. If the present order and statute are valid, there is no legal reason why the Board of Public Utility Commissioners of the state of New Jersey should not proceed to order all the grade crossings on the Erie Railroad system in the state of New Jersey to be forthwith eliminated, when the conditions specified in the statute are found to exist; and it follows, of course, that if an administrative board in the state of New Jersey can legally make such an order or orders, similar boards in other states can do likewise, and the result is that there is no limit to the enormous burden that might thus be imposed upon a railroad company, short of the elimination of every grade crossing on its entire system. If it be said that the statute applies only to those crossings that are dangerous to public safety or what impede public travel, that does not relieve the situation, because the question of danger is largely a matter of degree, and under the opinion of the New Jersey Court, the mere passage of trains over a grade crossing constitutes an "impediment" thereto.

If an administrative body is given power to determine as a matter of fact what constitutes danger or impediment, and if its conclusion in that respect is binding on the reviewing court, except in a case where there is *no* evidence whatever to sustain it, then there is no limit to what might be ordered under such a statute, other than the sound discretion of the administrative body to whom is committed this vast power—a discretion which, if the present case be taken as an illustration, may be grossly abused to the serious financial detriment, and even bankruptcy, of the company that is unfortunate

enough to have a large number of grade crossings on its railroad.

Indeed, by the opinion of the New Jersey Supreme Court an order requiring the elimination of grade crossings is probably not even a matter of *discretion* on the part of the board. That court says that the word "may," as used in the statute, may mean "must." If it does mean "must," it follows that whenever the jurisdictional facts appear the board *must* order the elimination of the crossing. But whatever be the correct view on this point, the real question upon which the validity of the statute depends is not merely what is in fact done under the authority thereof, but what *might* or *could* be done thereunder, as indicated by the following authorities:

In *Ex parte Christensen*, 43 Fed., 243, it was said:

"The validity of an ordinance must be determined by its terms, by what it authorizes, not by the manner of its execution. It is valid or invalid irrespective of the manner in which it is in fact administered. Its capability of being abused is the test."

In *Grauger v. Douglas Park Jockey Club*, 148 Fed. 513, 521, it was held:

"The constitutionality of a statute must be determined by its provisions, and not by the manner in which it is in fact administered."

In *Sargent v. Rutland R. Co.*, 85 Atl. 654, held "the constitutionality of a law is to be tested, not by what has been done under it, but by what may rightfully, by its authority, be done." Citing *Montana Co. v. St. Louis Mining & Milling Co.*, 152 U. S. 160, 38 L. Ed. 398.

The constitutionality of a statute is to be determined not according to the grace or favor of the officials who

act under it, but according to the terms of the statute itself. *Security Trust Company v. Lexington*, 203 U. S. 323, 51 L. Ed. 204; *Georgia Ry. v. Wright*, 207 U. S. 127, 52 L. Ed. 134.

In *Security Trust Company v. Lexington*, *supra*, it was said:

"If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute." *The Bristol Case*.

It will be urged by the defendants in error that the present statute can be sustained under the decision of this Court in the Bristol case, *supra*, as against the claim of the plaintiff in error that the statute is an unreasonable exercise of the police power. It is true that in that case the Connecticut statute requiring the alteration of grade crossings under certain conditions was sustained. That statute, however, differed in several very important respects from the one now under consideration. It is quoted at length in the opinion of the court. It will be observed that under that statute, if the petition for the abolition of the crossing is filed by the railroad company the expense is to be paid by the railroad company "owning or operating the railroad"; and in case the petition is filed by the municipality, then an amount not exceeding one-quarter of the expense is to be paid by the municipality and the remainder by the railroad company owning or operating the railroad; if the highway affected by such last-mentioned order (that is, in a case where the municipality files the petition) has been constructed

since the *railroad*, the commissioners may order an amount not exceeding one-half of the whole expense to be paid by the municipality and the remainder by the railroad company. It is further provided (*italics ours*):

"The *directors* of every railroad company which operates a railroad in this state shall remove or apply for the removal of at least one grade crossing each year for *every sixty miles* of road operated by it in this state, which crossings, so to be removed, shall be those which in the opinion of said directors are among the most dangerous ones upon the lines operated by it, and if the directors of any railroad company fail so to do, the railroad commissioners shall, *if in their opinion the financial condition of the company will warrant*, order such crossing or crossings removed as in their opinion the said directors should have applied for the removal of under the above provisions, and the railroad commissioners in so doing shall proceed in all respect as to method of procedure and assessment of expense as if the said directors had voluntarily applied therefor."

The important distinctions in this statute, as compared with the New Jersey statute, are the following:

1. When the municipality petitions for the abolition of a grade crossing it must pay not exceeding one-quarter of the whole expense, the railroad paying the balance; whereas under the New Jersey statute the railroad pays it all (regardless of whether the railroad or the municipality files the petition), except certain trifling expenses for paving, curbing and flagging and for changes in municipal water or sewer pipes.

2. If the highway has been constructed since the railroad (in a case where the municipality files the petition), then the municipality may be required to pay not exceeding one-half of the expense; whereas the

New Jersey statute makes no distinction whatever between highways constructed before and after the construction of the railroad.

3. One grade crossing is required to be removed each year for every sixty miles of road; whereas under the New Jersey statute (as construed in the present case) any one or more, or indeed all, of the grade crossings of any particular road, may be ordered to be removed just as quickly and rapidly as the board can approve the plans therefor.

4. The directors have the option of deciding which of the grade crossings are among the most dangerous ones; whereas under the New Jersey statute the directors have no discretion whatever on the subject.

5. *Compulsory* elimination may be ordered only in the event that the directors of the railroad fail to remove one crossing for each sixty miles; and it is only in the event, first, that the directors fail so to do, and in the *further* event that the railroad commissioners come to the conclusion that *the financial condition of the company will warrant*, that then the commissioners may order the removal of the crossings; whereas by the New Jersey statute the Board of Public Utility Commissioners is given power to order the elimination of crossings *regardless of financial conditions of the company, and even in the face of positive and uncontradicted testimony to the effect that it would be impossible for the company to comply with the board's order.*

The decision in the Bristol case is further distinguishable from the present case in that the charter of the railroad company in that case was subject to the legislative power to amend, alter or repeal the same. This fact is mentioned in the opinion as one of the ele-

ments that justified the court in concluding that the Connecticut statute did not violate the constitution. In the present case no such reserved power is found in the charter of the Paterson & Hudson River R. R. Co., and therefore so far as concerns the crossing on the line of that company this part of the reasoning of the Bristol case does not apply.

It should be further observed that the decision in this case was apparently based in part upon the fact that the state courts of Connecticut had ruled that, under the law of that state, grade crossings were in the "nature of nuisances, which the legislature had the right to abate." This is quite different from the attitude of the courts of the state of New Jersey relative to railroads and the danger or inconvenience incidental to the operation thereof. Thus, in *Vreeland v. Forest Park Commission*, 82 N. J. Eq. 349, the Court of Errors and Appeals of New Jersey held that the act of April 12th, 1909, commonly known as the "Fire Line Act," was unconstitutional as a taking of lands without compensation, which could not be justified as a proper exercise of the police power. In reaching this conclusion, the court said:

"There is nothing in the nature of the land or its use that creates a nuisance to be abated" (p. 351).

The rule in New Jersey is that incidental annoyances and inconveniences due to the operation of railroad trains, are not to be considered as a nuisance, either public or private, but on the contrary, must be considered as in contemplation when the railroad charters were given.

Beseman v. Pennsylvania R. R., 52 N. J. L. 221, 20 Atl. 169; affirming 50 N. J. L. 235;

Pennsylvania R. R. v. Jersey City, 84 N. J. L. 716, 49 L. R. A. (N. S.) 715;

Jersey City v. Erie R. R., 84 N. J. L. 761;
Kelly v. Erie R. R., 86 N. J. L. 379.

On the question of whether the railroad commissioners of Connecticut were justified in concluding that the financial condition of the railroad company would warrant the elimination of the crossing under consideration, the U. S. Supreme Court in the Bristol case held that that was a question of fact which it would not review unless it appeared that the error was so "gross" as to amount *in law* to a denial by the state of the rights secured under the constitution of the United States.

In the present case we submit that this Court has the right to consider and decide whether the action of the board in making the order under review was arbitrary; and if under the statute the board has no discretion but *must* order the elimination of crossings, regardless of comparative advantages to the public and the railroad, and of the financial condition of the latter, then we insist the statute violates the Due Process Clause.

The defendants in error may also cite the case of *Missouri Pacific Ry. Co. v. City of Omaha*, 235 U. S. 121, 59 L. Ed. 157. This was an injunction suit brought by the railroad to enjoin the city from enforcing an ordinance whereby the railroad was required at its own expense to construct a viaduct across its line of railroad at a certain street. The cost of the construction was \$80,000. It does not appear from the opinion whether the street was laid out and opened before or after the construction of the railroad tracks. This Court affirmed a decree of the Circuit Court dismissing the bill. In the course of the opinion the Court, referring to the police power, said (*italics ours*):

"So long as the means have a substantial relation to the purpose to be accomplished, and there

is no *arbitrary interference with private rights*, the courts cannot interfere with the exercise of the power by enjoining regulations made in the interest of public safety which the legislature has duly enacted."

The court also indicated in the opinion that if there was an "abuse" of the authority of the state or if the action was "arbitrary and oppressive," then the court would interfere by injunction or otherwise. It follows that if the court is satisfied that the action complained of is arbitrary and oppressive then it is both the right and the duty of the court to interfere.

Defendants in error may also cite the cases of

Northern Pacific Ry. Co. v. Duluth, 208 U. S. 583, 52 L. Ed. 630;

St. Paul etc. Ry. Co. v. Minnesota, 214 U. S. 497, 53 L. Ed. 1060;

Cincinnati etc. R. Co. v. Connersville, 218 U. S. 336, 54 L. Ed. 1060;

Chicago etc. Ry. Co. v. Minneapolis, 232 U. S. 430, 58 L. Ed. 671;

Lake Shore etc. R. Co. v. Clough, 242 U. S. 375, 61 L. Ed. 374.

In all of these cases the railroad was required to pay the expense of the construction of highway bridges. But as we have shown in discussing these cases under Point VIII, the decisions were rested upon the settled law of the state as indicated by the decisions of the state courts requiring railroads to construct overhead crossings at highways which had been laid out and opened after the construction of the railroad. These decisions are therefore not conclusive of the claim now made that this Court has the right to determine whether a requirement that the railroad

construct such bridges is an unreasonable exercise of the police power—particularly when we consider the insignificant expense to the railroad in those cases as compared with the enormous amount involved in the present case. For example, in the *Duluth* case in 208 U. S., the ordinance in question requires the railroad to make certain repairs to a bridge. The cost of the repairs is not stated in the opinion but as the total original cost of the bridge was only \$73,000 it is apparent that the amount involved must have been much less than that sum.

In the *Minnesota* case in 214 U. S., only one street and one bridge was involved; the cost does not appear from the opinion.

In the *Connersville* case in 218 U. S., a street was opened through a railroad embankment. The allowance to the railroad for damages by reason of such opening was fixed at \$800; the opinion does not show what was the total cost of the work.

In the *Minneapolis* case in 232 U. S., the improvement in question was the construction of a bridge to carry the railroad tracks across a canal which had been built as part of a park development. It was held that the railroad was not entitled to compensation for the cost of the bridge—which the opinion shows was about \$18,000.

In the *Clough* case in 242 U. S., the cost to the three railroad companies who were parties thereto was about \$160,000 for the expense of bridging a drainage ditch.

But in the present case the expense is a matter not of a few thousands but literally of millions; the original estimate made six years ago was nearly \$3,000,000 and it is a fair assumption that at the present time the amount of this estimate should be at least doubled. This enormous expense is imposed upon the plaintiff in error without any public necessity therefor; it does not even appear that the

public convenience will be materially advanced; and this large expense is required within the limits of a single municipality over a stretch of less than two miles out of a main line track of nearly 2,500 miles, without any consideration for the need of other and more immediately pressing and important expenditures which should have been made long since by the plaintiff in error if it had had the financial ability to do so, and without regard to the undisputed testimony that the plaintiff in error was absolutely without the financial means, either by way of cash in hand or by means of ability to borrow, to pay the cost required by the order under review and authorized by the statute upon which the order was based.

Counsel for defendants in error may also cite the cases of:

Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548; 58 L. Ed. 721.

Chicago & Alton R. Co. v. Tranbarger, 238 U. S. 67; 59 L. Ed. 1204, and

Great Northern R. Co. v. Clara City, 246 U. S. 434; 62 L. Ed. 817,

in support of the proposition that the state has the right to make various regulations affecting the health and safety of the public.

In the *Goldsboro* case, this Court sustained the validity of certain municipal ordinances which limited the speed of trains, required flagmen to precede them, and directed the railroad to change its grade at certain crossings. In that case the railroad tracks were constructed on a right of way which ran through the middle of what afterwards came to be the principal street of the town. One of the provisions of the ordinances in question required that the tracks be lowered, to conform to the

grade line of the street, and to fill in the tracks between the rails; the lowering being 6 inches at one point, 10 inches at another and 18 inches at another. It was pointed out, however, that if it appears that there is "wanton or arbitrary interference with private rights" the question then arises—whether the law making body has exceeded the legitimate bounds of the police power.

In the *Tranbarger* case suit was brought to recover a penalty fixed by a statute which required railroad companies to construct suitable openings across and through the right of way and roadbed, in order to afford proper drainage for surface water. This Court sustained the recovery of the penalty, in an action brought under such statute, on the ground that it was a "fair exercise" of the police power.

In the *Clara City* case, the railroad company was required to build a sidewalk at a highway crossing, in accordance with the provisions of a state law of Minnesota, which required railroad crossings to be planked at points where they crossed public streets and also required the construction of sidewalks across the tracks to connect with sidewalks constructed by the municipality or by the owners of abutting property. The statute was held valid, but the Court pointed out that such statutes might be declared unconstitutional "where they are arbitrary or unreasonable attempts to exercise authority vested in the state in the public interest."

All of these cases are very different from the present, where the statute compels the Board of Public Utility Commissioners (in case any order is made at all) to direct that the entire expense—sometimes amounting to millions of dollars—shall be paid by the railroad company, less the insignificant portion of not exceeding 10 per cent. if a street railway happens to cross the

tracks of the railroad company. Such a statute, we submit, is not a "fair exercise" of the police power and is "arbitrary and unreasonable" and, therefore, under the principles laid down in these very cases, it should be declared invalid.

Reference may also be made to the various cases in this Court which have held that railroad companies may be compelled, without compensation, to reconstruct bridges across navigable waters, when the increasing demands of traffic require such construction. *Chicago &c. Ry. Co. v. People*, 200 U. S. 561, 50 L. Ed. 596; *Chicago Railroad Co. v. City of Chicago*, 201 U. S. 506, 50 L. Ed. 845; *Union Bridge Co. v. United States*, 204 U. S. 364, 51 L. Ed. 523; *Monongahela Bridge Co. v. United States*, 216 U. S. 177, 54 L. Ed. 435; *Hannibal Bridge Co. v. United States*, 221 U. S. 194, 55 L. Ed. 699.

The decisions in this series of cases were based upon the ground that a railroad company was obliged to change its tracks in order to conform to the changed conditions of navigation, as, otherwise, the continuance of the tracks in existing locations would amount to a permanent obstruction of the waterway. This is very different from the case of railroad tracks that cross public streets. There can be no pretense in this class of cases that the tracks obstruct, or substantially interfere with, the use of the public highways. In the bridge cases, Congress was exercising a right over navigable waterways which was held to be "paramount," and, therefore, the railroad tracks were necessarily altered in order that the said right might continue to be exercised without obstruction. But, so far as public streets are concerned, there is no paramount right as between the railroad and the street—unless, indeed, the railroad

may be said to have a paramount right with respect to all streets, except those that were in existence at the time the railroad was constructed. Even as to waterways, it is doubtful if the principle of the bridge cases would be extended to artificial channels which were laid out after the construction of the railroad tracks, as distinguished from natural waterways which were in existence at the time of the construction of the tracks. It was so held by the Supreme Court of Illinois in the case of *East Side District v. East St. Louis, &c., Ry.*, 279 Ill. 123, 116 N. E. 720. This decided that a railroad company was entitled to be reimbursed for the cost of the work of elevating its tracks, excavating a channel and building a bridge, which work was made necessary by the construction of a new and artificial channel and a levee across its right of way.

A recent illustration of the foregoing argument is found in the decision of the United States District Court of Minnesota in the case of *Chicago, &c., R. Co. v. City of Minneapolis*, 238 Fed. 384. In that case, the railroad brought suit to enjoin the city from enforcing an ordinance which required the elimination of certain grade crossings by the depression of the tracks. The total cost to the railroad of changing its tracks to conform to the provisions of the ordinance was more than \$5,000,000. The railroad urged that the tracks should be elevated rather than depressed and showed that the expense upon the elevated plan would be \$3,000,000 less than on the depression plan. The Court pointed out that under a statute of the state of Minnesota, the city had the power to pass an ordinance providing for the separation of the grades of streets and railroad tracks, but came to the conclusion that the ordinance imposed an unnecessary and unreasonable expense upon the

railroad company and the industries served thereby to the extent of several million dollars, and that this amounted to "a practical confiscation of their property." (See page 405.) A permanent injunction was issued restraining the enforcement of the ordinance.

The only case in this Court in which the question of the validity of a state law providing for the abolition of grade crossings has been directly involved, is the Bristol case, *supra*. As we have already shown that case is distinguishable both on the facts and on the statute then under consideration.

The injustice and unreasonableness of compelling the railroad company to assume the entire burden of expense of eliminating grade crossings is shown in a striking manner in the present case. The "danger" upon which the board relies as the justification for making the order under the statute is due in large part to the city's own acts. At the three crossings where the highway traffic is heaviest, the city has given a street railway company the right to use the streets. The railroad company had nothing to say about that and could not reasonably be held responsible for any dangers resulting therefrom, and to the extent that the existence of the street railway tracks and the operation of its cars thereon contribute to or constitute "danger," that cannot be attributed to the railway company.

So far as the pedestrian and vehicular traffic is concerned, that is a matter which is the natural result of the development of the city and is not in any sense chargeable to the railroad company. So far as the "danger" may be said to arise by reason of obstructions to view, the evidence shows that in nearly every case these obstructions are located off of the railroad

property. The railroad company is not responsible for them and has no control over them.

The company has done all that it could to meet the "dangers to be encountered" (see 95 Atl., p. 177) from the operation of trains by providing gates and watchmen at every one of the crossings in question.

Assuming for the purpose of argument that the conditions at all of the crossings in question are such as to justify the conclusion that they are "dangerous to public safety" and that public travel is "impeded" thereby, the fact remains that the railroad is not the only agency responsible for such conditions. They are the result not merely of the running of trains, but also of the growth of the city and of the increased use of the crossings by reason thereof for vehicular, pedestrian and trolley traffic. They are also the result in part of the construction of factories and other structures near the right of way. It is highly inequitable to require the railroad company to pay the sole expense of removing dangers and impediments of which only a part can be ascribed to it. This argument is illustrated by the decision in the case of *City of Milwaukee v. Railroad Commission of Wisconsin*, 155 N. W. 948. There the court had under consideration a statute which authorized the railroad commission upon the petition of a municipality to order alterations in railroad crossings and to fix the proportion of the costs to be paid by the railroad company and the municipality. The commission ordered that the city pay 25 per cent. of the cost, the railroad 70 per cent. and a street railway 5 per cent. The city brought proceedings to set aside that part of the order which assessed 25 per cent. of the cost against it. The court sustained the order, saying (*italics ours*):

"Milwaukee has during the last half century become a great and prosperous city. Its great-

ness and prosperity must have come because of its commerce, and its commerce has come largely because of its railroads. Without them Milwaukee as we know it today would not exist. The growth of the city and of the railroads has been coincident, inter-dependent, inseparable, and from this growth has arisen the great danger of the grade crossing. *Why should not the expense of removing that danger be equitably shared by the different agencies whose joint growth has brought it about?*"

The New Jersey Supreme Court in its opinion cited the case of *Morris & Essex R. R. Co. v. City of Orange*, 63 N. J. L. 252, as establishing the principle that a regulation for public safety under a police power of the state is not a taking of private property without just compensation, although conformity to such regulation involves expense (p. 2289, ll. 10-20).

In that case it was held that a railroad is not entitled to compensation for the use of its tracks for a highway crossing at grade and that it was not entitled to receive an allowance for the erection and maintenance of gates, sign-boards, cattle-guards, etc. But it was also held that for an injury occasioned by *structural changes*, such as the removal of buildings or changes in the tracks, adequate compensation should be made (see page 270). The latter principle, we submit, is the one that applies to a case like the one now under consideration, where the purpose of the statute cannot be carried out without making many and expensive "structural changes."

Furthermore, in any event the question still remains whether the police power has been exercised in a reasonable manner; and upon that question the item of expense must be taken into consideration.

In the *Morris & Essex* case, *supra*, the amount of the damages claimed by the railroad, as the result of opening the street across its track at grade, aggregated the sum of about \$18,000, which was based upon a capitalization of the items for the value of the land and of the cost of construction of planking and gates and the maintenance of gates and flagmen (see page 254).

If we select from these items those which were occasioned by "necessary structural changes," we find that they amounted to only about \$600, namely, the cost of re-constructing a switch and the cost of constructing a culvert, the capitalized value of which, at 5 per cent., would be only about \$12,000. It is difficult to see how any precedent that is worth while can be obtained from a case of this kind where the expense is so trifling as compared with the enormous expenditure of \$3,000,000 and upwards, practically all of which is for structural changes. The present statute not only makes no allowance to the railroad for these changes, but it compels the railroad itself to pay for them.

We, therefore, submit that the statute in question is an unreasonable exercise of the police power because:

(a)

The statute, in many material respects, is different from the statutes sustained in the Bristol and other cases.

(b)

The methods authorized thereby for the elimination of grade crossings are "arbitrary and capricious."

(c)

The provisions thereof are directly contrary to the course of legislation and general public opinion both within the state of New Jersey and elsewhere within the United States.

(d)

The cost thereby imposed upon the railroad company is practically confiscatory of its property.

CHAPTER THREE.

Conclusion.

XI.

If, for any of the foregoing reasons, any part of the statute upon which the order under review is based is invalid, then the entire statute must fall; if, however, the statute is valid, but, nevertheless any part of the order under review is invalid, then the entire order must be set aside.

Unconstitutional provisions may be eliminated from a statute only where they are interjected into an enactment otherwise valid, and are so independent and separable that their removal will leave the constitutional features and purposes of the act substantially unaffected by the process.

Johnson v. State, 59 N. J. L. 535, 539.

Hamm v. Bedell, 67 N. J. L. 148, 150.

Riccio v. Hoboken, 69 N. J. L. 649, 661.

State v. Davis, 72 N. J. L. 345, 348.

Rutherford v. Hudson River Traction Co., 73 N. J. L. 227, 234.

Fagan v. Payne, 75 N. J. L. 851.

Hutches v. Borough of Hohokus, 82 N. J. L. 140.

In re Van Horn, 74 N. J. Eq. 600, 603.
36 Cyc. 976.

In *Riccio v. Hoboken*, 69 N. J. L. 649, 661, *supra*, it was said:

“It is argued, however, that these unconstitutional features may be treated as excrescences upon the general scheme of the act, and may be totally disregarded, leaving the statute in its main features to remain. Upon this question we adhere to the declaration of Mr. Justice Depue, afterwards Chief Justice, speaking for this court, in *Johnson v. State*, 30 Vroom, 535 (at page 539): ‘It is undoubtedly elementary law that the same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand, and that which is unconstitutional will be rejected. But if the different parts of the act are so intimately connected with and dependent upon each other as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect the legislature would not have passed the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent upon each other must fall.’”

In *Hann v. Bedell*, 67 N. J. L. 148, 150, *supra*, it was said:

“By the supplement of 1892 the legislature sought to extend the scope of the original act by embracing towns within its provisions, and by altering the method of selecting members of the excise board in all the municipalities affected by the legislation, except in cities of the first class. So far as the attempt to subject towns to the

provisions of this statute is concerned, it is manifestly, directly in the face of the constitutional provision. And in our judgment this illegality vitiates the whole act. Where an unconstitutional feature stands by itself, and is separable as a distinct thing from the body of the act, and there is no reason to suppose that it constituted an essential motive to the enactment of the law, only the unlawful superaddition to the declared object of the statute will be held to be inoperative and void. *Rader v. Township of Union*, 10 Vroom, 569. But where it cannot be so separated or where it is apparent that the eliminated portion does not constitute an essential motive for legislative object, the whole act must fall. The principle object of the supplement of 1892 was to include towns in the scheme for regulating the exercise, and to divide the municipalities embraced in that scheme into two classes, the first class to embrace cities containing a population of more than one hundred thousand, and the second class to embrace all other cities in the state, and all towns, a different method being provided of selecting members of the board of excise in these two classes of municipalities. To declare inoperative and void only that feature of this law which renders it unconstitutional would be in violation of the principle above enunciated, and would retain upon the statute-book a law which the legislature never passed, and which very probably, it never would have enacted."

In *Rutherford v. Hudson River Tr. Co.*, 73 N. J. L. 227, 234, *supra*, it was said:

"Were we to hold the requirement for paving Park avenue to be an unreasonable restriction, and therefore unjustified by section 7 of the Traction Act (with the result of declaring section 9 or the ordinance *ultra vires* the municipality, then the whole of the ordinance, including its grant of privileges and franchises, must fall at the same time. For, undoubtedly, the provision of macadam-

izing is an essential part of the ordinance, without which it presumably would never have been adopted. The same reasoning applies here that is applicable to an act passed by the general legislature containing some unconstitutional features. As was said by the Court of Errors and Appeals, in *Riccio v. Hoboken*, 40 Vroom, 662: 'In the absence of any express declaration to the contrary contained in the act itself, the presumption is that the legislature intended any given enactment to be effective in its entirety. *Iowa Life Insurance Co. v. Eastern Mutual Life Insurance Co.*, 35 Vroom, 340, 346. In seeking the legislative intent, the presumption is against any mutilation of a statute, and the courts will resort to elimination only where an unconstitutional provision is interjected into a statute otherwise valid, and is so independent and separable that its removal will leave the constitutional features and purposes of the act substantially unaffected by the process.' "

The rule is stated in 36 *Cyc.* 976, *supra*, as follows:

"It is elementary that the same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. The rule is, however, subject to several important limitations, and the whole statute will be declared invalid where the constitutional and unconstitutional provisions are so connected and independent in subject-matter, meaning, and purpose that it cannot be presumed that the legislature would have passed the one without the other."

In the case at bar, Section 42 of the Act of 1911, creating the Board of Public Utility Commissioners (P. L. 1911, Chapter 195, pp. 374-389), provides "if, for any reason, any section or provision of this act shall be questioned, in any court, and shall be held to

is unconstitutional or invalid, no other section or provision of this act shall be affected thereby."

It will be noticed that the supplement to the act of 1911, viz., Chapter 57 of the Laws of 1913 (P. L. 1911, c. 91) does not contain any such provision. Section 42 of the Act of 1911 does nothing more or less than reiterate the rule of law laid down in the cases cited *supra*.

See *Fagan v. Payne*, 75 N. J. L. 851, 855.

In the case last cited it was said (italics ours):

"We are of the opinion that the fifth section is a separate part of the act. It is to be observed that section 24, page 168, of the act of 1901, provides that an unconstitutional clause or section shall not affect any other section or provision. *Whether this section is more than a mere affirmation of a general legal rule of statutory construction need not be discussed, but it at least shows that the legislature had in mind the existence of this rule.*"

The rule laid down in the above cases in the state of New Jersey is the same as in this Court, as shown by the following cases:

In *Poindexter v. Greenhow*, 114 U. S. 270, 29 L. Ed. 85, the Court said:

"It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts are so distinctly separable that each can stand alone, and where the Court is able to see, and to declare, that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part shall fail. To hold otherwise would be to substitute for the law intended by the legislature, one

they may never have been willing by itself to enact" (p. 304).

In *El Paso, etc., Ry. Co. v. Gutierrez*, 215 U. S. 87, 54 L. Ed. 106, the Court said:

"It remains to inquiry whether it is plain that Congress would have enacted the legislation had the act been limited to the regulation of the liability to employes engaged in commerce within the District of Columbia and the territories. If we are satisfied that it would not, or that the matter is in such doubt that we are unable to say what Congress would have done, omitting the unconstitutional feature, then the statute must fall" (p. 97).

See also *Illinois Central R. R. Co. v. McKendree*, 203 U. S. 514, 51 L. Ed. 298; *Employers Liability Cases*, 207 U. S. 463, 52 L. Ed. 297; *Butts v. Merchants' Transportation Co.*, 230 U. S. 126, 57 L. Ed. 1422.

Under these cases, if the Court should conclude that any part of the statute is invalid, then the entire statute falls, and the order under review, in that event, would, of course, fall with the statute.

If, however, the Court should conclude that it is not necessary to pass upon the validity of the statute for the reason that some one or more of the provisions in the order are invalid, the entire order would fall for the reason that under the Public Utility Act of the state of New Jersey, under which these proceedings were brought, as construed by the highest court of the state of New Jersey, when any part of an order of the Board of Public Utility Commissioners is set aside as invalid, it is not possible to enter a judgment sustaining the valid part of the order and setting aside the invalid part—the only thing that can be done is to set aside the entire order and to start all over again.

The first case in the state courts of New Jersey wherein this question came up was *Public Service Gas*

Company v. Board of Public Utility Commission, 87 N. J. L. 581, 92 Atl. 606.

In that case writs of certiorari had been prosecuted in the Supreme Court by the cities of Paterson and Passaic to review an order of the Board of Public Utility Commissioners fixing the rate for gas at ninety cents per one thousand cubic feet, the claim of the municipalities being that the board should have fixed a lower rate. The New Jersey Supreme Court recognized its lack of power to order a modification of the order of the Board of Public Utility Commissioners and dismissed the writs prosecuted by the cities, saying (84 N. J. L., 463, at 465):

"The only remedy that could give the cities the relief they seek is a writ of mandamus commanding the commission to reduce the rate to ninety cents. Under well settled principles, this writ is not available. * * * The question now involved is not whether upon an application to this court for a mandamus to compel a public service corporation to furnish gas we might not determine for ourselves as an original question what would be a reasonable charge, just as the Court of Chancery determined a reasonable charge for water in *Long Branch Commission v. Tintern Manor Water Co.*, 4 Robbins, 71. The parties do not appeal to our original jurisdiction, but very properly have resorted to the new procedure provided by the legislature in the Public Utilities Act of 1911 (P. L., p. 374). Under that act our jurisdiction is appellate, not original, and the power given (section 38) is the power to set aside the order of the commissioners not to make or compel them to make a new order. Our original jurisdiction, as it has always existed is not and cannot be affected by the legislature, but they may provide, as they have in this case, a new method of procedure."

The Court of Errors and Appeals, upon a first hearing of an appeal by the two cities, affirmed the judgment of the Supreme Court dismissing the writs and said (87 N. J. L. 581, 92 Atl. 606):

"It was held in effect that in certiorari the Supreme Court had simply the alternative of affirming the order of the commissioners or setting it aside; whereas the relief they sought by the cities would approximately be given by the Supreme Court, if at all, only on an application for mandamus. The Supreme Court therefore dismissed the two writs prosecuted by the cities. With this conclusion we agree and have nothing to add to the reasoning of the Supreme Court in that regard."

Upon a rehearing, however, the Court of Errors and Appeals came to a different conclusion, not as to the power of the New Jersey Supreme Court on certiorari, but as to the propriety of dismissing the writs without adjudicating upon the merits of the question presented. Accordingly, upon re-hearing, that court reversed the judgments of the New Jersey Supreme Court (95 Atl. 127), and, upon the writs of certiorari prosecuted by the city, affirmed upon the merits the order of the Board of Public Utility Commissioners. The theory upon which this result was reached was that the cities were entitled to an adjudication as to whether or not the order of the board should be affirmed or set aside. The final decision, therefore, in no way affected the force of the decision of the Supreme Court and of the first opinion by the Court of Errors and Appeal, so far as the same related to the lack of power upon a certiorari prosecuted under Section 38 of the Public Utilities Act of 1911 to substitute the judgment of the courts for that of the peculiar statutory

tribunal to whom the determination of the particular question had been entrusted by the legislature. In other words, such a writ of certiorari was not an appeal to the original jurisdiction of the New Jersey Supreme Court to review all proceedings of inferior tribunals by certiorari, but was an appellate proceeding, the procedure under which was limited by the terms of the statute creating the same.

This question again came directly before the Court of Errors and Appeals for consideration in the case of *Erie R. R. Co. v. Board of Public Utility Commissioners*, 90 N. J. L. 271. This was an appeal from an order and judgment entered in the New Jersey Supreme Court, reversing in part an order of the Board of Public Utility Commissioners, directing certain protection to be given several grade crossings on the line of the railroad company in Hudson county. The judgment of the New Jersey Supreme Court had directed that the record be remitted to the board for the purpose of modifying the order under review. The Court of Errors and Appeals reversed this judgment, saying that the order should have been set aside *in toto*, without directing the board to revise or modify the order, and this conclusion was reached "because the Supreme Court had no power to make such an order or judgment under the statute. The power of the Supreme Court under the above statute must be limited either to affirm or set aside the order of the Board of Public Utility Commissioners as a whole." (Citing *Public Service Gas Co., supra.*) It, therefore, follows that if this Court reaches the conclusion that any part of the order under review is invalid, the court below should be directed to set aside the order as a whole. This conclusion is not affected by the amendment to the act

concerning public utilities, known as Chapter 150, Laws of 1918 (p. 304). This was passed on February 26th, 1918, and probably would not apply to an order made prior thereto, but in any event the amendment is expressly limited to orders "hereafter made."

XII.

The judgment of the Supreme Court of the State of New Jersey affirming the order of the Board of Utility Commissioners, under review, and the judgment of the Court of Errors and Appeals of the State of New Jersey affirming the judgment to the Supreme Court of the State of New Jersey should be reversed, with directions to the State Courts to set aside the entire order.

GILBERT COLLINS,
GEORGE S. HOBART,
GEORGE F. BROWNELL,
CHARLES E. HUGHES,
Counsel for Plaintiff in Error.

APPENDIX A.

Report of Board of Railroad Commissioners and of the Highway Commission of Massachusetts to the legislature of that state.

“The problem is to determine what policy should be applied for the elimination of crossings which now exist as the result of the indifference of the public in their eagerness for railroad facilities and of the poverty of the railroad companies during the early years of railroad construction.

“It will be seen from the resume of the law and practice of other states, which is appended to this report, that there is considerable diversity of policy among the different states in regard to grade crossing elimination. In a large number of states there are no laws whatever with regard to that matter. In other states the law applies to future crossings only.

“Where provision is made for the abolition of existing crossings a limited recognition is given in some jurisdictions to the theory that the entire cost should be assessed upon the railroad company. In Connecticut and New Hampshire, when the railroad company is the petitioner, it is obliged under the law to pay the entire expense. In New Hampshire the law also provides that a city or town may, subject to appeal to the Public Service Commission, require a railroad company to abolish any crossing in such city or town at the expense of the company, but in the only case where such action has been taken by any city or town, appeal was taken to the Public Service Commission and an agreement was reached by which the railroad was to pay 65 per cent., the State 23 per cent. and the town 12 per cent. In Indiana, where there is no statute on the subject, the Supreme Court has decided that the railroad commission, under its general powers, may require the separation of a

grade crossing in order to protect passengers on the trains, the entire expense to be borne by the railroad company. Broadly stated, therefore, the policy of assessing the entire cost of grade crossing abolition upon the railroad company is recognized in the statutory law of two states only, and in these is limited to proceedings brought on the initiative of the company."

"There has been a general recognition of the equities in the case as above stated. In the two states where the theory of assessing the entire cost on the railroads is recognized, it is limited, as we have already shown, to cases arising on the petition of the company. Whatever justice there may be in requiring railroad companies to pay the entire cost of any grade crossing elimination which they may desire in their own interests, this policy is open to the practical objection that under it very few grade crossings are likely to be abolished, and it seems to be the interest of the state to promote rather than to retard this work.

"The policy which not only seems to be most equitable but is found to be most effective in securing results is that of apportioning the cost of grade crossing abolitions between the railroad and other parties in interest. Under this arrangement a portion of the cost is generally paid by the city or town, and in some cases by the county or state where the grade crossing abolition occurs. Street railway companies having locations on public ways included in the scheme of grade crossing elimination are also required to pay a portion of the cost involved.

"As the relative advantage to the parties may vary widely in different cases of grade crossing elimination much may be said in favor of the principle of apportioning the cost according to the

equities in each particular case. This policy has been adopted in Arizona, California, Michigan, North Carolina and Wisconsin, as well as in the Dominion of Canada. In all these cases the apportionment is made by the railroad commission or other public board exercising supervision over railroad companies. So far as we are informed, this principle has never been recognized where the apportionment is made by other than a public board.

Owing to the disinclination to leave such large discretionary power in the hands of any board, the principal of fixed percentages for the various parties in interest has been adopted in Connecticut, Massachusetts, New York, Ohio and Vermont.

In Connecticut, when proceedings are brought on the petition of the city or town the percentage varies, as we have already stated, according to the priority of the highway or railroad. If the highway was opened before the construction of the railroad, 25 per cent. of the cost was assessed to the city or town and 75 per cent. to the railroad company; but if the railroad was constructed before the opening of the highway, the city or town and the railroad each paid 50 per cent. of the cost. In New York the cost of the abolition of existing crossings is apportioned between the railroad company, the state and the city or town, the railroad company paying 50 per cent., the state 25 per cent. and the city or town the remaining 25 per cent. In Ohio, 65 per cent. of the cost is assessed to the railroad company and the remaining 35 per cent to the city or town. In Vermont, none of the percentages are definitely fixed, except that the railroad must pay at least 65 per cent., the city or town not more than 10 per cent., and the state not more than 25 per cent. If, therefore, less than the maximum amount is assessed to the state or to the city or town, the proportion paid by the railroad company is correspondingly increased.

"In Massachusetts, the legislation enacted shows that the theory of apportionment according to the equities in each case, and the theory of apportionment according to fixed percentages, have both been considered by the public authorities. We have already stated that prior to 1890 the cost of grade crossing abolition was apportioned among the parties in interest at the discretion of the commission having the matter in charge, as is still done in proceedings for the alteration of crossings. This principle, moreover, was approved by the commission of 1888, as appears from the following statement:

"But we do not consider it practicable for the legislature to fix in advance a proportion to be paid by the parties interested, for the reason that in no two places that have so far come under our observation have the benefits or the disadvantages been equally divided. We would recommend that each one be divided on its own merits by some tribunal such as we have hereinbefore suggested.

"The experience in this state under both of the principles of apportionment which have been under consideration has shown that the principle of fixed percentages has been the one most productive of results. We believe that it would be unwise to abandon that principle, so long, at any rate, as special commissions continue to be appointed for each proceeding.

"A comparison of the law and practice in other states seems also to indicate that the percentage of cost paid by the different parties in interest is apportioned on an equitable basis. The provision by which the railroad company pays 65 per cent., or substantially two-thirds of the entire cost, is generally regarded as reasonable, though there may be individual cases where this amount is either too large or too small. As the benefits of grade crossing elimination are not merely local, but are of great benefit to the whole traveling public, the assessment of 25 per cent. to the state does not

seem unreasonable, especially as this amount may be greatly decreased where a street railway company is a party to the proceedings. The provision requiring an amount not exceeding 10 per cent. to be paid by the city or town seems also to be reasonable, as recognizing the peculiar local benefits received, but limiting the maximum amount which may be paid in any case.

"In our opinion, the present law has proved as satisfactory in operation as the law of any other state in relation to this matter. We do not deem it expedient, therefore, at this time, to recommend any radical change in the law as it now stands. We believe, however, that there are certain details in which the law might be amended to advantage. While the law does not provide that a fixed percentage of 10 per cent. of the cost of grade crossing elimination shall be paid by the city or town, but only an amount not exceeding 10 per cent., we find that in practice the amount paid by the town has been fixed at less than the maximum amount authorized by the statute in only 5 grade crossing eliminations out of a total of 482. There may be cases, especially where the grade crossing elimination is made in a sparsely settled community, where the benefit received by the town represents less than 10 per cent. of the total cost of the grade crossing elimination. Moreover, it may not only be inequitable in certain cases to assess 10 per cent. of the cost to the city or town, but such an assessment may prove a disproportionate burden to a town of small size or limited financial resources.

"We would recommend, therefore, that the law be amended so as to provide expressly that the amounts assessed upon the cities and towns shall be proportionate to the benefits received and to the ability of these municipalities to pay; and that the Board of Railroad Commissioners should be given the right before the final decree is en-

tered by the court, to review the apportionment of the cost as well as the general plan of grade separation made by the special grade crossing commission.

"We would suggest that the legislature might also consider the advisability of substituting a permanent board representing the public for the separate special commissions now authorized by law, in accordance with the following recommendation of the commissions of 1888:

"Some board or court should be clothed with power to act on petition, and, furthermore, they should have the power to act on their own motion; in case such action should be required for the purpose of carrying out the provisions of the law, and we suggest that it would be a step in advance if the authority and responsibility now somewhat widely distributed were concentrated into one set of hands and the same persons were required to decide what should be done, who should do it and also who should pay for it, making all reasonable provisions at the same time for appeal; but if the custom of employing a special commission to apportion the cost is to be kept up, we would suggest that it should be made permanent to that extent; that the same persons should be called in all cases, in order that whatever experience is gained from year to year may be utilized."

"We desire also to call attention to the fact that in certain states the railroad or Public Service Commission is empowered on its own motion to order the abolition of grade crossings in the interest of public safety or convenience. While we deem it proper to call these matters to the attention of the legislature, we make no recommendation in relation thereto."

APPENDIX B.

Summary of the statutes in states other than New Jersey on Subject of Elimination of Railroad Grade Crossings.

Alabama.

Cities with a population of more than 35,000 may compel the construction and maintenance of bridges, viaducts, tunnels and bridges within city limits and may apportion the cost among different railroads where such viaduct, bridge or tunnel crosses the tracks of more than one railroad; where there is only one railroad the expense must be borne by it.

(Code of 1907, Sec. 1296, p. 736.)

Arizona.

The Public Service Commission has exclusive power to alter or abolish grade crossings, to prescribe the terms thereof and the proportion in which the expense should be divided between the railroad, street railway, and the state, county or other public authority in interest.

(Revised Statutes of 1913, Sec. 2319, p. 803.)

Arkansas.

There is no general statute. The only legislation is a special act requiring two companies named therein to raise their tracks to the maximum grade of a certain levee at the point where the track crosses same; also another special act which requires a certain railroad to remove sidetracks and switches at a certain crossing.

(Laws of 1913, Chap. 172, p. 728.

Laws of 1917, Chap. 141, p. 762.)

California.

Public Utilities Commission has exclusive power to alter or abolish grade crossings and to prescribe the terms thereof, and the proportion in which the expense thereof should be divided between the railroad or street railway and the state, county, or other public authority in interest.

(Laws of 1911, Chap. 14.

Laws of 1915, Chap. 91.

Laws of 1917, Chap. 209.)

Colorado.

The Railroad Commission has power, upon its own motion or upon complaint, to order the alteration or abolition of grade crossings, "upon just and reasonable terms and conditions to be prescribed by the commission"; it also has power to prescribe the proposition in which the cost is to be divided between the railroad and the state, county, or other public authority in interest.

(Laws of 1917, Chap. 109.)

Connecticut.

Authority is given to the Public Utilities Commission to alter grade crossings under certain conditions; if a petition is brought by the directors of the railroad, the entire expense is to be paid by the company. If brought by a municipality, it is to pay not more than one-quarter of the expense and the railroad the remainder, provided the highway was in existence when the railroad was constructed, or its layout changed for the benefit of the railroad. If the highway was constructed since the railroad, the commission may order the town, city or borough to pay not more than one-half of the costs. The directors of every railroad are required to apply for the removal or to remove at least one grade crossing every year for

every fifty miles. If they fail to do so, the commission shall, if, in its opinion, the *financial condition of the company will warrant*, order such removal. If the commission upon its own motion orders any alterations, it shall determine and direct by whom such alteration shall be made, and at whose expense and in such cases one-quarter of the entire expense is to be paid by the state, and the remainder by the railroad.

(Laws of 1911, Chap. 196.

Revision of 1918, Sec. 3710 and following.)

Delaware.

There is no statute for the compulsory elimination of grade crossings, but there are statutes which provide for the assessment of damages to property owners when such crossings are changed and authorizing the city of Wilmington to borrow money for the abolition of grade crossings.

(Laws of 1913, Chap. 168.

Laws of 1905, Chap. 164.)

Florida.

No legislation on the subject.

Georgia.

No legislation on the subject.

Idaho.

No legislation on the subject.

Illinois.

Public Utilities Commission has power to alter or abolish grade crossings and to prescribe the terms thereof

and to fix the proportion in which the expense is to be divided between the railroad, or street railway, and the state, county, or other public authority in interest.

(Laws of 1913, page 460.

Laws of 1917, page 672.)

Indiana.

Cities of more than 100,000 may require elimination of grade crossing. In such case the railroad pays 75 per cent., the trolley company, if there be one, 5 per cent., the city 14 per cent. and the county in which the city is located 6 per cent. of the cost. Where there is no trolley at the crossing, the city pays 17 per cent. and the county 8 per cent. of the costs. Cities of between 43,000 and 49,000 may also require the abolition of grade crossings, in which case the railroad pays 75 per cent., the trolley company, if there be one, 15 per cent., and the city the remainder of the cost. The amount required from the trolley company is not to exceed \$10,000 at a crossing where the right-of-way and tracks of two or more steam railroads join and are contiguous, or more than \$5,000 at any other crossing. If the amount required from the trolley company exceeds such maximum amount, the additional expense is to be paid by the city, or the railroad. If the railroad commission orders the elimination, one-quarter of the entire expense is to be apportioned between the county or counties in which the grade crossing exists, and three-quarters by the railroad. This, however, does not apply to cities of more than 20,000, nor to cities or incorporated towns.

(Burns' Anno. Stats. of 1908, Vol. 3, Sec. 8864 and following.

Laws of 1913, Chap. 182.

Laws of 1915, Chap. 75.)

Iowa.

Board of Railroad Commissioners may order the alteration, relocation or vacation of a highway where the same crosses a railroad; in such event the portion of expense borne by the municipal authority is to be considered as held in trust by the railroad company receiving the same and cannot be included as a part of the value upon which the railroad is entitled to receive a return. Cities of 7,000 or over may require railroads to construct and maintain viaducts, provided the railroad commissioners determine the same to be necessary for public safety and convenience, but if not more than one viaduct is required in any one year property damage is to be paid by the city, ordinary repairs to the viaduct or approaches are divided between the city and the railroad.

(Code of 1915, p. 174, Sec. 2017.)

Kansas.

Cities of the first and second class may require railroads to construct and maintain viaducts or tunnels, "as may be deemed necessary for the convenience, safety or protection of the public." On county roads the cost of eliminating crossings is to be divided between the company and the township or county "in a fair and equitable proportion"—to be determined by the State Highway Commission.

(Laws of 1913, Chap. 106.

Laws of 1917, Chap. 264.)

Kentucky.

No legislation.

Louisiana.

No legislation.

Maine.

The Public Utilities Commission apportions the expenses and damages incidental to elimination of crossings between the state, the town in which the crossing is located, and the railroad, and shall order 25 per cent. to be paid by the state, 10 per cent. by the town and the remainder by the railroad. It is provided that the commission shall not make any order upon any petition until they are satisfied by investigation, or otherwise, that the *financial condition of the corporation owning or operating the railroad will enable said corporation to comply with such order*, and that the probable benefit to the public will warrant said order and the probable expense resulting therefrom, and that the order can be complied with, without exceeding the state appropriation, which is limited to \$15,000 in any one year. Where the street railway has a right-of-way at such crossing, the commission shall apportion to it an equitable share of the damage and expense of alteration and the balance shall be apportioned as provided above.

(Laws of 1915, Chap. 325.

Rev. Stats., Chap. 24, p. 409.

Laws of 1917, Chap. 38.)

Massachusetts.

A commission appointed by the Superior Court, apportions the work to be done by the railroads, and the city or town. The railroad is to pay 65 per cent. of the total expense. If there is a street railway at the point, it pays 15 per cent. and the remainder is divided between the commonwealth and city or town, but not more than 10 per cent. is assessed to the city or town. If the amount assessed to the city or town is less than 10 per cent., the difference between the assessment and 10 per cent. of

the total cost is to be paid by the railroad. If the crossing was established after June 21, 1890, no part of the expense shall be charged to the commonwealth, and such unapportionable part shall be apportioned by the commission between the railroad, street railway, the city or town. There is a provision for the division of the costs of maintenance between all parties in interest.

(Laws of 1902, Chap. 111.

Laws of 1905, Chap. 408.

Laws of 1906, Chap. 463.

Laws of 1914, Chap. 722.)

Michigan.

The Railroad Commission and the state highway commissioner shall apportion the expense between the railroad, state, county, good-roads district or town. The state's portion is not to exceed 25 per cent. Cities, towns, counties and other political subdivision of the state may agree with railroad companies for the elimination of crossings. If no agreement can be reached, then the Board of Railroad and Street Crossings may determine the portion to be paid by the railroads, city, county or township. There is a provision for the maintenance of such crossings to be paid by all parties in interest, according to the special circumstances.

(Compiled Laws of 1915, Chap. 87.)

Minnesota.

No legislation.

Mississippi.

The railroad company is required to make proper grades in the highway when same is raised or lowered;

and must also erect and maintain all bridges on the highway. There is no provision for compulsory elimination of crossings.

(Code of 1906, p. 1115, Sec. 4053.)

Missouri.

No legislation.

Montana

No legislation.

Nebraska.

No legislation.

Nevada.

The Railroad Commission has power to order repairs or reconstruction of property, including buildings, tracks and equipment. This does not in terms extend to the abolition of grade crossings.

(Rev. Laws of 1912, Sec. 4555.)

New Hampshire.

The Board of Railroad Commissioners has power upon petition of the railroad to authorize the highway to be raised or lowered; a town may by vote require the railroad to raise or lower the highway, but the railroad may apply to the board for determination of the question whether the change should be made and the board may then make such order as it adjudges "the public good requires."

(Laws of 1901, Chap. 159.)

New Mexico.

No legislation.

New York.

The Public Service Commission is authorized to eliminate grade crossings on petition of any city, village or town; when the change is made on such petition, the railroad pays 50 per cent. of the expense, the municipality 25 per cent. and the state 25 per cent., except where the crossing is in a village of not more than 1,200 inhabitants. Where the crossing is on a state or county highway 50 per cent. is paid by the railroad and the remaining 50 per cent. by the state, or by the state, county and town in the proportion in which the cost of construction of the highway was paid.

(Laws of 1915, Chap. 240, Sec. 94.)

North Carolina.

The Corporation Commission has power to require the raising or lowering of tracks or highways and to designate who shall pay for the same and to apportion the costs among the railroads and the municipalities.

(Laws of 1907, Chap. 469.

Laws of 1911, Chap. 197.

Laws of 1913, Ex. Ses., Chap. 63.)

North Dakota.

No legislation.

Ohio.

A municipality or county may contract with a railroad to abolish grade crossings, and apportion the costs between them. The costs, including that of land or prop-

erty purchased or appropriated and the payment of the damages to abutting property shall be apportioned so that the railroad shall pay not less than 65 per cent. and the municipality or county not more than 35 per cent.; the apportionment is subject to this limitation only. A municipal corporation may require a railroad to raise or lower its tracks. The costs thereof shall be borne 35 per cent. by the municipality and 65 per cent. by the railroad. A street railway, where its tracks are at any such crossing, may be required to bear a reasonable portion of the costs assumed by the municipality, but not more than one-half thereof.

(Page & Adams General Code, Sec. 8863.)

Oklahoma.

There is no legislation on the subject, but in the constitution of the state it is provided that the Corporation Commission should have the duty of supervising, regulating and controlling transportation companies.

(Sec. 18 of Article IX.)

Oregon.

The Public Service Commission has power to abolish grade crossings and to prescribe the terms and the proportion of the expense to be divided between the railroad and the public authority in interest.

(Laws of 1917, Chap. 228.)

Pennsylvania.

The Court of Quarter Sessions may vacate a highway which crosses a railroad and declare any undergrade or subway or overgrade bridge, whether constructed by the railroad or others, to be the public way. Munic-

ipalities may enter into contracts for the alteration of crossings and the erection of bridges, which provides for the apportionment of the expense within certain fixed limits.

(Purdon's Digest, Vol. 5, p. 5893, Sec. 59.

Purdon's Digest, Vol. 4, p. 3871, Sec. 131.

Supplement of 1912, p. 560, Sec. 13.)

The Public Service Commission has power upon its own motion or complaint, to order crossings to be re-located or abolished "upon just and reasonable terms and conditions"; in prescribing same and the proportionate contributions to the expense, the commission takes into account the relative importance to the public of the services rendered by the company, as well as the priority of location.

(Public Service Commission Law—Laws of 1913, p. 1391.)

Rhode Island.

The town council may apply to the railroad commissioner to decide whether a request for change of grade is reasonable, neither party may appeal to the court from his decision; the expense is borne by the railroad and the town in such proportion as the court may decide.

(General Laws of 1896, Chap. 187, p. 605.)

In certain cities grade crossings were abolished by special commission—the expense being apportioned on the basis of 65 per cent. to the railroad company and 17½ per cent. to each of the two cities in question.

(Laws of 1912, Chap. 896.)

South Carolina.

The county supervisors may point out the location of crossings considered to be unsafe and may indicate how

and in what manner they should be constructed, and may require such construction within 60 days, and the railroad is then authorized to raise or lower the highway; under a decree from the county commissioners. There is no express provision for division of the expense between the railroad and the municipal authorities.

(Code of Laws, Vol. 1, Sec. 3232.)

South Dakota.

The municipal or county authorities may declare by ordinance when any viaduct is deemed necessary for the safety and protection of the public. Property damage is to be paid by the municipality and may be assessed against the property benefited. There is no express provision for apportionment of cost between the railroad and the municipality.

(Laws of 1909, Chap. 126.)

Tennessee.

No legislation.

Texas.

No legislation.

Utah.

The city council has power to provide for or change the location, grade or crossing of any railroad. There is no expense provision for the elimination of grade crossings or the division of the cost thereof.

(Laws of 1911, Chap. 120, p. 205.)

Vermont.

The Public Service Commission may change grades on petition of the municipality or of the railroad. The

state is to pay not more than 25 per cent., the town not more than 10 per cent., and the railroad the remainder. If the highway was constructed since the railroad, the state's proportion is the same, but the town is to pay not more than 15 per cent., and the railroad the remainder. Where there is a trolley company occupying any part of the crossing, it may be assessed such per cent. of the total cost as is according to the benefits conferred. Railroads are required to eliminate one crossing for every eighty miles. Should they not do so, the board shall, if in its opinion the *financial condition of the corporation will warrant*, order the elimination thereof. In such case the state pays 20 per cent. of the cost.

(Public Stats. of 1906, Chap. 194, Sec. 4544.

Public Acts of 1908, Chap. 108.

Gen. Stats. of 1917, Sec. 5294.)

By a later statute a railroad is required to spend \$75 per mile of main line per annum.

Laws of 1917, Chap. 156.)

Virginia.

No legislation.

Washington.

The Railroad Commission may require changes of grade on petition of municipality or county; the cost is apportioned between the railroad and the municipality or county, or between the railroad and the state if the highway is a state highway; this apportionment is made "as justice may require, regard being had for the benefits accruing to the railroad, municipality, county or state, by reason of the improvement."

(Laws of 1913, Chap. 30.

Remington's Code of 1915, Sec. 8733.)

West Virginia.

At the time of the making of the order under review (1915), this state had no legislation on the subject. By a recent statute, however, the County Circuit Court is authorized to appoint a commission to determine whether a highway which crosses a railroad track is unsafe for travel and whether an alteration is necessary, and if the commission orders such alteration and the railroad refuses to comply with the order, the court has the power to direct that the highway be altered and that the expense thereof be recovered from the railroad.

(Code of 1918, Sec. 1940, p. 393.)

Wisconsin.

The Railroad Commission has power on petition of municipality authorities or of the railroad to order alteration in crossings and is authorized to fix the proportion of the cost to be paid by the railroad company and the municipality.

(Laws of 1909, p. 722.

Laws of 1911, Chap. 191; Statutes of 1917, Sec. 1297.)

Wyoming.

The Public Service Commission has power to apportion the cost of construction of highway crossings between public utility companies and municipalities. There is no provision for compulsory elimination.

(Laws of 1915, Chap. 146.)

FILED

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JAMES D. MAH

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 35.

PASSAIC WATER COMPANY,

Plaintiff in Error,

vs.

BOARD OF PUBLIC UTILITY COMMISSION-
ERS, CITY OF PATERSON and BOARD
OF FINANCE of said City,

Defendants in Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

Brief in Behalf of Plaintiff in Error.

HUMPHREYS & SUMNER,
Attorneys of Plaintiff in Error.

GEORGE S. HOBART,
Of Counsel.

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Defendants-in-Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

BRIEF IN BEHALF OF PLAINTIFF-IN-ERROR.

(1.)

STATEMENT OF THE CASE.

This writ brings up for review a judgment of the New Jersey Court of Errors and Appeals entered March 5, 1918, affirming a judgment of the New Jersey Supreme Court dated June 28, 1916, which judgment affirmed an order of the Board of Public Utility Commissioners dated April 20, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad." The order of the Board of Public Utility Commissioners, which was thus affirmed, required the Erie Railroad Company to alter certain grade crossings accord-

ing to a plan annexed to said order and made part thereof, and required certain other of the parties to the proceeding, including the plaintiff in error, to make certain changes in their property and construction, and to comply with all of the requirements of said order.

That portion of the order of the Commissioners relating to the plaintiff in error reads as follows:

"Any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it may be necessary to change or remove to carry said plan and this order into effect, shall change or remove the same, according to said plan."

"And it is further ordered, that the said Erie Railroad Company and the City of Paterson and Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company and Western Union Telegraph Company and all other parties to this proceeding and each and every of them proceed with due diligence to the execution of this order, and comply with all the requirements thereof, and the duties imposed upon them thereby, and by the said act under which this order is made, and the laws of this state, and that to that end they and each of them exercise in good faith all of the powers conferred upon them and each or any of them by the laws of this state" (p. 1790, l. 37 to 1791, l. 17).

The effect of the order of the Commissioners upon the Erie Railroad Company was substantially to require it to reconstruct its railroad by elevating it above the level of the fifteen crossings over which it passes (p. 2263, ll. 28-38) from Madison avenue to River street in the city of Paterson, a distance of approximately ten thousand

eight hundred feet (10,800) or a little over two miles (p. 2264, ll. 29-32).

The plaintiff in error is financially affected by this order, because if it is upheld it will be required to incur the expense involved in moving its water pipes.

(2)

SPECIFICATION OF ERRORS.

The Court of Errors and Appeals of the State of New Jersey erred in holding that the order of the Board of Public Utility Commissioners of said state, dated April 30th, 1915, and the statute of said state whereon the same is based, did not violate the rights of the plaintiff-in-error, secured to it by the Constitution of the United States and the several amendments thereto; and in not holding that the said order or that the said statute did violate such rights, or some one or more of them, in the following particulars:

I.

Because the order under review and the statute upon which the same is based, are an unreasonable exercise of the police power; they are therefore invalid as to the railroad company and if invalid as to the railroad company, they must be set aside not only as to it but also as to the water company.

II.

Because said order and statute take the property of the plaintiff-in-error for public use, without compensation, and also take its property for the private benefit of other companies, and thereby deprive the plaintiff-in-error of

its property without due process of law, contrary to the provisions of the Fourteenth Amendment.

III.

Because said order and statute deny the plaintiff-in-error the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment.

(3)

BRIEF OF THE ARGUMENT.

I.

The order under review and the statute upon which the same is based, are an unreasonable exercise of the police power; they are therefore invalid as to the railroad company, and if invalid as to the railroad company, they must be set aside not only as to it but also as to the water company.

The railroad company runs some of its trains through the city of Paterson, in accordance with the provisions of two leases, one from Paterson and Hudson River Railroad Company and one from Paterson and Ramapo Railroad Company (see petition of city, p. 1636; answer of Erie Railroad Co., p. 1664; answer of Paterson and Hudson River Railroad Co., p. 1679; answer of Paterson and Ramapo Railroad Co., p. 1684; opinion of New Jersey Supreme Court, p. 2275, l. 39).

The two lessor companies organized under special charters (Laws of New Jersey 1831, p. 24; Laws of New Jersey 1841, p. 97). They were leased by two separate leases, dated September 9, 1852, to the "Union Railroad Co.," and these leases were afterwards validated by the

legislature of the State of New Jersey on March 14, 1853 (Laws of 1853, p. 480; p. 2276 of Record, II 13-21).

It is not necessary in this brief to enter into an extended argument relating to the powers of the state to compel a railroad company to protect grade crossings as an incident to the exercise of the police power. The argument will be limited to the proposition that said order is *unreasonable*, and therefore beyond the scope of the police power, and we rely upon the rule established by the cases *that the power to require an owner of property to make alterations is limited by the requirement that such alterations shall be reasonable in nature, to be determined not only by the nature and extent of the alterations required to be made, but by the expense entailed in relation to the value and nature of the property involved in the proposed alterations.*

The rule referred to is laid down in the case of *Health Department of the State of New York v. The Rector, etc. of Trinity Church*, 145 N. Y., pp. 32-40 (cited in the opinion of the New Jersey Supreme Court in the present case, p. 2280, l. 22).

Quotation per Peckham, *J.*

"As to the other objection, no one would contend that the amount of the expenditure which an act of this kind may cause, whether with or without a hearing, is within the absolute discretion of the legislature. It cannot be claimed that it would have the right, even under the exercise of the police power, to command the doing of some act by the owner of property and for the purpose of carrying out some provision of law, which act could only be performed by the expenditure of a large and unreasonable amount of money on the part of the owner. If such excessive demand were made the act would without doubt violate the constitutional rights of

the individual. The exaction must not alone be reasonable, when compared with the amount of the work or the character of the improvement demanded. The improvement or work must in itself be a reasonable, proper and fair exaction when considered with reference to the object to be attained. If the expense to the individual under such circumstances would amount to a very large and unreasonable sum, that fact would be a most material one in deciding whether the method or means adopted for the attainment of the main object were or were not an unreasonable demand upon the individual for the benefit of the public. Of this the courts must, within proper limits, be the judges. We may own our property absolutely and yet it is subject to the proper exercise of the police power. We have surrendered to that extent our right to its unrestricted use. It must be so used as not improperly to cause harm to our neighbor, including in that description the public generally. There are sometimes necessary expenses which inevitably grow out of the use to which we may put our property and which we must incur, either voluntarily or else under the direction of the legislature, in order that the general health, safety or welfare may be conserved. The legislature, in the exercise of this power, may direct that certain improvements shall be made in existing houses at the owners' expense, so that the health and safety of the occupants and of the public through them may be guarded. These exactions must be regarded as legal so long as they bear equally upon all members of the same class and their cost does not exceed what may be termed one of the conditions upon which individual property is held. It must not be an unreasonable exaction either with reference to its nature or its cost. Within this reasonable restriction the power of the state may, by police regulations, so direct the use and enjoyment of the property of the citizen that it shall not prove pernicious to his neighbors or to

the public generally. The difference between what is and what is not reasonable, frequently constitutes the dividing line between a valid and void enactment by the legislature in the exercising of its police power. In commenting on the difference of the degree in any given case which would render an act valid or otherwise, Mr. Justice Holmes, in *Rideout vs. Knox*, speaking for the Supreme Court of Massachusetts said: 'It may be said that the difference is only one of degree; most differences are when nicely analyzed. At any rate, difference of degree is one of the distinctions by which the right of the legislature to exercise police power is determined. Some small limitations of previously existing rights incident to property may be imposed for the sake of preventing a manifest evil; larger ones could not be except by the exercise of the right of eminent domain.' (148 Mass., 368, 372. See also *Miller vs. Horton*, 152 *id.* 540, at 547.) The case of *Stuart vs. Palmer* (74 N. Y., 183) is an example of the exercise of the taxing power of the state and other considerations obtain in such cases." * * * p. 47. "We do not think that the cost of making the improvements called for by this act exceeds the limits which have been defined, assuming the amount thereof which the defendant offered to prove."

In that case the owner of certain dwelling houses was required to install plumbing fixtures to supply running water so as to comply with the tenement house law at a certain expense. Whether the expense to the property owner under any given circumstances should be regarded as so large as to be unreasonable would seem to depend upon the nature of the property and its value and the public necessity in each case. In the case cited the Court determined that the expense for installing running water into a dwelling house occupied by numerous tenants and classified as a tenement house under the state law was not

so large as to be unreasonable in view of the character of the property, but it seems clearly to follow that an expense anywhere nearly approximating the value of the property to be altered would have been held to have been so large as to be unreasonable within the rule laid down, and that an order requiring the owner substantially to rebuild his property at an expense equal to its original value would also be regarded within the same category.

In Tiedman on State and Federal Control Over Persons and Property, Vol. 2, p. 988, the rule is stated:

"It is a judicial question whether a particular regulation is a reasonable exercise of police power.

"The public necessity of the exercise of the police power in any case is a matter addressed to the discretion of the legislature; but whether a given regulation is a reasonable restriction upon personal rights is a judicial question."

See also *Helena v. Dwyer*, 64 Ark., 424.

Quotation, p. 425:

"The police power of the state is very broad and comprehensive and can be exercised to promote the health, comfort, safety and welfare of society. Its limits have not been definitely defined. It is not, however, without its limitations. *In re Jacobs*, 98 N. Y., 110, the Court said, 'If this were otherwise, the power of the Legislature would be practically without limitation. In the assumed exercise of the police power in the interest of the health the welfare or the safety of the public, every right of the citizen might be invaded and every constitutional barrier swept away. Generally it is for the legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety, and while its measures are calculated, intended, convenient and appropriate to accomplish these ends, the exercise of its discre-

tion is not subject to review by the courts. But they must have some relation to those ends. Under the mere guise of police regulation personal rights and private property cannot be arbitrarily invaded and the determination of the legislature is not final on conclusive."

The great difficulty, of course, is to apply to a particular case the rule stated in the authorities above cited that the expenditure required to comply with the regulation under the police power shall be a reasonable amount relatively to the nature of the property, its value and the nature of its use.

We submit to the Court the following considerations concerning the present case:

The charter of Paterson and Hudson River Railroad Co., one of the two lessor companies, provided that its capital should be two hundred and fifty thousand dollars (\$250,000) with authority to increase it to five hundred thousand dollars (\$500,000) (P. L. 1831, p. 24, section 2). By a subsequent act approved March 3rd, 1837 (P. L. 1837, p. 292) the capital was authorized to be increased the further sum of two hundred thousand dollars (\$200,000), which would bring the total authorized capital of the road to seven hundred thousand dollars (\$700,000).

The charter of Paterson and Ramapo Railroad Company fixed its capital at four hundred thousand dollars (\$400,000) (P. L. 1841, p. 97).

The lines of these two roads, which join in the city of Paterson, form a single continuous line extending from the New Jersey state line to the Hudson river opposite the city of New York, a total length for the two lines of approximately thirty miles, they being of about equal length.

Assuming that the full amount of authorized stock has been issued, the entire property of these two lessor railroads would be capitalized at about one million one hundred thousand dollars (\$1,100,000), an average of about thirty-seven thousand dollars (\$37,000) per mile of road. These two roads are leased to the Erie Railroad Company. The leases provide that at their termination any erections or improvements upon the demised property made by the lessee shall be paid for by the lessors (p. 2276, l. 37 *et seq.*). It is no doubt possible that considerable sums have been spent upon these leased properties by the lessees so that their total value may now exceed the total sum at which they are actually capitalized by the owners, as shown above. There is no evidence in the case to indicate that the actual present value of the roadbed included in the leases (aside from the question of the value of the right of way) exceeds the average of thirty-seven thousand dollars (\$37,000) per mile. Applying that average value to the two miles of roadbed which the present order of the Board of Public Utility Commissioners requires to be rebuilt, the result is that the Erie Railroad Company is ordered to expend upon property which it has leased worth about seventy-four thousand dollars (\$74,000) the sum of nearly three million dollars (\$3,000,000), which amount some day the owners of the property may be compelled to repay to it under the terms of the leases. The result of this requirement made in an attempted exercise of the police power of the state is that the Erie Railroad Company, in order that it may enjoy its property rights under the two leases, is to be compelled to expend in rebuilding a small portion of the leased property a sum nearly equal to forty (40) times the value of the property to be rebuilt.

If this result is a reasonable one, and is within the limitation of the police power as stated in the authorities cited, it would seem that so far as the rule is to be actually applied in any particular case it may as well be declared at once that there is no limitation whatever beyond the judgment and discretion of these boards in regard to their powers to compel railroad corporations to expend their funds to rebuild their road so as to eliminate grade crossings.

The unreasonableness of the statute and the order in question is rendered still more conspicuous when they are applied, as they are, in the case at bar, not to one or two single grade crossings in a city, but to nearly every grade crossing in a city involving an enormous expense to the operating company large enough to cause it to become bankrupt.

This argument is developed more at length in the brief filed in behalf of the Erie Railroad Company and to save repetition we refer to Point X thereof.

For these reasons, we submit that the order under review and the statute whereon the same is based are an unreasonable exercise of the police power. If, on these or any other grounds, the order is invalid as to the railroad company, it follows that the order is also invalid as to this plaintiff-in-error, for the obvious reason that there would be no occasion for the water company to incur the expense of changing its water pipes unless the crossings were changed and the grades of the several streets were altered in the manner set forth upon the plan attached to and forming part of the order under review.

II.

The order and statute take the property of the plaintiff-in-error for public use, without compensation, and also take its property for the private benefit of other companies, and thereby deprive the plaintiff-in-error of its property without due process of law, contrary to the provisions of the Fourteenth Amendment.

But even though the order and statute should be found to be valid as against the objections urged by the railroad company, it does not necessarily follow that the provisions of the statute and order requiring the water company to pay the expense of moving or changing the grade or location of its property is also valid.

Under the charter of the water company, it has certain rights to lay pipes and hydrants. Section 9 of its charter provides as follows:

"9. And be it enacted. That the said company be, and they are hereby fully authorized and empowered to lay their pipes beneath such public roads, streets, avenues, and alleys as they may deem necessary for the purpose aforesaid, free of all charge, to be made by any person or persons, or body politic whatsoever, for said privilege, and also such hydrants at the crossings or intersections of the said streets and alleys; provided, that the said pipes shall be laid at least two feet below the surface of the same, and shall not in anywise unnecessarily obstruct or interfere with public travel, or damage public or private property."

(See Act of the Legislature of the State of New Jersey, entitled "An Act to Incorporate the Passaic Water Company," laws of 1849, page 47.)

It further appears from undisputed testimony offered in behalf of the city of Paterson that this company has

water pipes, varying in size from 6" to 24" at nearly all of the streets affected by the order under review. See Vol. I, p. 14, l. 10; p. 19, l. 18; p. 23, l. 40; p. 29, l. 15; p. 32, l. 20; p. 34, l. 5; p. 35, l. 40; p. 37, l. 25; p. 39, l. 1; p. 40, l. 30; p. 41, l. 40; p. 44, l. 10. See also maps of various crossings in question, Vol. VI., Exhibits P. 1 A to P. 1 N.

Under the statute and order, the necessary changes in pipes and hydrants involved in the change in grade of the streets and the re-location thereof must be made by the water company at its own expense. Of course, we do not question the right of the city to change the grade of the streets, and when such changes are made, probably the water company must make its property conform thereto. *Jersey City v. City of Hudson*, 13 N. J. Eq. 420. There is no evidence, however, that the city of Paterson has passed any ordinance or taken any other proceedings under the City Charter requiring changes to be made in the grades of the streets wherein the railroad is directed to eliminate the crossings.

Moreover, the changes thus required to be made at the sole expense of the water company are of no benefit or advantage whatever to it. There is no evidence in the present case that any of the pipes or other property of the water company "unnecessarily obstruct or interfere with the public travel or damage public or private property;" there is no evidence to show that any of the changes required in the water pipes or other property will improve the service either for the benefit of the public or the water company; there is no pretense that the water company has in any way failed to comply strictly with the provisions of its charter, but, notwithstanding the lack of evidence on these points, the water company is required to share in the great expense of changes in the

grades of the streets and of the railroad tracks, which, to some extent may be said to benefit the property of other companies, to wit, the Erie Railroad Company, Paterson & Hudson River Railroad Company, Paterson & Ramapo Railroad Company and Public Service Railway Company. The share which the water company is required to contribute to the benefit of these other companies is probably without any corresponding benefit or compensating advantage to the water company. Its property is, therefore, taken for the private benefit of these other companies, to the extent that it is required to make a contribution to the general expense of the elimination of the crossings, and thereby the water company is deprived of its property without due process of law.

III.

The order of the Board of Public Utility Commissioners and the statute upon which the same was based deny the plaintiff-in-error the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment.

We submit that the statute denies the plaintiff-in-error the equal protection of the laws, particularly in this respect, viz., that it places a street railway, using a crossing, upon a different footing in regard to the bearing of the expense, from that on which it places other public service corporations, whose property or constructions lie underneath such crossing.

If the statute can lawfully impose upon the Passaic Water Company the obligation to bear all the expense of removing its constructions, where such removal is necessary to eliminate the crossing, what possible reason is there for putting a street railway, the removal of whose

constructions is also necessary to eliminate the crossing, upon an absolutely different footing?

Both the railway company and the water company are public utility corporations. Both possess the right under their respective charters to lay their constructions, the one under and the other over the crossing. Conceding that such right is subordinate to the public right of way, why should the water company pay the whole expense of changing the location of its pipes, and the railway company be treated on a totally different principle, not being required to pay the total expense of removing its tracks and relocating them, but being required to pay not exceeding 10 per cent. of the total expense?

If these two public utility corporations, the street railway company and the water company, are entitled to the equal protection of the law, and should consequently be dealt with on the same basis in apportioning the cost of eliminating the grade crossing between them, and if the legislature had the right to impose upon the water company the entire cost of removing its pipes, then the legislature, to insure equality, should have cast upon the street railway the entire cost of removing its street railway apparatus, and adapting it to the new grade. That cost could very readily be ascertained, and was, in fact, ascertained in the case at bar, the details of the cost of changing the tracks, wires and other property of the street railway company being summarized in Exhibit PSR-1 at pages 1394 to 1396, and the details being given in PSR-2, at pages 1397 *et seq.* In any given case it would be only necessary to first find the cost of eliminating the grade crossing had no street railway been there, and then find the cost of eliminating the grade crossing with the street railway there, and the difference would be the cost consequent upon the existence of the street railway. This

difference might in one case amount to next to nothing; in another case to less than 10 per cent. of the total cost of eliminating the grade crossing, and in still another case to considerably more than 10 per cent. of eliminating the grade crossing. If the grade crossing was eliminated so that the railroad ran over the existing street railway, without disturbing it, there would be very little extra cost due to the existence of the street railway. On the other hand, a condition can well be imagined where at a grade crossing the expense of changing the location of the street railway tracks, etc., might amount to considerably more than 10 per cent. of the total expense of eliminating the grade crossing. So that the provision of the statute casting the whole expense of removing its pipes on the water company, and an indeterminate sum not to exceed 10 per cent. of the whole expense of eliminating the grade crossing, upon the street railway, in lieu of the actual expense of changing its tracks, etc., is absolutely incongruous and rests upon no basis of equality or fairness.

The general principle upon which depends the question of whether a person has been deprived of the equal protection of the laws, has been summarized by this court in *Southern R. Co. v. Greene*, 216 U. S. 400, as follows:

"The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the state of Alabama, within the meaning of the 14th Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation."

In the same case, the Court also laid down the rule by which the legality of the classification of persons might be determined, using the following language:

"While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification." (Citing cases.)

If we apply this principle to the present case it will be observed that the plaintiff-in-error does not enjoy the same rights as belong to, nor does it bear the same burdens as are imposed upon, other persons in a like situation. We, therefore, respectfully submit that the distinction made by the statute and order between the plaintiff-in-error and the Public Service Railway Company has no reasonable and just relation to the classification and that the attempt to compel one public utility such as this plaintiff-in-error, to pay the entire expense of moving or changing its property, while requiring another public utility to pay an amount not exceeding 10% (and not even requiring such proportion of payment to be made by such other public utility unless the board sees fit to so order), is arbitrary and "without any substantial basis." The order and statute, therefore, deny to the plaintiff-in-error the equal protection of the laws, contrary to the Fourteenth Amendment.

IV.

CONCLUSION.

Insofar as the order under review affects the rights and property of the plaintiff-in-error, it is invalid and, to that extent, should be set aside. But, under the construction of the Public Utility Act of the State of New Jersey, as adopted by the courts of that state, when any part of an order made by the board pursuant to the statute is found to be invalid, then the entire order must be set aside. To save repetition on this point, reference is made to the authorities under Point XI of the brief filed by Erie Railroad Company. The result, therefore, is that if the Court finds the part of the order which affects this plaintiff-in-error to be invalid, the entire order must be set aside.

The judgment of the Supreme Court of the State of New Jersey affirming said order, and the judgment of the Court of Errors and Appeals of said state, affirming said judgment, should, therefore, be reversed with directions to the state courts to set aside the entire order.

HUMPHREYS & SUMNER,
Attorneys of Plaintiff-in-Error.

GEORGE S. HOBART,
Of Counsel.

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CLERK.

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 36.

WESTERN UNION TELEGRAPH COMPANY,
Plaintiff in Error,

vs.

BOARD OF PUBLIC UTILITY COMMISSION-
ERS, CITY OF PATERSON and BOARD
OF FINANCE of said City,
Defendants in Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

Brief in Behalf of Plaintiff in Error.

COLLINS & CORBIN,
Attorneys of Plaintiff in Error.

GEORGE S. HOBART,
Of Counsel.

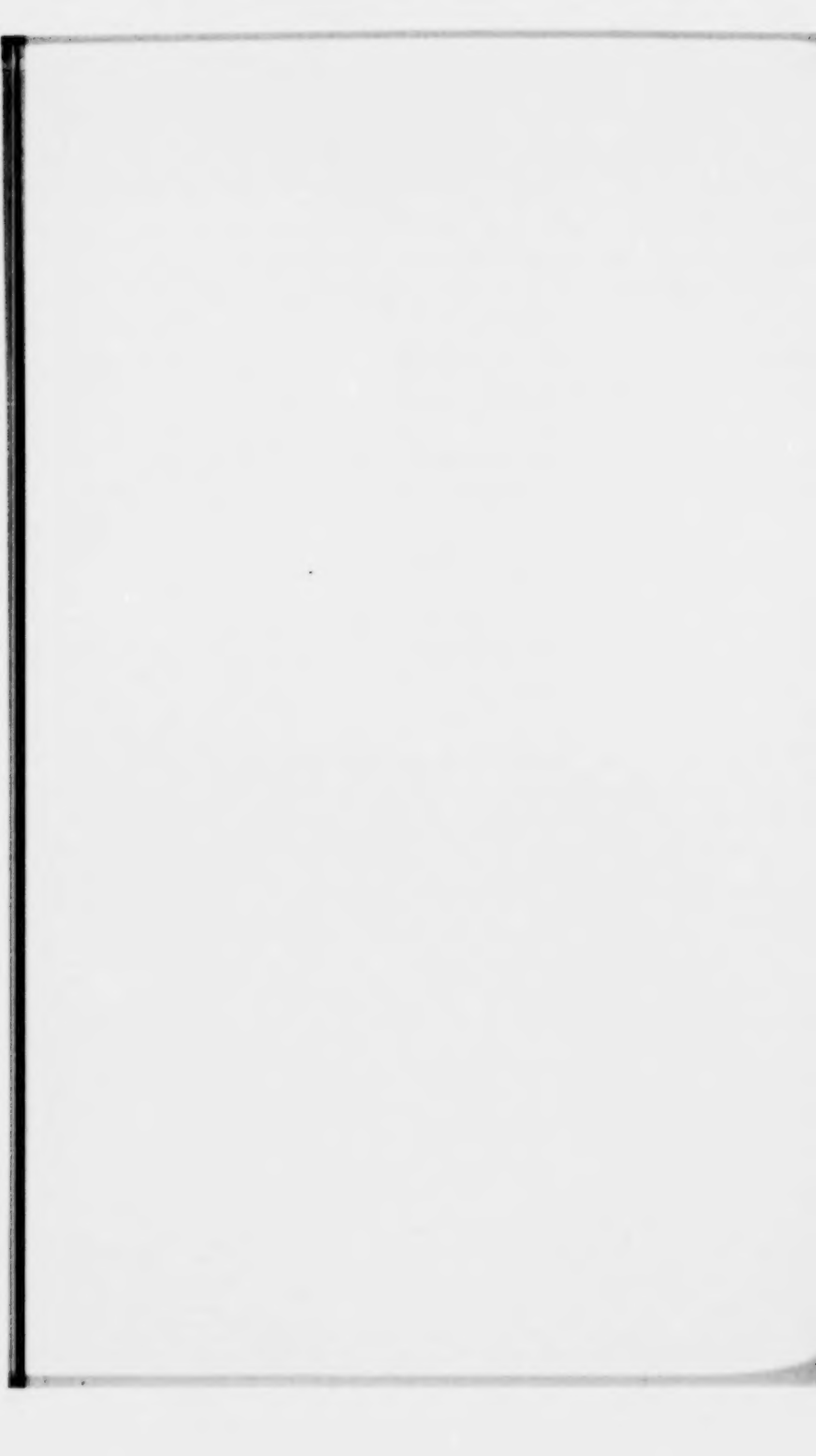
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OCTOBER TERM, 1920.

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WESTERN UNION TELEGRAPH COMPANY,
Plaintiff-in-Error.

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BOARD OF PUBLIC UTILITY COMMISSION-
ERS, CITY OF PATERSON, and BOARD OF
FINANCE OF SAID CITY,
Defendants-in-Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS
OF THE STATE OF NEW JERSEY.

BRIEF IN BEHALF OF PLAINTIFF-IN-ERROR.

(1)

STATEMENT OF THE CASE.

The writ of error in this case was sued out to review a judgment of the Court of Errors and Appeals of the State of New Jersey, affirming a judgment of the Supreme Court of said state, which had sustained an order of the Board of Public Utility Commissioners of said state, dated April 20th, 1915, whereby said board directed the plaintiff-in-error to "change or remove" its property according to a certain plan and profile attached to an order for the elimination of certain highway grade crossings in the city of

Paterson, on the lines of railroad owned by Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company and operated by the Erie Railroad Company.

The Supreme Court of the State of New Jersey allowed the plaintiff-in-error a writ of certiorari to review said order in so far as it affected the property of the plaintiff-in-error, and the proceedings are a part of the case wherein the Erie Railroad Company has also taken a writ of error from the Court of Errors and Appeals to this Court, for the purpose of reviewing said order insofar as it affected said railroad company.

The record in the present case is a part of the record in the case wherein said Erie Railroad Company is the plaintiff-in-error, and has, for convenience, been included as a part of the record in the latter case.

The New Jersey Supreme Court, in a *per curiam* opinion, affirmed the order of the Board of Public Utility Commissioners, saying that the various reasons which were presented to the Court in behalf of this plaintiff in error were "disposed of" in the opinion filed in the Erie Railroad case and needed "no further discussion." (Vol. V, page 2313, 4.)

The judgment of the New Jersey Supreme Court was affirmed, without further opinion, by the Court of Errors and Appeals, by a vote of seven to five. (See 90 N. J. L. 729, 103 Atl. 1055.)

The order of the Board of Public Utility Commissioners, which it is sought to be reviewed, purports to be made under the authority of Chapter 57 of the Laws of 1913 of the State of New Jersey (printed at length in the brief

filed for the Erie Railroad Company). Section 4 of this statute reads as follows:

"4. Where the order of said board shall require changes in, or the removal of the property or constructions of any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe lines or other company or corporation, co-partnership or individual, they shall at their own expense, move or change the grade or location of their property or constructions in conformity with the order of said board. They shall be deemed parties in interest and shall be given notice of hearing and an opportunity to be heard."

The plaintiff-in-error is the owner of several lines of telegraph wires and poles and the appurtenances used in connection therewith at fifteen highway grade crossings in the city of Paterson, the grades of which are directed to be altered by said order of April 20th, 1913.

Insofar as the said order concerns the plaintiff-in-error it provides as follows:

"Any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual whose property or construction it may be necessary to change or remove to carry said plan and this order into effect, shall change or remove the same, according to said plan.

"AND IT IS FURTHER ORDERED, that the said Erie Railroad Company and the city of Paterson, and Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company and Western Union Telegraph Company, and all other parties to this proceeding, and each and every of them proceed with due diligence to the execution of this order, and comply with all of the requirements thereof and the duties

imposed upon them thereby, and by the said act under which this order is made, and the laws of this state, and that to that end, they and each of them exercise in good faith, all of the powers conferred upon them and each or any of them by the laws of this state."

The plaintiff-in-error will urge that this order, insofar as it affects its rights and property, is invalid, and should, therefore be set aside as to it, even though the order may be sustained as against the objections of the railroad company and other plaintiffs-in-error.

(2)

SPECIFICATION OF ERRORS.

The Court of Errors and Appeals of the State of New Jersey erred in holding that the order of the Board of Public Utility Commissioners of said state, dated April 20th, 1915, and the statute of said state whereon the same is based, did not violate the rights of the plaintiff-in-error secured to it by the Constitution of the United States and the several amendments thereto; and in not holding that the said order or that the said statute did violate such rights, or some one or more of them, in the following particulars:

I.

Because said order and statute impose a burden upon the interstate traffic of the plaintiff-in-error, contrary to the provisions of Article I, Section VIII, Paragraph 3, of the Federal Constitution.

II.

Because said order and statute take the property of the plaintiff-in-error for public use, without compensation, and also take its property for the private benefit of other companies, and thereby deprive the plaintiff-in-error of its property without due process of law, contrary to the provisions of the Fourteenth Amendment.

III.

Because said order and statute deny to the plaintiff-in-error the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment.

IV.

Because said order and statute impair the obligation of the contract between the plaintiff-in-error and the Erie Railroad Company, contrary to the provisions of Article I, Section X, Paragraph 1, of the Federal Constitution.

(3)

BRIEF OF THE ARGUMENT.

I.

The order under review and the statute upon which the same is based imposes a burden upon the interstate traffic of the plaintiff-in-error, contrary to the provisions of Article I, Section VIII, Paragraph 3, of the Federal Constitution.

The poles, wires, &c., which the order under review requires the plaintiff-in-error to change at its own expenses, are part of an interstate telegraph system included within

a contract between the plaintiff-in-error and Erie Railroad Company in that part of the United States described in said contract as "lying east of Lake Michigan." (Ex. R. 21, pp. 1062-6.)

The schedule attached to the answer filed by the plaintiff-in-error gives a detailed statement of the poles and wires owned and operated by it along that part of the right of way of the Erie Railroad Company in the city of Paterson which would be affected by the order under review. (Vol. II, pp. 1696-7.)

The following is a description of said poles and wires taken from said schedule.

(1) Madison avenue, line of poles and wires on both sides of track, the line on the north side owned by Erie Railroad Company but leased to and maintained by the Western Union Telegraph Company, carries on top arm five telegraph and two signal wires operated by Erie Railroad Company. On the other arms all wires are signal wires operated by Erie Railroad Company. The line of poles and wires on the south side of tracks is owned and operated by Western Union Telegraph Company and carries two railroad company wires and eight Western Union wires.

(2) Between Newark Jet. and east end of the Paterson station opposite telegraph office the lines are consolidated on the north side. This joint line carries nine Erie Railroad telegraph wires, eighteen Western Union wires, and six Erie Railroad short line signal and telephone wires. The above wires are on six upper arms. The wires on arms below the sixth arm are Erie Railroad automatic signal wires.

(3) Between the east end of Paterson station and a point opposite the Paterson City station of the N. Y., S. & W. R. R. there are seven Erie telegraph wires and fourteen Western Union telegraph wires and a varying number of Erie R. R. short line telephone and signal wires and Public Service Electric light wires; also Erie Railroad automatic signal wires.

(4) Between a point opposite the N. Y., S. & W. R. R. Paterson City station, and Broadway the line is consolidated and carries seven Erie R. R. telegraph wires; seven Western Union telegraph wires; three railroad short line signal wires and two Erie R. R. short line telephone wires, with a varying number of Erie R. R. automatic signal wires.

(5) Between Broadway and River Street station there are two pole lines, one on either side of the tracks. The north side line carries seven Erie R. R. telegraph wires, three Erie R. R. short line signal and two Erie R. R. short line telephone wires on the two upper arms and a varying number of automatic signal wires on the arm below the second crossarm. On the south side there are seven Western Union telegraph wires.

The location of these poles and wires was shown in detail by the testimony of one Veenstra, a witness called on behalf of the city (see that part of his testimony which relates to this subject, beginning at p. 14, l. 30, and continuing at intervals to p. 47).

The Erie Railroad Company offered in evidence a tabulated statement showing the location, number and character of the various wires, and distinguishing between those owned or used by the railroad company and those owned or used by the telegraph company (see Exhibit

R. 13, p. 949; testimony of Mr. Corson, telegraph inspector of the railroad, pp. 235, 6). According to the estimate of the city's engineer, the cost of changing and adapting the poles, signals and wires in order to have them conform to the proposed change of grade, would be \$50,000. (Exhibit P. 55, p. 919.) The estimate of the railroad engineer for this work is \$20,000. (Exhibit R. 101, p. 1306.)

By reference to Exhibit R. 13 (p. 949) it will be seen that the number of telegraph wires and the number of railroad wires is approximately equal. It may therefore be reasonably inferred that the cost imposed upon the telegraph company by the order under review will be about one-half of the total cost. This amount, according to the estimate of the city engineer, would be about \$25,000, and according to the estimate of the railroad engineer, would be about \$10,000. For the purposes of the present discussion, the exact amount thus ordered to be paid by the telegraph company is not important. Its legal rights are invaded whether the cost is to be \$1,000, or \$10,000, or \$25,000, or any other substantial sum.

It is settled that telegraph lines, when extending through different states, are instruments of interstate commerce and that the messages passing over said lines from one state to another constitute a portion of such commerce.

Pensacola Tel. Co. v. Western Union Tel. Co., 96 U. S., 1;

Western Union Tel. Co. v. Texas, 105 U. S., 460;

Western Union Tel. Co. v. Pendleton, 122 U. S., 347;

Western Union Tel. Co. v. James, 162 U. S., 650;

Western Union Tel. Co. v. Kansas, 216 U. S., 1;

Western Union Tel. Co. v. Commercial Milling Co., 218 U. S., 406;

Western Union Tel. Co. v. Crovo, 220 U. S., 364;
Western Union Tel. Co. v. Brown, 234 U. S., 542;
Gardner v. Western Union Tel. Co., 231 Fed. 405.

The question in any particular case, of course, is whether the state statute which is attacked "regulates" interstate commerce, contrary to the provisions of Article One, Section 8 of the Federal Constitution. Some of the cases above cited are illustrations of the application of this principle.

Thus, in *Pensacola Tel. Co. v. Western Union Tel. Co.*, *supra*, it was held that as against the act of Congress of July 24, 1866, entitled, "An act to aid in the construction of telegraph lines, and to secure to the government the use of the same for postal, military and other purposes" (when accepted by the Western Union Telegraph Co.) the statute of the State of Florida of December 11, 1866, which purported to confer exclusive rights upon a telegraph company organized under the laws of that state, was inoperative because it was in conflict with the former act. A bill filed by the Pensacola Company, to enjoin the erection of a telegraph line by the Western Union Company, on account of the alleged exclusive right of the former company to construct such telegraph line, under its charter, along a certain railroad in Florida, was therefore dismissed.

In *Western Union Tel. Co. v. Texas*, *supra*, the State of Texas brought suit to recover the amount of taxes imposed pursuant to state laws requiring every telegraph company doing business in the state to pay a tax of one cent for every full rate message and one-half cent for every message less than full rate. A large portion of the messages were sent to places outside of the state and by

the officers of the United States on public business. The state court entered judgment for the full amount. The U. S. Supreme Court held that the judgment, so far as it included the tax on messages sent out of the state, or for the Government on public use, was erroneous, on the ground that so far as the tax operated on private messages sent out of the state it was a regulation of foreign and interstate commerce and beyond the power of the state; and that as to Government messages, it was a tax on the means employed by the United States to execute its powers.

In *Western Union Tel. Co. v. Pendleton*, *supra*, a statute of the State of Indiana was held to be in violation of the Federal Constitution in so far as it attempted to regulate the delivery of messages to places situated in other states, by imposing a penalty for failure to deliver such messages.

In *Western Union Tel. Co. v. James*, *supra*, a state statute of Georgia, imposing a penalty for failure to deliver a telegram, was held valid in an action brought to recover the penalty by reason of failure to make delivery within the limits of the state. The penalty prescribed by the statute under consideration in that case was \$100 besides damages. In discussing this statute, the Court said:

“Nor is the statute open to the same objections that were regarded as fatal in *Western U. Telg. Co. v. Pendleton*, 122 U. S., 347 (30:1187), 1 Inters. Com. Rep. 306. No attempt is here made to enforce the provisions of the state statute beyond the limits of the state, and no other state could by legislative enactment affect in any degree the duty of the company in relation to the delivery of messages within the limits of the state of Georgia. No confusion therefore could be expected in carrying out within the limits of that state the provisions of

the statute. It is true it provides a penalty for a violation of its terms and permits a recovery of the amount thereof irrespective of the question whether any actual damages have been sustained by the individual who brings the suit; but that is only a matter in aid of the performance of the general duty owed by the company. It is not a regulation of commerce, but a provision which only incidentally affects it. We do not mean to be understood as holding that any state law on this subject would be valid, even in the absence of congressional legislation, if the penalty provided were so grossly excessive that the necessary operation of such legislation would be to impede interstate commerce. Our decision in this case would form no precedent for holding valid such legislation. It might then be urged that legislation of that character was not in aid of commerce, but was of a nature well calculated to harass and to impede it. While the penalty in the present statute is quite ample for a mere neglect to deliver in some cases, we cannot say that it is so unreasonable as to be outside of and beyond the jurisdiction of the state to enact."

In *Western Union Tel. Co. v. Kansas*, *supra*, it was held that the exaction from a foreign telegraph company for the benefit of the permanent school fund, under the authority of a statute of Kansas, of a "charter fee" of a given per cent. of the authorized capital stock as a condition of continuing to do local business within the state, was invalid, for the reason that it was a violation of the interstate commerce clause.

In *Western Union Tel. Co. v. Commercial Milling Co.*, *supra*, it was held that a statute of the State of Michigan fixing the liability of telegraph companies for non-delivery of messages and the damages sustained by the sender was not unconstitutional as a burden on, or a regulation of,

interstate commerce, and that therefore the telegraph company was not entitled to have its damages limited to the amount received by it for the sending of the message if, in fact, the damages exceeded that amount.

In *Western Union Tel. Co. v. Crovo, supra*, a statute of the State of Virginia was held valid, which imposed a penalty for delay within the state in sending a message, even though the message was to a point without the state.

In *Western Union Tel. Co. v. Brown, supra*, it is held that a statute of South Carolina, which made mental anguish caused by the negligent non-delivery of a telegram a cause of action, was an unconstitutional attempt to regulate interstate commerce when the non-delivery of the telegram occurred in the District of Columbia, although the message was sent in South Carolina.

A number of other cases dealing with the question of the power of states to control or impose burdens upon interstate telegraph companies will be found collated in a note in 24 L. R. A., p. 161 and following. The editor of the note thus summarizes the cases:

"The conclusion to be drawn from all the decisions of the Supreme Court of the United States upon the subject seems to be clear that a state cannot impose burdens of any kind whatever upon interstate messages of telegraph or telephone; but that business of such companies, so far it consists of messages of private individuals between points in the state, is subject to state regulation and taxation."

The present order is doubly obnoxious to this principle. In the first place the large cost imposed upon the plaintiff-in-error (varying estimated at from \$10,000 to \$25,000)—not to speak of the inconvenience and delay during the

progress of the work of eliminating the grade crossings—interferes with the plaintiff-in-error's business and operates to "impede interstate commerce," in the language of the *James* case, *supra*. It is in the same category as a "grossly excessive penalty" imposed for failure to deliver telegrams—although in the present instance the interference with interstate commerce is even clearer than in the case of the imposition of a penalty, because here the plaintiff-in-error is obliged to expend a large amount of money not because it has violated any law or in any way defaulted in the performance of its legal duty, but merely because it happens to own and operate telegraph wires along a line of railroad crossings which have come under the ban of the Board of Public Utility Commissioners. Such expenditure on the part of the plaintiff-in-error is more than the payment of a fine or a penalty—it amounts to a spoliation of the plaintiff-in-error and a confiscation of its property for the benefit of other persons and corporations and operates as a direct burden upon the interstate commerce of the plaintiff-in-error.

In the second place, the money required to be expended by the plaintiff-in-error to comply with the order under review is in effect a tax upon it and its interstate commerce. The improvement ordered by the board is attempted to be justified on the theory that it will remove danger to public safety and impediment to public travel on the public streets. It is therefore neither more nor less than an improvement of the public streets. It should therefore be paid for either by assessments for special benefits or by general taxation.

State v. Newark, 27 N. J. L. 185;

State v. Jersey City, 36 N. J. L. 56;

State v. Elizabeth, 37 N. J. L. 330;

Davis v. Newark, 54 N. J. L. 144.

But by Section 4 of Chapter 57, Laws of 1913, and by the order under review, the plaintiff-in-error is required to contribute to the cost of such improvement whatever amount it will cost it to change or remove its property or construction so far as may be necessary to carry the board's order into effect. This payment is an arbitrary imposition on the plaintiff-in-error as one of a number of taxpayers for the cost of the improvement of public street, and therefore operates not only as a burden upon the interstate commerce of the plaintiff-in-error but imposes upon it an unjust and unequal burden of taxation and assessment.

II.

Said order and statute take the property of the plaintiff-in-error for public use, without compensation, and also take its property for the private benefit of other companies, and thereby deprive the plaintiff-in-error of its property without due process of law, contrary to the provisions of the Fourteenth Amendment.

The order under review is not of the slightest benefit or advantage to the plaintiff-in-error. The undisputed evidence shows that all of its wires are now elevated a considerable distance above the present grades of the railroad tracks and of the stations. There is no pretense that any of these wires (or any other property of the plaintiff-in-error) in any way impede public travel or operate to make the street crossings or any of them, dangerous to public safety.

The very nature of the plaintiff-in-error's business is such that it makes little difference to it whether its wires are five feet or ten feet or a hundred feet above the surface

of the ground, except, of course, that they should be high enough to afford sufficient clearance for the railroad or for the highway traffic.

The evidence in the present case shows that the poles and wires are properly constructed for those purposes. But if the grade of the railroad tracks is changed, it will be necessary to reconstruct the poles and wires and other appurtenances in order to adapt them to the changed grade and location of the tracks—the cost thereof varying from \$10,000 to \$25,000, according to the respective estimates.

It may be claimed that the adaptation of the property of the plaintiff-in-error to the changes in the railroad tracks is necessarily incidental to the elimination of the grade crossings. But assuming for the sake of argument that that is the fact, still there is no legal justification for compelling the plaintiff-in-error to make this adaptation at its own expense. It receives no benefit therefrom; on the contrary, it may well be that such changes will be a detriment to the plaintiff-in-error—they are practically certain to operate as a detriment at least during the time when such changes are being made, due to the inconvenience and delay necessarily involved in the making of such changes.

The expense thus imposed upon the plaintiff-in-error cannot be justified under the plea of the police power, as there is no claim that the plaintiff-in-error's property at the present time constitutes a nuisance or that it is necessary to have it reconstructed for the sake of the public health or safety. The statute upon which the order under review is based arbitrarily requires the plaintiff-in-error, at its own expense, to move or change the "grade or location" of its "property or constructions," regardless of

whether such changes are necessary for any of the purposes upon which the exercise of the police power depends. The statute in this respect, we submit, is "arbitrary and capricious" (in the language of the U. S. Supreme Court in the case of *New York & New England R. R. v. Bristol*, 151 U. S. 556).

Such a statute, and the order which purports to have been made in conformity therewith, are, we submit, an unlawful interference with the plaintiff-in-error's property and impose upon the plaintiff-in-error an expense which cannot be justified under the police power.

It may, however, be urged that, in view of the fact that the plaintiff-in-error is a public utility corporation, it cannot claim compensation for the cost of making whatever changes in its property may be necessary in order to have same conform to the changes in the street grades. See *Jersey City v. City of Hudson*, 13 N. J. Eq., 420; *Union Bridge Co. v. United States*, 204 U. S., 364.

So far as concerns that part of the property of the plaintiff-in-error which is within the limits of the streets, this argument might be sound, *provided* the municipality was seeking to change the street grades. But in the present case, the municipality has taken no proceedings for that purpose. If they should hereafter be taken then, of course, the plaintiff-in-error would be entitled to have a hearing thereon so far as the same affect its property and franchise; and unless such hearing be given, an attempt on the part of the municipality to make such changes would operate to deprive the plaintiff-in-error of its property without due process of law. If it be said that the Board of Public Utility Commissioners, by virtue of the authority conferred by Chapter 57, Laws of 1913, stands in the shoes of the municipality with respect to

changes of grades of streets, the answer is that the board has not itself undertaken to change the grades of the streets but has *ordered* the Erie Railroad Company to do so and the latter company is without power to carry out such order.

Furthermore, many of the poles and wires of the plaintiff-in-error are not in public streets at all. The location of the poles at the several highways is indicated on the detail crossing maps of the city (Exhibits P. 1A to 1N). By reference to same, it will be seen that at and near crossings some of the poles are within the limits of the street lines and others are outside of those limits. *Between* the lines of the several crossings the poles are not within the limits of the streets, but are on the right of way of the railroad. The principle in the case of *Jersey City v. City of Hudson, supra*, if applicable at all, therefore applies only to a comparatively small portion of the plaintiff-in-error's property, namely, that which is actually located within the limits of the public streets.

The present order deprives the plaintiff-in-error of its property without due process because made without an opportunity to be heard. It is true that section 4 of the statute provides for notice of hearings, etc., but the same section also provides that where the order of the board requires changes, etc., then the telegraph or other company *shall*, at their own expense, move or change their property, etc. The hearing is therefore a mere sham. The statute prescribes in advance what the duty of the telegraph or other company is to be. It is difficult to imagine what purpose could be served by such a hearing. The rights and duties of the plaintiff-in-error are prejudged. No matter what evidence may be produced at such a hearing, the determination of the board (if the crossings are

to be altered at all under the terms of section 1 of the statute) is inevitably the same so far as concerns the plaintiff-in-error.

In the case of *Landoner v. Denver*, 210 U. S., 373, at p. 386, this Court said:

"A hearing in its very essence demands that he who is entitled to it shall have the right to support his allegations by argument, however brief, and if need be, by proof, however informal."

But what purpose can be served by submitting proof or by making argument if the party whose rights are affected knows in advance that his proof, no matter how strong, and that his argument, no matter how weighty, are addressed to those whose ears are closed by the very statute under which his rights are impaired and his property destroyed. Under such conditions, a "hearing" is a farce and argument becomes mere mockery.

Moreover, the changes which the plaintiff-in-error is ordered to make are not within the terms of the petition upon which the order is founded. This petition originally did not name the plaintiff-in-error as a party in interest, although it purported to describe various wires at each of the several crossings (pp. 1639-1659). The prayer of the petition asked that notice thereof be given to certain named corporations of which the plaintiff-in-error was not one (p. 1661). At the first hearing before the board it appeared that the plaintiff-in-error was interested in some of the wires (p. 52); and thereupon the city was directed to amend its petition by including the plaintiff-in-error a party thereto (p. 96). Such amendment was thereafter filed (p. 663). But even this amendment did not state what changes, if any, were desired in the property of the plaintiff-in-error, it merely alleged as a fact that

some of the overhead wires were owned and operated by the Erie Railroad Company and others by the plaintiff-in-error, and that the number and height of the wires were shown upon the various maps accompanying the petition. The plaintiff-in-error was therefore haled before the Board of Public Utility Commissioners without any information as to what the city desired so far as its property was concerned; and even after a large number of hearings before the board, the plaintiff-in-error is still in the dark as to what the city wants; and even after the order itself has been made by the board, plaintiff-in-error is still without *definite* information as to what must be done by it in order to comply with the order. True, the order says "that any telegraph * * * or other company or corporation shall change or remove its property or construction, "according to said plan" (p. 1790, l. 42), but the plan does not inform the plaintiff-in-error what changes it is required to make in the construction or location of its poles, wires, and other property. If any order at all is sustainable against the plaintiff-in-error, we submit that it is at least entitled to know what changes are desired by the city and what changes are ordered by the board. Unless it receives such information, it is compelled arbitrarily by the order to spend its money to adapt its property so far as necessary to the changed grades of the railroad tracks and streets, without notice as to what changes are desired or ordered and without a hearing as to the propriety or necessity thereof.

Moreover, there is no evidence to show that the relocation and reconstruction of the property of the plaintiff-in-error contemplated by the board's plan and which the plaintiff-in-error is ordered to make "according to said plan" are necessary or appropriate for the elimination of

the grade crossings. The board's scheme for eliminating the crossings can be carried out fully and effectively, so far as appears, without requiring the plaintiff-in-error to make any changes whatever in its property. It might be convenient for the plaintiff-in-error to rearrange its poles and wires when the tracks are elevated, but that, we submit, is a matter which rests entirely in the discretion of the plaintiff-in-error and is of no concern to the board. So long as the plaintiff-in-error is properly equipped to carry out its duties as a public utility corporation, and so long as it does in fact effectively perform such duties, the details of how, when or where the plaintiff-in-error shall change "its property or construction" does not concern the Board of Public Utility Commissioners.

Finally, the property of the plaintiff-in-error is not only taken for public use without compensation, but to the extent that the changes benefit the property of the Erie Railroad Company, Paterson & Hudson River Railroad Company, Paterson & Ramapo Railroad Company and Public Service Railway Company, the order takes its property for the private benefit of said other companies.

The assertion of a right on the part of the legislature to take the property of one citizen and transfer it to another, even for a full compensation, where the public interest is not promoted thereby, is claiming a despotic power, and one inconsistent with every just principle and fundamental maxim of a free government. 15 Cyc. 579, and cases cited.

Aside from the general public who use the several crossings in question and who may be presumed to derive some benefit by the elimination thereof, the other parties interested therein are (a) Erie Railroad Company, the lessee of the right of way, (b) the Paterson & Hudson River Rail-

road Company, and the Paterson & Ramapo Railroad Company, the respective owners in fee of the right of way, and (c) Public Service Railway Company, the operator of the street railway company using three of the several crossings. It cannot be denied that the changes in the railroad tracks, etc., ordered by the Board of Public Utility Commissioners will add to the value of the railroad property and will facilitate the use thereof. The same thing applies in less degree to the Public Service Railway Company, the movement of whose cars across the railroad tracks will be rendered more rapid and convenient. The question of whether such advantages are outweighed by the great cost imposed upon the Erie Railroad Company and Public Service Railway Company is quite another story. But so far as the plaintiff-in-error is concerned, we submit that there is no doubt that certain benefits and advantages will accrue to those companies. The Paterson & Hudson River Railroad Company, and the Paterson & Ramapo Railroad Company, as owners of the improved property, must also be presumed to derive some advantage therefrom. But the plaintiff-in-error is in a different position. By the order under review it is compelled to contribute an amount, the estimates whereof vary from \$10,000 to \$25,000 to the cost of an improvement which is of no advantage to it, but on the contrary benefits the other companies above named. This amounts to a taking of the property of the plaintiff-in-error to the extent of the amount of the contribution forced from it, for the benefit of other companies.

The property of the plaintiff-in-error is therefore taken for the private use and benefit of the above-named companies. This cannot lawfully be done even if the plaintiff-in-error received compensation therefor. 15 Cyc., 578 and cases cited.

III.

The order and the statute deny to the plaintiff-in-error the equal protection of the laws.

Section two of the statute provides that the "entire expense" of the alterations, etc., shall be paid by the railroad, unless a street railway uses the crossing, in which event the board may order not exceeding ten per centum of the expense directly chargeable to the crossing used by the street railway company to be paid by the company operating such street railway.

In the order under review, the board directed the Public Service Railway Company to pay ten per centum of the expense of the alterations, etc., directly chargeable to three of the crossings, to wit: (1) Park avenue and Market street, (2) Broadway, and (3) River street, used by the street railway operated by said company (p. 1792, ll. 1-20).

Section 4 imposes upon the plaintiff-in-error as a telegraph company the entire expense of moving or changing the grade or location of its property or constructions. This section does not in terms refer to a street railway company. True, it uses the expression "or other company or corporation, co-partnership or individual." But section 2 had already dealt with the question of the extent of the obligation of street railways and had limited their burden to an amount not exceeding ten per cent. of the expense "directly" chargeable to the crossing. If section 4 does not apply to street railways, then it follows that the street railway company and the telegraph company are treated on entirely different principles—although they are both public utility corporations and although each has the same rights to use the public streets so far as may be necessary for their respective purposes.

Under this statute and order, the Public Service Railway Company is required to pay not exceeding ten per cent. of the expense directly chargeable to the crossings used by it, and the plaintiff-in-error is required to pay all of the expense of moving or changing its property at all the crossings, for the purpose of conforming with the order.

The general principle upon which depends the question of whether a person has been deprived of the equal protection of the laws has been summarized by this Court in *Southern R. Co. v. Greene*, 216 U. S. 400, as follows:

“The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the State of Alabama, within the meaning of the 14th Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation.”

In the same case, the Court also laid down the rule by which the legality of the classification of persons might be determined, using the following language:

“While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification.”
(Citing cases.)

If we apply this principle to the present case, it will be observed that the plaintiff-in-error does not enjoy the same rights as belong to, nor does it bear the same bur-

dens as are imposed upon, other persons in a like situation. We, therefore, respectfully submit that the distinction made by the statute and order between the plaintiff-in-error and the Public Service Railway Company has no reasonable and just relation to the classification and that the attempt to compel one public utility such as this plaintiff-in-error, to pay the entire expense of moving or changing its property while requiring another public utility to pay an amount not exceeding 10 per cent. (and not even requiring such proportion of payment to be made by such other public utility unless the board sees fit to so order), is arbitrary and "without any substantial basis." The order and statute, therefore, deny to the plaintiff-in-error the equal protection of the laws, contrary to the Fourteenth Amendment.

IV.

The order and the statute impair the obligation of the plaintiff-in-error's contracts with the Erie Railroad Company (Reason 5).

By the agreement between the plaintiff-in-error and Erie Railroad Company, dated September 25, 1907 (Exhibit R. 21, p. 1062), the railroad company leases to the telegraph company the right to maintain along certain railroads (including the railroad where these crossings are to be altered) poles, wires, etc., with the right to erect and maintain additional wires, the right to operate and use all of the poles, wires and other property, and the right to operate and use the said property and to enjoy the returns and profits thereof.

The agreement runs from October 1, 1907, to September 30, 1928. Upon the termination of the agreement the

poles, wires, etc., are to be returned to the railroad company in like good order and repair as when received by the telegraph company.

The railroad company grants to the telegraph company the exclusive right to conduct commercial or public telegraph business on and along the premises covered by the agreement.

The plaintiff-in-error operates its telegraph lines under the Federal statute of 1866. See *Pensacola Tel Co. v. Western Union Tel. Co.*, 96 U. S., 1, 24 L. Ed., 708, where the statute is quoted at length and the powers and duties of the plaintiff-in-error thereunder are discussed.

This contract, taken in connection with the Federal statute, gives the plaintiff-in-error the franchise to operate said telegraph lines during the term of the agreement.

The plaintiff-in-error is, therefore, in the same position as if it had a franchise from the State of New Jersey or from the city of Paterson giving it the right to construct, maintain and operate the telegraph line in and through the city. The necessary effect of the order under review is either that the telegraph lines will be destroyed; or, the plaintiff-in-error, at its own expense, must reconstruct them in conformity with the plan attached to the board's order, making whatever changes may become necessary by reason of the change of grade and reconstruction of the main line railroad tracks and side tracks. In either event, the rights of plaintiff-in-error under its said contract with the Erie Railroad Company, are destroyed or at least substantially impaired; and the order which causes this result and the statute which permits it, are therefore invalid. *Hudson Telephone Co. v. Jersey City*, 49 N. J. L., 303; *Phillipsburg Electric Co. v. Town of Phillipsburg*, 66 N. J. L., 505; *United Electric*

Co. v. Bayonne, 73 N. J. L., 410; *Owensboro v. Cumberland Telephone Co.*, 230 U. S., 59, 66.

V.

CONCLUSION.

Insofar as the order under review affects the rights and property of the plaintiff-in-error, it is invalid and, to that extent, should be set aside. But, under the construction of the Public Utility Act of the State of New Jersey, as adopted by the courts of that state, when any part of an order made by the board pursuant to the statute is found to be invalid, then the entire order must be set aside. To save repetition on this point, reference is made to the authorities under Point XI of the brief filed by Erie Railroad Company. The result, therefore, is that if the Court finds the part of the order which affects this plaintiff-in-error to be invalid, the entire order must be set aside.

The judgment of the Supreme Court of the State of New Jersey affirming said order, and the judgment of the Court of Errors and Appeals of said state, affirming said judgment, should, therefore, be reversed with directions to the state courts to set aside the entire order.

COLLINS & CORBIN,

Attorneys of Plaintiff-in-Error.

GEORGE S. HOBART,
Of Counsel.

OCT 13 1920

JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 37.

D. FULLERTON & COMPANY,
Plaintiff-in-Error,

vs.

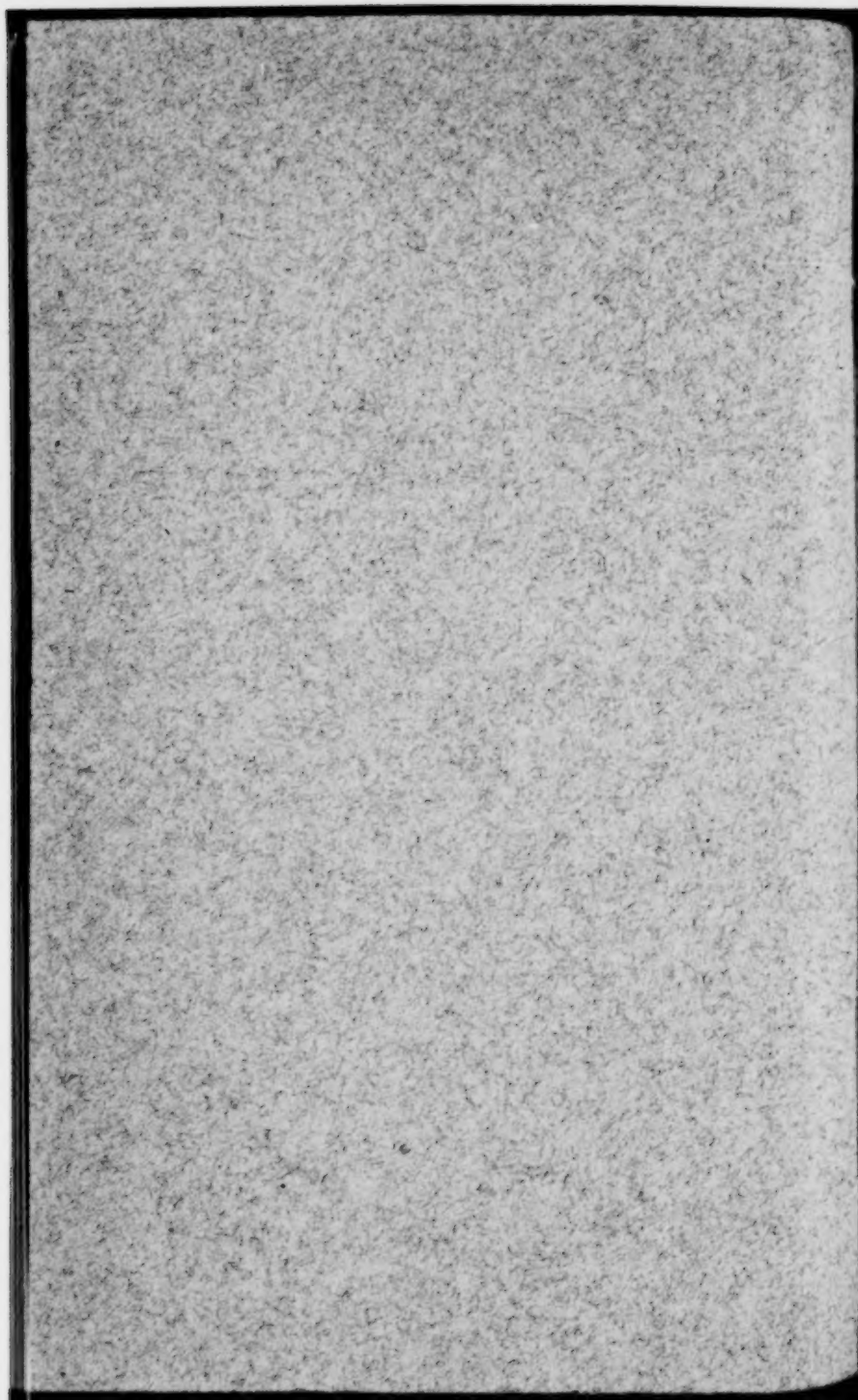
BOARD OF PUBLIC UTILITY COMMISSION-
ERS, CITY OF PATERSON and BOARD
OF FINANCE of said City,
Defendants-in-Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

Brief in Behalf of Plaintiff-in-Error.

HUDSON & JOELSON,
Attorneys of Plaintiff-in-Error.

GEORGE S. HOBART,
Of Counsel.



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IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
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BRIEF IN BEHALF OF PLAINTIFF-IN-ERROR.

(1)

STATEMENT OF THE CASE.

The writ of error in this case was sued out to review a judgment of the Court of Errors and Appeals of the State of New Jersey, affirming a judgment of the Supreme Court of said state which had sustained an order of the Board of Public Utility Commissioners of said state, dated April 20th, 1915, directing the Erie Railroad Company to elevate certain railroad tracks in the City of Paterson, N. J., for the purpose of eliminating certain highway grade crossings in said city.

According to the recital in said order, the plaintiff-in-error is one of the "parties in interest" who appeared before said board in the proceedings leading to the making of said order. The order directs the railroad company to eliminate the crossings in the manner therein provided, and according to a certain plan and profile thereto attached. The order then provides, among other things, as follows:

"Any telegraph, telephone, gas, electric lighting; water, oil, pipe line or other company or corporation, co-partnership or individual whose property or construction it may be necessary to change or remove to carry said plan and this order into effect, shall change or remove the same, according to said plan" (p. 1790, ll. 35-40).

The order further directs Erie Railroad Company, the City of Paterson, certain other companies, "and all other parties to this proceeding" to proceed with due diligence to the execution of the order and to comply with all the requirements thereof and the duties imposed upon them thereby, and by the said act under which this order is made, and the laws of this state, and that to that end, each of them exercise in good faith all of the powers conferred upon them and each or any of them, under the laws of this state (p. 1791, ll. 1-20).

The plaintiff-in-error was allowed a writ of certiorari by the New Jersey Supreme Court for the purpose of reviewing said order. The opinion of that Court sustaining the order did not discuss the points that were raised by the plaintiff-in-error, other than merely to recite the same and to conclude that they were disposed of in the opinion filed in the case wherein the Erie Railroad Company was prosecutor. The opinion is reported in 90 N. J. L. 677, 103 Atl. 1051. It was affirmed by the Court of Errors and Appeals of New Jersey without further opinion (see 90 N. J. L. 678, 103 Atl. 1052). For copy of opinion see Vol. V., p. 2315.

(2)

SPECIFICATION OF ERRORS.

The Court of Errors and Appeals of the State of New Jersey erred in holding that the order of the Board of Public Utility Commissioners of said state, dated April 20th, 1915, and the statute of said state whereon the same is based, did not violate the rights of the plaintiff-in-error secured to it by the Constitution of the United States and the several amendments thereon; and in not holding that the said order or that the said statute did violate such rights, or some one or more of them, in the following particulars:

I.

Because the order under review and the statute upon which the same is based take the private property of the plaintiff-in-error for public use, without compensation, and also take its property for the private benefit of other companies and thereby deprive the plaintiff-in-error of its property without due process of law, contrary to the provisions of the Fourteenth Amendment.

II.

Because said order and statute deprive the plaintiff-in-error of the equal protection of the laws.

III.

Conclusion.

(3)

BRIEF OF THE ARGUMENT.**I.**

The order under review and the statute upon which the same is based take the private property of the plaintiff-in-error for public use, without compensation, and also take its property for the private benefit of other companies and thereby deprive the plaintiff-in-error of its property without due process of law, contrary to the provisions of the Fourteenth Amendment.

The plaintiff-in-error is the owner of several tracts of land located between the railroad right of way and the Passaic River in the vicinity of Franklin, Keen and Warren streets, in the City of Paterson. One of these tracts adjoins the railroad right of way on the westerly side (Exhibit D. F-1, pp. 1424-1427), and has a frontage of about 108 feet towards the railroad. Buildings of the value of over \$100,000 are constructed thereon and are used by the plaintiff-in-error in its business. It acts as agent for Swift & Company and receives an average of ten cars per week of dressed beef. Shipments are sent out by wagon and by railroad (p. 434, ll. 1-40).

A side track leads from the main line tracks of the railroad to the buildings of the plaintiff-in-error, the latter being located at a distance of about three feet from the side track. This side track is on the railroad right of way (p. 1977, ll. 10-25). The plaintiff-in-error has been in business in the same place for thirty-five years and has used this side track continuously during that time. The first floor of the building is used for a beef cooler in the rear and for shipping department and offices in the front. On the second floor are the pipes of the refrigerator. There

is also a receiving platform at the rear of the building, which is constructed about three feet from the side track (pp. 435, 436).

The side track is marked as No. 33 on the map of Erie Railroad Company showing track facilities, sidings, etc. (Exhibit R. 23A, known as siding map.)

Under the order of the Board of Public Utility Commissioners, the grade crossings at Keen and Warren streets are to be eliminated by raising the tracks, and Franklin street is to be closed and an undergrade crossing is to be constructed at Montgomery street, two blocks to the south thereof (p. 1790, ll. 1-30). By reason of the elevation of the tracks, the building of the plaintiff-in-error will have to be changed to conform therewith (pp. 437, 438). In one year the amount of business done by the plaintiff-in-error is over \$2,000,000 (p. 438, l. 35). The elevation of the tracks would substantially interfere with the plaintiff-in-error's business (p. 438); it would also require the construction of a new conveyor and it would be necessary to rearrange the various existing facilities in the present buildings, (pp. 443, 444).

The testimony of the city is that on the city's plan (which in this respect was adopted by the board) the side track will have to be raised about sixteen feet (p. 495, l. 40; p. 496, l. 1; also p. 1977, ll. 10-25).

It will therefore be seen that the plaintiff-in-error will be substantially affected by the proposed plan for the elimination of the crossings in that (1) the existing side track leading from the main line tracks of the railroad will be cut off by the elevation of the main line tracks and its usefulness destroyed; (2) if the plaintiff-in-error desires to continue to have the use of a side track, it will be necessary for *somebody* to construct another side track to

conform to the new grade of the main line tracks when elevated—the new side track to be built at about sixteen feet above the present grade; (3) it will be necessary to make various changes in the existing building of plaintiff-in-error in order to continue to use it for the purposes to which it is now adapted; (4) the business of the plaintiff-in-error so far as it has to do with the handling of meat and by-products, will be interfered with and probably to some extent destroyed.

The plan and the profile attached to and forming part of the order show that a new side track is to be constructed on bridges passing over Keen street and Franklin street and in front of the property of the plaintiff-in-error in the same relative location with respect to the property as the present side track, but at an elevation of about sixteen feet above the same. It was apparently the purpose of the board in making this order to have the plaintiff-in-error retain the benefit of a side track in the same location as the existing side track. This would be convenient if the only consideration were the location of the side track, and if somebody other than the plaintiff-in-error were to pay the cost of reconstructing the same. The evidence, however, shows that it will be necessary for the plaintiff-in-error, in order to avail itself of the side track when thus elevated, to make material changes in its building in order to continue to use it for the purposes to which it is now adapted. Assuming for the purpose of the present discussion that the plaintiff-in-error has no legal ground of complaint because it may be compelled to make these changes in its *building* in order to continue to do business, the question still remains as to how the plaintiff-in-error will be able to avail itself of the side track unless somebody reconstructs it in the manner required by the plan. The railroad company takes the position that

it, the railroad, is under no legal duty thus to reconstruct the side track for the benefit of the plaintiff-in-error; and if that position is well taken, then the plaintiff-in-error will be cut off from the further use of the side track when the main line tracks are elevated as required by the order, unless plaintiff-in-error itself undertakes to reconstruct the side track.

It may be said that the order is not susceptible of the construction that the plaintiff-in-error is commanded to reconstruct the side track. This argument, however, overlooks the fact that a side track will not raise itself. *Somebody* must raise the track if anybody is to continue to make use thereof. But if the railroad cannot be legally compelled to do this work, and if the plaintiff-in-error desires to continue to have the benefit of the use of the side track, then the necessary result of such an order as is now under consideration is that the plaintiff-in-error itself must do the work; in lieu of so doing it can no longer use the side track. The plaintiff-in-error is therefore in effect required to raise the side track at its own expense if it would continue to have the use thereof. But how can it do the work of raising the side track on the land of the railroad company without the consent of the latter? The plaintiff-in-error is in this dilemma; in order to continue to use the side track the track must be raised—the plaintiff-in-error cannot do it because it has no permission from the railroad company to go on its land for that purpose; the railroad cannot be compelled to do it—even if the order be construed to require the railroad so to do, for the reason that such an order is invalid as against the railroad company. The result, therefore, is that when the main line tracks are elevated, the side track stays on its present level; and there is no practical method of compelling a connection between the side track and the

main line tracks thus elevated. Section 16 (k) of the act covering public utilities does not help the matter, as that applies only to a side track which may be *constructed by the "shipper."*

The plaintiff-in-error is therefore either deprived of its existing side track facilities; or it must at its own expense reconstruct the side track to conform to the new grade of the main line track. From either aspect the order under review is invalid as against the plaintiff-in-error.

If the order is construed so as to require the plaintiff-in-error to reconstruct the side track by elevating same, at its own expense, as indicated on the plan attached to the order, then the property of the plaintiff-in-error is taken for public use without compensation, to the extent of the cost of such reconstruction; but if it be said that the reconstruction is not essential to the elimination of the grade crossings and that therefore the property of the plaintiff-in-error is not taken for public use, nevertheless, its property, to the extent of the cost of such reconstruction, is taken for the benefit of other companies, to wit, Erie Railroad Company as lessee, and Paterson & Ramapo Railroad Company as owner in fee of the land upon which the improvement is made.

The statute directs that "where the order of the said board shall require changes in or the removal of the property or constructions of any telegraph * * * or other company or corporation * * * they shall, *at their own expense*, move or change the grade or location of their property or constructions, in conformity with the order of said board." Pursuant to this provision of the statute, the order directs that "any telegraph * * * or other company or corporation whose property or construction it may be necessary to change to carry said plan and this

order into effect, shall change or remove the same according to said plan" (Vol. IV, p. 1790, ll. 35-40). A further paragraph of the order directs that "all other parties to this proceeding and each and every one of them, proceed with due diligence to the execution of this order and comply with all the requirements thereof and the duties imposed upon them thereby, and by the said act under which this order is made" (Vol. IV, p. 1791, ll. 10-15).

This plaintiff-in-error was a party to the proceedings and its appearance therein is recited in the order. What other construction, therefore, can be given to the order than a command to the plaintiff-in-error to change its property or construction as shown on the plan?

The opinion of the New Jersey Supreme Court is not entirely clear on the point as to whether the order requires the plaintiff-in-error to reconstruct its side track as indicated on the plan. In dealing with this particular case, the New Jersey court contented itself with reciting the points that were made and then stated "all these points are disposed of in the opinion of the court in the case of *Erie Railroad Company v. Board of Public Utility Commissioners*." (See Vol. V., page 2315.)

So far as the point now under discussion is concerned, presumably the reference is to that part of the opinion in the Erie case wherein the Court reached the conclusion that the order under review did not require the railroad company to make changes in private sidings, and did not require the owners of such private sidings to reconstruct them. The New Jersey Court said:

"The plan which accompanies the order simply suggests to such owners a method by which their property may be conformed to the new conditions so as to admit of a continuance of the siding facilities theretofore enjoyed" (p. 2282, ll. 15-40).

If this be the proper interpretation of the order, the obvious consequence is that the plaintiff-in-error is entirely deprived of the use of its side track unless it undertakes to reconstruct same at its own expense. The plaintiff-in-error will therefore be compelled to abandon the use of the side track and for all practical purposes be unable to continue its business. Under the construction of the order thus adopted by the New Jersey courts, we submit that the plaintiff-in-error is deprived of its property without due process of law.

This has been so decided in several cases which hold that an individual or a corporation is entitled to receive compensation for interference with switch connections or other shipping facilities due to a change in the location or grade of main line tracks.

In *Chicago, &c. R. Co. v. McGrew*, 104 Mo. 282, 15 S. W. 931, it was held that the connection of a mine with a railroad is a valuable property right and whatever damage was occasioned by cutting it off in the taking of part of the property by another railroad, should be allowed to the mine owner, even if the switches and tracks whereby the connection was made belonged to the railroad company.

In *New York, &c. R. Co. v. Blacker*, 178 Mass. 386, 59 N. E. 1020, part of petitioner's coal yard was taken in elevating a railroad for the purpose of eliminating a grade crossing. It was held that the fact that switch connections would be done away with was an element of damage which should be considered, although there was no obligation on the part of the railroad to continue the said connections. See also *Chicago, &c. R. Co. v. Wolf*, 137 Ill. 360; 27 N. E. 78; *Chicago, &c. R. Co. v. Walker*, 251 Ill. 629, 96 N. E. 536.

II.

The order and statute deprive the plaintiff-in-error of the equal protection of the laws.

We have shown under Point I that no matter what happens to the side track, the plaintiff-in-error is bound to incur some expense or sustain some loss; if the side track is to be reconstructed at the expense of the plaintiff-in-error (as is apparently directed by the order), then the plaintiff-in-error must bear that expense; but if the side track is not reconstructed at all, then the plaintiff-in-error is deprived of the use thereof. In either event, the result is that the plaintiff-in-error is required to contribute to the expense of a general public improvement without any compensating advantage. The contribution is not in proportion to the benefits received by the plaintiff-in-error as the result of such improvement for the obvious reason that no benefit is received by the plaintiff-in-error, as the elevation of the main line tracks does not add anything to the facilities of the business of the plaintiff-in-error. The case is analogous to a compulsory payment of a special tax or assessment for the benefit of the general public without any corresponding benefit.

State v. Newark, 27 N. J. L., 185;

State v. Jersey City, 36 N. J. L., 56;

State v. Elizabeth, 37 N. J. L., 330;

Davis v. Newark, 54 N. J. L., 144.

The case, in this respect, is like the case of *Houck v. Little River Drainage District*, 239 U. S. 254, 60 L. Ed. 266, and *Myles Salt Co. v. Drainage District*, 239 U. S. 478, 60 L. Ed. 392. In the latter case, it was held that property which was not benefited directly or indirectly by a drainage improvement could not be included within

the drainage district solely for the purpose of deriving a revenue from the levy and collection of drainage taxes thereon for the benefit of other lands that were to be improved by the drainage. This Court, in reversing a judgment in a suit to restrain the sale of the land in question for non-payment of drainage taxes, said:

"We are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind."

The general principle upon which depends the question of whether a person has been deprived of the equal protection of the laws, has been summarized by this Court in *Southern R. Co. v. Greene*, 216 U. S. 400, 54 L. Ed. 536, as follows:

"The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the State of Alabama, within the meaning of the 14th Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation.

In the same case, the Court also laid down the rule by which the legality of the classification of persons might be determined, using the following language:

"While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be made upon some real and substantial distinction, bearing a

reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification." (Citing cases.)

III.

CONCLUSION.

Insofar as the order under review affects the rights and property of the plaintiff-in-error, it is invalid and, to that extent, should be set aside. But, under the construction of the Public Utility Act of the State of New Jersey, as adopted by the courts of that state, when any part of an order made by the board pursuant to the statute is found to be invalid, then the entire order must be set aside. To save repetition on this point, reference is made to the authorities under Point XI of the brief filed by Erie Railroad Company. The result, therefore, is that if the Court finds the part of the order which affects this plaintiff-in-error to be invalid, the entire order must be set aside.

The judgment of the Supreme Court of the State of New Jersey affirming said order, and the judgment of the Court of Errors and Appeals of said state, affirming said judgment, should, therefore, be reversed with directions to the state court to set aside the entire order.

HUDSON & JOELSON,

Attorneys of Plaintiff-in-Error.

GEORGE S. HOBART,
Of Counsel.



NOV 15 1920

JAMES B. HAYES,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1920.

Nos. 38 and 39.

MORRIS & COMPANY,

Plaintiff-in-Error.

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
CITY OF PATERSON and BOARD
OF FINANCE of said City,

Defendants-in-Error.

JACOB MEYER and KOMMER DE VOGEL,
partners trading and doing business
as MEYER & DE VOGEL,

Plaintiffs-in-Error,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
CITY OF PATERSON and BOARD
OF FINANCE of said City,

Defendants-in-Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

Brief in Behalf of Plaintiffs-in-Error.

WILLIAM B. GOURLEY,
Attorney of Plaintiffs-in-Error.

GEORGE S. HOBART,
Of Counsel.



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Defendants-in-Error.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

BRIEF IN BEHALF OF PLAINTIFFS-IN-ERROR.

(1)

STATEMENT OF THE CASE.

The writs of error in this case were sued out to review judgments of the Court of Errors and Appeals of the State of New Jersey, affirming judgments of the Supreme Court of said state which had sustained an order of the Board of Public Utility Commissioners of said state, dated April 20th, 1915, directing the Erie Railroad Company to elevate certain railroad tracks in the City of Paterson, N. J., for the purpose of eliminating certain highway grade crossings in said city.

According to the recital in said order, the plaintiffs-in-error are "parties in interest" and appeared before said board in the proceedings leading to the making of said order. The order directs the railroad company to eliminate the crossings in the manner therein provided, and according to a certain plan and profile thereto attached. The order then provides, among other things, as follows:

"Any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company or corporation, co-partnership or individual whose property or construction it may be necessary to change or remove to carry said plan and this order into effect, shall change or remove the same, according to said plan" (p. 1790, ll. 35-40).

The order further directs Erie Railroad Company, the City of Paterson, certain other companies, "and all other parties to this proceeding" to proceed with due diligence to the execution of the order and to comply with all the requirements thereof and the duties imposed upon them thereby, and by the said act under which the order is made, and the laws of this state, and that to that end, each of them exercise in good faith all of the powers con-

ferred upon them and each or any of them, under the laws of this state (p. 1791, ll. 1-20).

The plaintiffs-in-error were allowed writs of certiorari by the New Jersey Supreme Court for the purpose of reviewing said order. The opinion of that Court sustaining the order did not discuss the points that were raised by the plaintiffs-in-error, other than merely to recite the same and to conclude that they were disposed of in the opinion filed in the case wherein the Erie Railroad Company was prosecutor. The opinion is reported in 90 N. J. L. 694, 103 Atl. 1053. It was affirmed by the Court of Errors and Appeals of New Jersey without further opinion (see 90 N. J. L. 694, 103 Atl. 1053). For copy of opinion see Vol. V., p. 2317.

(2)

SPECIFICATION OF ERRORS.

The Court of Errors and Appeals of the State of New Jersey erred in holding that the order of the Board of Public Utility Commissioners of said state, dated April 20th, 1915, and the statute of said state whereon the same is based, did not violate the rights of the plaintiffs-in-error, secured to them by the Constitution of the United States and the several amendments thereto; and in not holding that the said order or that the said statute did violate such rights, or some one or more of them, in the following particulars.

I.

Because the order under review and the statute upon which the same is based take the private property of the plaintiffs-in-error for public use, without compensation and also take their property for the private benefit of other companies and thereby deprive the plaintiffs-in-error of their property without due process of law, contrary to the provisions of the Fourteenth Amendment.

II.

Because said order and statute deprive the plaintiffs-in-error of the equal protection of the laws.

III.

Because the order and statute impair the obligation of the contracts between Erie Railroad Company and the respective plaintiffs-in-error, contrary to the provisions of Article I, Section X, paragraph 1 of the Federal Constitution.

IV.

Conclusion.

BRIEF OF THE ARGUMENT.**I.**

The order under review and the statute upon which the same is based take the private property of the plaintiffs-in-error for public use, without compensation, and also take their property for the private benefit of other companies and thereby deprive the plaintiffs-in-error of their property without due process of law, contrary to the provisions of the Fourteenth Amendment.

A preliminary statement of the location and character of these plaintiffs-in-error is essential in order that there may be a proper understanding of the disastrous effects upon them of the order of the board, which is under review.

MORRIS & COMPANY.

This company has its principal place of business in Chicago. Its place of business in Paterson is adjoining the right of way of the Erie Railroad and on the north side of Market street. This situation is for its purpose the very best in the city. The company has occupied the premises at this point for twenty-seven years (p. 364). The supplies for its business are brought in refrigerator cars. They receive eight to ten cars a week. The siding upon which these cars are received is near the building, which is an old brick structure. The land occupied by virtue of a lease, which is set out on page 2026. While this lease can be terminated upon sixty days' notice, it is in effect a perpetual lease. The parties thereto are satisfied. It is mutually beneficial to them. A third

party seeking advantage from this site cannot be heard as to the right of either party to the lease to terminate it. The whole interior of the building has been reconstructed, at a cost of \$8,000, so as to make it useful for the business of this company. The interest of this company in the Paterson Beef Company building upon the same premises represents \$25,000. The volume of this company's business at this place is one and a half million dollars per year (p. 565).

Mr. Beekman, the manager, says (367) that "it is next to impossible for a beef house to run a business without tracking facilities. There are some places that cart it. You take it out in the air and keep it a few minutes and it takes the bloom off the meat. It is impossible for those people to compete with those having facilities for unloading it."

As to this particular company the plan of the city adopted by the board does not provide as in other cases for a new siding. It takes the site of Morris & Company for a new station and gives them another site elsewhere.

Mr. Beekman says (564):

"According to the blue-print, that wipes us off the map entirely.

"They put us down in the woods.

"Q How does this affect your business (565)?

A It is out of the world up here (indicating).

"Q What do you mean by that? A No trade coming up there. We might just as well back out entirely."

At the present time the building used by this company is located on the northerly side of Market street, and on the westerly side of the railroad tracks. It is practically in the location where, according to the plan attached to the order, the *new* Market street railroad station is to be constructed. The proposed new site for this

company, as shown on sheet No. 3 of the plan attached to the order, is on the easterly side of Railroad avenue between Greene and Slater streets, on a plot of ground nearly 100 feet distant from the right of way. The new site is on property owned by Erie Railroad Company, on which at this time there are located several side tracks and leads which are part of the railroad's main freight yard in the City of Paterson. The cost to Morris & Company of the reconstruction in the middle of the railroad freight yard is the sum of \$40,000. (See testimony of Mr. Brameld, p. 1956, Ex. Erie 18, p. 2247.) There has not been any request to the railroad company on the part of Morris & Company to change the location of the side track and the switch connections now used, and there has been no complaint that the present facilities are inadequate and improper. The proposed site for the new building of Morris & Company is already in use by the railroad company as part of a very large freight yard. It is obvious that the new location is not as desirable for the purpose of this company's business as its present location—which is in the centre of the city and is equipped with side tracks and appropriate connections. The plan, as prepared by the board, makes no provision for access to the new location, nor for the construction of side tracks or of any of the other facilities that the company requires.

It is obvious that this part of the order, so far as it affects Morris & Company, cannot be justified on the theory that the change in the location of its building is necessary for or incidental to the elimination of the grade crossings; it is not necessary to destroy the present building of Morris & Company, and still less is it necessary to require the construction of another building, 1800 feet distant and 100 feet from the main line railroad tracks.

If, therefore, the order means that either Morris & Company or the railroad company is required to make this violent change in the location of the plant of Morris & Company, it is, to that extent, clearly invalid. *Potter v. Board of Public Utility Commissioners*, 89 N. J. L. 157, 98 Atl. 30.

MEYER & DE VOGEL.

Meyer & De Vogel are grain merchants and have their place of business abutting on the property of the Erie Railroad, 65 feet on Franklin street, 100 feet on Summer street and 100 feet on the railroad at the junction of Franklin and Summer streets. The land was purchased for this particular business, which they have carried on there for twenty-four years. They have adapted their building to their business so as to receive every reasonable facility from the railroad for their work. They unload their cars directly into the building, which is of brick and cost \$13,000 (386). In addition, \$2,700 worth of machinery was installed. The first floor of the building now is on a level with the floor of a car standing on the siding. The grain is taken to the top of the building by machinery and then dropped down upon the scales. From the scales it falls into the granary, which is on the second floor. It is carried to each bin as it may be needed. The elevation of the tracks at this point is to be fifteen feet. It will require \$3,000 to \$4,000 (387) to adapt the building to the new elevation. The whole interior of the building will have to be altered. After the plan of the city was submitted Mr. Meyer testified again on page 571, and stated that if the tracks were raised fifteen feet, it would consequently make the opening in the middle of the first and second stories. This will be a serious damage to the

building and to their business. The siding of Meyer & De Vogel, as testified to by Mr. Brameld (1976), leaves the siding of A. H. Smith about thirty feet west of Keen street, and thence crossing Keen street parallels the right of way of the railroad company to Franklin street. It is on the property of the railroad company. A letter dated February 25th, Exhibit Erie 12 (2031), shows that the company, Meyer & De Vogel, paid \$430.19 for the installation of this siding. There was an agreement signed in reference to the matter in the usual form. Neither Mr. Bostman, the secretary of the railroad company (1945), nor Mr. Meyer has been able to find the written agreement. The right of this company therein was the same as that of other property owners having an agreement for the construction of siding. The terms and conditions of such agreements are shown by the other siding agreements presented in evidence. This contract between the railroad company and the company, Meyer & De Vogel, cannot be impaired without great loss to them. The fact that it may be terminated by notice from the other contracting party does not make it any the less valuable. These agreements are in effect perpetual contracts. Another serious blow which they are called upon to bear is the attempt to close Franklin street. The land of this company is bounded by three sides as stated *supra*; one side is upon the railroad, one side abuts on Summer street, and the other on Franklin street. Their main building several stories in height, is at the junction of Franklin street and Summer street and extends along Franklin street to the railroad. Franklin street is used for the entrance to the building, of which there are two, one at either end. It is also used for loading and unloading their trucks. Mr. Meyer says, "We do most of our business on Franklin street" (573). But an important fact

is that it is used exclusively as a means of reaching the populous centers of the city. With this street closed, it will be necessary for their trucks and teams to haul their loads to Lafayette street and cross under the railroad at this point and return on the other side of the railroad to a point opposite the closed street.

Mr. Meyer says (at p. 573), "We have a traveling trade that would be cut off altogether." Their right to do business is thus impaired.

Ryerson v. Morris Canal and Banking Co., 69 N. J. L. 505.

Such a result we need hardly add is a very heavy burden placed upon the shoulders of these plaintiffs-in-error. When they were young men they purchased this site for its advantages for their trade, and they have prospered in consequence of their foresight. To be deprived now of its benefits by this order under review is to destroy the work of a lifetime.

The order directing the construction of a new crossing at Montgomery street as a substitute for the present crossing at Franklin street, 500 feet distant, is an unwarranted exercise of power and invalid.

The order directs that an undergrade crossing at Montgomery street be constructed in the place of the present crossing at Franklin street. The words are: "The plan of the city provides . . . for substituting for the present crossing at Franklin street a new undergrade crossing at Montgomery street" (1757). This was ordered to be done (1765). The precise language of the order is "by substituting for the existing crossings at Cedar street a crossing under the railroad at Taylor street and for the existing crossing at Franklin street a crossing under the railroad at Montgomery street" (1790).

The authority for this extraordinary exercise of power is alleged to be found in Section I of the act and which section the board set forth in their report of November 4, 1914 (1750). This section is as follows:

"Whenever a public highway and a railroad cross each other at the same level, and it shall appear to the board that such crossing is dangerous to public safety, or that the public travel is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad, within such time as said board may fix, to alter such crossing according to plans to be approved by said board, by substituting therefor a crossing not at the grade of such public highway either by carrying such public highway under or over such railroad, or by reconstructing such railroad under or over such public highway, or by vacating, relocating or changing the lines, width, direction or location of such highway and the opening of a new highway in the place of the one ordered vacated." P. L. 1913, p. 91.

The authority given by this section to the board is to alter such crossing by substituting therefor a crossing not at the grade of *such* public highway either by carrying *such* public highway under or over such railroad or by reconstructing such railroad or changing the lines, width, direction or location of *such* highway, and the opening of a new highway in the place of the one ordered vacated.

It is obvious that what the legislature had in mind was to change the grade only of *such* highway by carrying it under or over the railroad. Power, indeed is given to vacate and open a new highway *in the place* of the one ordered vacated. The board in the order under review has, however, directed the opening of Montgomery street as a substitute for Franklin street, which new highway is

about 500 feet south of the vacated street. Even if the order directed that Montgomery street crossing be opened *in the place of* Franklin street, the board was without power to make it, as there is another highway—Lafayette street, between these two points open for public travel for many years and in daily use. Yet by this order the Montgomery street crossing is to be substituted for the present crossing at Franklin street! There is, too, a highway, Keen street, open for travel north of Franklin street at the same distance as Lafayette street is south. There is also another crossing at Lawrence street at the same distance north of Franklin street and Montgomery street, the new substituted crossing, is south of Franklin street. Why not, instead of going 500 feet and passing an open street, go 5,000 feet and pass a dozen open streets? Where is the limit? The statute does not confer such extraordinary power.

But, again, there is an entire absence of reason for this vacation. The city employed Henry Ryon, a young man with the briefest experience to aid the city engineer. This was his first experience of the kind. Yet this is how lightly the property rights of Meyer & DeVogel in Franklin street are set aside.

He is examined by the city counsel:

“Q You intend to close Franklin street? A Franklin street is shown closed.

“Q Why do you show that? A It was a little more convenient there, the way the tracks were laid out, and also due to the fact it gave a better distribution of streets to open Montgomery street and close Franklin Street. Franklin Street, according to the census given in the testimony before this commission, has the least number of people crossing of any street in the city.”

This is the whole story. This young man, a complete stranger in the city, without any experience in similar cases, draws a map showing Franklin street closed and when asked to justify his action merely states that "it was a little more convenient" and then adds, as an after-thought, that it also gave a better distribution of streets. No *substantial* argument is advanced why Meyer & De Vogel should submit to this injury. He attempts a better distribution of streets by making a crossing at a street where there never existed any and where there has never been the slightest request therefor. The Court is "to set aside such order when it clearly appears that there was no evidence before the board to support reasonably such order" (P. L. 1911, 374, Sec. 38). If this new crossing is to be opened, then Meyer & De Vogel say that it must not be done at the expense of Franklin street.

The railroad company is directed by this order to substitute Montgomery street crossing for Franklin street crossing. This is not left in doubt. It is the specific and direct command of the board.

"The board * * * does hereby order the Erie Railroad Company to alter such crossings and each of them according to the plan," etc. * * * "by substituting for * * * the existing crossing at Franklin street a crossing under the railroad at Montgomery street," etc. * * * "and by performing all other work required according to and shown on the said plan and profile." (1789, 1790.)

The city of Paterson is included (1791) among a long list of the parties to the proceeding who are in a general way to execute the order. How is this railroad company to vacate Franklin street and open Montgomery street? To state the question is to answer it. It has no such power. The board cannot invest it with such power. Will

the city assume to execute it, although the railroad company is commanded to do so? The validity of an order cannot depend on such assumption. It will be conceded that the railroad company cannot open and close streets. If it be argued that the city was ordered to open and vacate these streets, then we ask—does this order itself open the new crossing?

Is the regular method prescribed by law in opening and vacating highways thus abrogated? Is notice to be given to those interested? Are objectors to have an opportunity to be heard? Has the Board of Works, the municipal body having jurisdiction over these streets, lost *pro hac vice* such jurisdiction? (P. L. 1907, p. 114; P. L. 1911, p. 179; *Sherwood v. Paterson*, 94 Atl. 311.) Is the act creating such board annulled? Is the vote of the members of the Board of Public Works to be dispensed with and the vote of the Board of Public Utility Commissioners substituted therefor?

Meyer & De Vogel paid for the siding and the construction thereof, and as a necessary adjunct of the contract they have an easement to the circulation of light and air.

So far as their right to light and air over the land of the railroad company, which abuts their property, is concerned, it is conceded that against this property of the railroad company no easement of light and air can be acquired by a mere user for twenty years. *Hayden v. Dutcher*, 31 N. J. Eq. 217. But it is claimed that against the railroad company an easement of light and air by virtue of their siding contract does exist. *Johnson v. Hahne*, 61 N. J. Eq. 438. This is a property right under the constitution.

These parties will also be deprived of light and air to that part of their building abutting on Franklin street near the railroad. The plans require the construction of a wall or embankment about fifteen feet high across Franklin street on the easterly line of the railroad. The effect of this will be to make the first story contiguous to this wall less valuable to these parties. This building is entitled to the lateral light and air over the street. Any obstruction of the highway is a nuisance and subjects the party to indictment. The passage of a steam railroad longitudinally over a street is a nuisance if unauthorized, and if authorized, can only be done after compensation is made.

Van Horne v. Newark Pass. Ry. Co., 48 N. J. Eq. 332.

The 34th Section of our Railroad Act, P. L. 1903, 645, declares that in any city except in a city of the first class, the municipal authorities may permit the railroad company to lay its tracks along and upon any street, provided the company shall first acquire the rights of the owners abutting thereon by agreement for condemnation.

In the Elevated Railroad cases in New York, *Lahr v. Metropolitan Elevated R. Co.*, 104 N. Y. 268, it was held that abutters upon public streets in a city are entitled to such damages as they may have sustained by reason of a diversion of the street from the use for which it was originally taken and its legal appropriation to other and inconsistent uses. These plaintiffs-in-error have an easement in the bed the the street for ingress and egress to and from their premises and also for the free and uninterrupted passage and circulation of light and air. The ownership of such an easement is an interest in real

estate constituting property within the meaning of that term in the constitution.

Ibid.

The loss to these plaintiffs-in-error, if this street is vacated, will be very great. It deprives them, as has been said, of its use for their business and as a means of ready communication with their customers and of their customers with them. To say that the vacation of the street will restore the land to the center of the highway to the plaintiffs-in-error, discharged from its public easement, and that such restoration is adequate compensation for the vacation, is to state what we all know to be not in accordance with the fact. These parties are deeply concerned, not only in the part of the street vacated in front of their own property, but also in every foot of it elsewhere, and especially in the part sought to be vacated.

Meyer & De Vogel will also be deprived of light and air where the line of their property adjoins the railroad property. The level of the railroad is at this point to be raised fifteen feet and will in consequence deprive these parties of the light and air for their building for their whole first story on the railroad side.

The plaintiffs-in-error, Meyer & De Vogel, as abutting property owners on the part of Franklin street which the order now under review directs to be vacated are entitled to subject such order to judicial scrutiny.

Beecher v. Newark, 64 N. J. L. 475; aff. 65 N. J. L. 307;

Morris & Cummings Dredging Co. v. Jersey City, 64 N. J. L. 142;

Lambert v. Paterson, 72 N. J. L. 437;

Sherwood v. Paterson, 94 Atl. 311.

This firm is not only deprived of light and air by the elevation of the main line tracks, but they are also deprived of the use of the existing side track. The plan adopted by the board provides that the new siding for the use of this firm is to be an extension of another new siding constructed for one Smith, to be built at an elevation of fifteen feet above the present siding, on the railroad's right of way (1976, ll. 20-30). It is obvious that before such new side track can be used at the new elevation, *somebody* must build it. The railroad company claims that it is under no legal duty to rebuild the side track for the benefit of Meyer & De Vogel, and if that position is well taken, then Meyer & De Vogel can no longer use the side track, as it will be cut off when the main line tracks are elevated—unless Meyer & De Vogel undertake to rebuild the track; but they have no right to go on the right of way of the railroad company for that purpose, even if they wanted to do so.

Effect of Destruction of Side Tracks.

It will be seen from the foregoing summary of the conditions as they now exist, and of the order of the board and the plan thereby adopted, that with respect to both Morris & Company and Meyer & De Vogel, the side tracks now used by both are destroyed. In the case of the former, there is no provision made for a new connection with the main line tracks when elevated—all that is done is to set its building in the middle of the freight yard; in the case of the latter, the existing side track is cut off and if Meyer & De Vogel desire to maintain a connection with the main line tracks, they must build a new siding at the new elevation, at their own expense. If, however, the

order is construed so as to require Morris & Company to construct a building at the proposed new site, and to require Meyer & De Vogel to rebuild the side track by elevating same, then the property of both of the plaintiffs-in-error is taken for public use, without compensation, to the extent of the cost of such construction. If it be said that such removal and such reconstruction is not essential to the elimination of the grade crossings, and for that reason the property of these plaintiffs-in-error is not taken for *public* use, nevertheless, the property of both of them, to the extent of the cost of such reconstruction, is taken for the benefit of other companies, to wit, in the case of Morris & Company, for the benefit of Erie Railroad Company as owner of the land on which the new building is to be constructed, and, in the case of Meyer & De Vogel, for the benefit of Erie Railroad Company as lessee and of Paterson & Ramapo Railroad Company as owner in fee of the right of way upon which the new siding is to be built.

But it will probably be urged that the order of the board does not require the construction of a new building by Morris & Company in the railroad freight yard, or the construction of a new side track by Meyer & De Vogel at the new elevation of the main line tracks. The opinion of the New Jersey Supreme Court is not entirely clear as to what, if anything, these plaintiffs-in-error are required to do. The Court merely recited that the reasons in both cases were the same as those presented in the case of D. Fullerton & Co., and then stated: "all the points in these cases are disposed of in the opinion of the court in the case of Erie Railroad Company *v.* Board of Public Utility Commissioners" (p. 2317). We assume that this reference is to that part of the opinion in the Erie case

wherein the Court concluded that the order under review did not require either the railroad company or the owners of private sidings to make changes therein or to reconstruct the same. The Court said:

“The plan which accompanies the order simply suggests to such owners a method by which their property may be conformed to the new conditions, so as to admit of a continuance of the siding facilities theretofore enjoyed.” (P. 2282, ll. 15-40.)

This conclusion might be said to include the case of Meyer & De Vogel, as the plan indicates a means by which such facilities may continue to be enjoyed (always providing that somebody builds the new side tracks to conform to the new grade of the main line track), but it certainly cannot be stretched to include the case of Morris & Company. So far as the latter company is concerned it is not only deprived of the use of the existing side track and connections, and it is not only deprived of the use of the existing building (which is to be destroyed to make way for a new construction for the benefit of the railroad company) but there is no provision even “suggested” in the plan, whereby its new building (if somebody is gracious enough to build it) is to have any means of connection with the main line tracks. The above quotation from the opinion of the New Jersey Supreme Court applies generally to all of the proposed changes in side tracks, leads, &c.; and later in the opinion, the Court makes further comment as to the effect of the order upon Morris & Company, saying:

“Point X is that the order is invalid in so far as it requires the prosecutor to construct structures upon its lands for the use of Fuller’s Express Company and Morris & Co. in substitution for the structures now occupied by them as lessees and

which will be rendered useless by the elimination work.

"It is true that the plan adopted by the board has indicated upon it suggested possible locations upon the lands of the railroad company of substituted structures for these private companies, but it does not require the railroad company to provide such locations or to erect such structures since neither the existing structures nor the suggested structures constitute any part of the railroad." (P. 2285, ll. 8-20.)

Under this construction of the order, it will be observed that Morris & Company, to use the expression of its manager, is "entirely wiped off the map." This company has to submit to the destruction of its existing *building*, as well as of the side track and connections thereof and it does not even have the poor consolation of constructing another building and another side track at its own expense in the same relative location. In this respect, it is even worse off than Meyer & De Vogel, as in the latter case, the board at least undertook to "suggest" the construction of a new side track in a position which corresponds substantially to the location of the existing track. It will, therefore, be seen that if the railroad is not "required" to provide a new location for Morris & Company, that company is absolutely deprived of the use of the present building and side tracks without *any* means of rehabilitating itself.

But if again, it be urged that the destruction of the building of Morris & Company is merely a "suggestion" which cannot be legally carried into effect, still the fact remains that the side track which is now in use by Morris & Company is cut off in exactly the same way as the side track of Meyer & De Vogel is cut off, and in the case

of both parties, *somebody* must reconstruct the side tracks at some place and at some time, if either party is to continue to carry on its business. It follows, that from any point of view, both these plaintiffs-in-error are deprived of the use of their existing facilities and for all practical purposes they will be unable to continue their business.

Under the construction of the order thus adopted by the New Jersey courts, we submit that these plaintiffs-in-error are deprived of their property without due process of law. The cases hold that persons are entitled to receive compensation for interference with switch connections or other facilities, caused by a change in the location or grade of main line tracks.

In *Chicago &c. R. Co. v. McGrew*, 104 Mo. 282, 15 S. W. 931, it was held that the connection of a mine with a railroad is a valuable property right and whatever damage was occasioned by cutting it off in the taking of part of the property by another railroad, should be allowed to the mine owner, even if the switches and tracks whereby the connection was made belonged to the railroad company.

In *New York &c. R. Co. v. Blacker*, 178 Mass. 386, 59 N. E. 1020, part of petitioner's coal yard was taken for the purpose of eliminating a grade crossing. It was held that the fact that switch connections would be done away with was an element of damage which should be considered, although there was no obligation on the part of the railroad to continue the said connections. See also, *Chicago &c. R. Co. v. Wolf*, 137 Ill. 360, 27 N. E. 78; *Chicago &c. R. Co. v. Walker*, 251 Ill. 629, 96 N. E. 536.

To compel these plaintiffs-in-error to make the changes at their own expense, or to destroy their facilities, without compensation, operates to deprive them of their property without due process of law, contrary to the provisions of the Fourteenth Amendment.

II.

The order and statute deprive the plaintiffs-in-error of the equal protection of the laws.

We have shown under Point I that under any possible construction of the order under review, both of the plaintiffs-in-error are bound to incur some expense or sustain some loss. If the order means (as on its face it apparently does) that these plaintiffs-in-error must construct buildings or side tracks, then they must themselves bear that expense; but if the side tracks are not reconstructed at all, then they are deprived of the use thereof; and in addition, so far as Morris & Company is concerned, the building where its business is now carried on is destroyed. The result is that these parties are required to contribute to the expense of a general public improvement without any compensating advantage. Such contribution is obviously not in proportion to the benefits received, as there is no evidence to show that any benefits will be received. They are in a different position than some of the other parties who are similarly situated, and to that extent sustain an unequal portion of the cost of the proposed public improvement; and they are, therefore, deprived of the equal protection of the laws.

The case, in this respect, is like the case of *Houck v. Little River Drainage District*, 239 U. S. 254, 60 L. Ed.

266, and *Myles Salt Co. v. Drainage District*, 239 U. S. 478, 60 L. Ed. 392. In the latter case, it was held that property which was not benefited directly or indirectly by a drainage improvement, could not be included within the drainage district solely for the purpose of deriving a revenue from the levy and collection of drainage taxes thereon for the benefit of other lands that were to be improved by the drainage. This Court, in reversing a judgment in a suit to restrain the sale of the land in question for non-payment of drainage taxes, said:

"We are not dealing with disputable grounds of discretion or disputable degrees of benefit, but with an exercise of power determined by considerations not of the improvement of plaintiff's property, but solely of the improvement of the property of others—power, therefore, arbitrarily exerted, imposing a burden without a compensating advantage of any kind."

The general principle upon which depends the question of whether a person has been deprived of the equal protection of the laws, has been summarized by this Court in *Southern R. Co. v. Greene*, 216 U. S. 400, 54 L. Ed. 536, as follows:

"The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the state of Alabama, within the meaning of the 14th Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation."

In the same case, the Court also laid down the rule by which the legality of the classification of persons might be determined, using the following language:

"While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification." (Citing cases.)

III.

The order and statute impair the obligation of the contracts between Erie Railroad and the respective plaintiffs-in-error.

The contract of Morris & Company is in the form of a lease dated May 14th, 1910, whereby the railroad company leased to Morris & Company a certain part of a brick building located on the northerly side of Market street, together with certain premises appurtenant thereto.

The original contract of Meyer & De Vogel, which was in the usual form of siding agreements, was not located (1945-6). Under this agreement the shipper agrees to pay the cost of the grading and of all materials and labor used in the construction of the side track (Ex. R. 50, p 1118).

It is obvious that the use of the side tracks is necessary to the business of both of these parties. It is a valuable property right which depends upon the contract. The

railroad is not bound to construct side tracks for the benefit of private shippers.

If the order be construed to require the railroad company to reconstruct the side tracks, the railroad may decline to do so, as it is not part of its obligation; and, on the other hand, if the plaintiffs-in-error or either of them should desire to reconstruct the side tracks so as to continue their business in their present locations, the railroad company may not permit them to do so, and finally, if nobody is required to reconstruct the side tracks, then the plaintiffs-in-error are deprived of the benefit of their contracts with the railroad company. No matter how the order is construed, the rights of the plaintiffs-in-error, as given by their respective contracts, are impaired.

IV.

Conclusion.

Insofar as the order under review affects the rights and property of the plaintiffs-in-error, it is invalid and, to that extent, should be set aside. But, under the construction of the Public Utility Act of the State of New Jersey, as adopted by the courts of that state, when any part of an order made by the board pursuant to the statute is found to be invalid, then the entire order must be set aside. To save repetition on this point, reference is made to the authorities under Point XI of the brief filed by Erie Railroad Company. The result, therefore, is that if the Court finds the part of the order which affects this plaintiff-in-error to be invalid, the entire order must be set aside.

The judgment of the Supreme Court of the State of New Jersey affirming said order, and the judgment of the Court of Errors and Appeals of said state, affirming said judgment, should, therefore, be reversed with directions to the state courts to set aside the entire order.

WILLIAM B. GOURLEY,
Attorney of Plaintiff-in-Error.

GEORGE S. HOBART,
Of Counsel.

FILED

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Supreme Court of the United States

OCTOBER TERM, 1920.

Nos. 33, 34, 35, 36, 37, 38, 39, 40.

ERIE RAILROAD COMPANY Plaintiff in Error	vs.	BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY Defendants in Error
PUBLIC SERVICE RAILWAY COMPANY Plaintiff in Error	vs.	SAME
PASSAIC WATER COMPANY Plaintiff in Error	vs.	SAME
WESTERN UNION TELEGRAPH COMPANY Plaintiff in Error	vs.	SAME
D. FULLERTON & COMPANY Plaintiff in Error	vs.	SAME
JACOB MEYER, et al., PARTNERS, &c. Plaintiff in Error	vs.	SAME
MORRIS & COMPANY Plaintiff in Error	vs.	SAME

BRIEF IN BEHALF OF DEFENDANTS-IN-ERROR.

L. EDWARD HERRMANN,
*Counsel for Board of Public Utility Commissioners,
Defendant-in-Error.*

FRANK H. SOMMER,
FRANCIS SCOTT,
*Counsel for City of Paterson and Board of Finance
of said City,
Defendant-in-Error.*



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Supreme Court of the United States

OCTOBER TERM, 1920.

Nos. 33, 34, 35, 36, 37, 38, 39, 40.

ERIE RAILROAD COMPANY Plaintiff in Error	vs.	BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY Defendants in Error
PUBLIC SERVICE RAILWAY COMPANY Plaintiff in Error	vs.	SAME
PASSAIC WATER COMPANY Plaintiff in Error	vs.	SAME
WESTERN UNION TELEGRAPH COMPANY Plaintiff in Error	vs.	SAME
D. FULLERTON & COMPANY Plaintiff in Error	vs.	SAME
JACOB MEYER, et al., PARTNERS, &c. Plaintiff in Error	vs.	SAME
MORRIS & COMPANY Plaintiff in Error	vs.	SAME

BRIEF IN BEHALF OF DEFENDANTS-IN-ERROR.

BRIEF OF THE ARGUMENT.

(The Italics used are not in the text quoted, but are ours.)

POINT I.

The common law imposes upon a railroad company the duty to maintain the public highways where they cross the railroad, in condition for safe and convenient use at all times and under all circumstances.

This duty is continuing and extends to the separation of the grades of the public highway and the railroad whenever such separation is reasonably necessary for safety and convenience.

The duty applies alike to highways in existence when the railroad was laid out and to those constructed later.

The authorities are uniform in recognition of the fact that the common law imposes upon a railroad company the duty to maintain the public highways, where they cross the railroad, in condition for safe and convenient use, at all times and under all circumstances.

The rule was distinctly stated in *State ex rel. Village of Clara City v. Great Northern Ry. Co.*, 130 (Minn.) 400, 153 N. W. 879, where BURR, J., said:

"Even at common law the burden was cast upon the railroad to maintain that part of the public highway occupied by its tracks and right of way in a proper condition for travel."

The authorities are also uniform in recognizing that the duty so imposed by the common law is continuing.

In *State v. St. Paul and Minn. Transfer Ry. Co.*, 80 Minn. 108; 83 N. W. 32, the Court held that at common law the duty rests upon a railroad corporation, when it occupies a public thoroughfare with its tracks, to restore the same by some reasonably safe and convenient means to its former condition of usefulness, and that the duty is continuing.

That this continuing duty requires the separation of the grades of the public highway and the railroad, whenever such separation is made reasonably necessary by increased operation over the railroad, or increased use of the highway, or both, in order that the safety and

convenience of the traveling public may be conserved, is likewise uniformly recognized.

In *State ex rel. City of St. Paul v. Chicago, M. & St. P. Ry. Co.*, 122 Minn. 280; 142 N. W. 312, the Court held that whenever it is reasonably necessary for the convenience and safety of the traveling public, it is the duty of a railway company to viaduct or bridge its tracks at their intersection with streets and that *this duty exists at common law.*

To the same effect is *Wabash R. Co. v. Railroad Commission, Ind.*, ; 95 N. E. 673, where the Court in the course of its opinion said:

"It is well settled in this state that the right of a railroad company to cross a highway with its tracks carries with it the duty upon the part of the railroad company to restore the highway to, and keep it in, its former condition of usefulness and safety, and, if this cannot be done by a grade crossing, the company must do it either by constructing its tracks over or under the highway or the highways over or under its tracks. . . ."

"While under the law of this state the railroad company may have a discretion as to the manner of performing this duty of providing a safe and useful crossing, it is a ministerial discretion. The act must be done, and there is no discretion as to whether it will or will not do it. If the mode chosen fails to execute the duty, though the company claims it is adequate, the law by mandamus will compel a proper performance, pointing out in the writ the point of failure and what must be done that there may be no further failure." . . ."

There is a conflict in the authorities as to whether the duty so imposed by the common law applies alike to highways in existence when the railroad was laid out and to those constructed later. The weight of authority sup-

ports the proposition that the duty is not confined to highways that were in existence when the railroad was laid out, and that it extends as well to highways constructed later.

This question was considered in *State ex rel. City of Minneapolis v. St. Paul, M. & M. Ry. Co.*, 98 Minn. 380; 108 N. W. 261; 28 L. R. A. (N. S.), 298; where the Court concluded that the obligation imposed upon the railroads by the common law extended to highways in existence when the railroad was laid out and to those constructed later as well, and where the Court said:

“ * * * In view of the fact that the railroad company takes its franchise subject to the reserved right of the state to lay new streets over and across its tracks, and in contemplation that it may do so, * * * and the further fact that the company is solely responsible for the necessity of safety devices at street crossings, the same being occasioned by the operation of its trains over and across the street, and the further elementary principle that he who creates and maintains upon his premises a condition dangerous and inimical to others is under legal obligation to so guard and protect it that injury to third persons may not result therefrom, *the rule of the common law as to existing, must be held to apply equally to new streets.* The right is a condition attached by implication of law to the charter and franchises of the railway company, and the obligation to maintain the street intersections in good repair is a continuing one, follows the franchise and applies to new streets or highways as soon as they come into existence.”

There is no conflict between the duty so imposed by the common law—a duty to the general public—and the duty of care, the violation of which constitutes a tort, and gives rise to an action for damages by the individual

injured. The first of these duties is based upon the right of the general public and is enforceable by an action for injunction or mandamus by the state or its political sub-divisions in an appropriate case, and may be made the subject of indictment.

The latter of these duties is based upon the right of the individual and may be asserted by the individual injured in his person or property, through violation thereof by an action for damages.

Clark v Elizabeth, 61 N. J. L. 565, 575;

Palmyra v. Pennsylvania R. R. Co., 62 N. J. E. 601, 614.

POINT II.

The acts incorporating "The President and Directors of the Paterson & Hudson River Railroad Company" (Laws of New Jersey, 1831, p. 24) and the "Paterson & Ramapo Railroad Company (Laws of New Jersey, 1841, p. 97), (lessors of Erie Railroad Company) each impose the duty "to construct and keep in repair, good and sufficient bridges or passages over and under the said railroad or roads, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on said road shall not be prevented thereby."

The Paterson & Hudson River Railroad Company was incorporated by an act of the Legislature of New Jersey in 1831 (Laws of New Jersey, 1831, p. 24; Exhibit R. 15). The Paterson & Ramapo Railroad Company was organized under an act of the Legislature of the State of New Jersey enacted in 1841 (Laws of New Jersey, 1841, p. 97; Exhibit R. 15).

The Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company leased their respective lines, on September 9th, 1852, to the Union Railroad Company. The following day the latter company assigned these leases to the New York and Erie Railroad Company, a corporation organized under the Laws of the State of New York in 1832. These leases were ratified by an act of the Legislature of the State of New Jersey on March 14, 1853 (Laws of New Jersey 1853, p. 480, and 1862, p. 206). The respective railroads of the Paterson and Ramapo Railroad Company and the Paterson and Hudson River Railroad Company, so leased, were incorporated into the main line of the New York & Erie Railroad Company, which connected with them at Suffern in the State of New York. After 1852 the New York and Erie Railroad Company was succeeded by the Erie Railroad Company, which in turn was succeeded by the New York, Lake Erie and Western Railroad Company, which latter company was finally succeeded by the present corporation, the Erie Railroad Company. (See Exhibit R. 15.)

The charters of both the Paterson and Hudson River Railroad Company and the Paterson & Ramapo River Railroad Company and the franchises granted thereby were unlimited in time, and therefore perpetual; *Hudson Tel. Co. v. Jersey City*, 49 N. J. L. 303; *East Orange v. Suburban Elec. & Co.*, 59 N. J. E. 563; *Louisville v. Cumberland Tel. & Tel. Co.*, 244 U. S. 649. The leases of the property and franchises of these two railroad companies to the Union Railroad Company were made for and during the existence and continuance of the charters of the companies respectively, and the legal existence of said companies.

The statute creating The President and Directors of the Paterson & Hudson River Railroad Company, before referred to, provided in its ninth section as follows:

“That it shall be the duty of the said company to construct and keep in repair, good and sufficient bridges or passages over and under the said railroad or roads, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be prevented thereby, and also where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagon ways, over and under said railroad, so that they may conveniently pass the same.”

The statute incorporating the Paterson & Ramapo Railroad Company, before referred to, contains a substantially similar provision in its eleventh section.

POINT III.

The duty imposed by the acts incorporating The President and Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company is continuous and requires that at all times and under all circumstances the public highways, where they cross the railroad, be kept by the companies respectively in a condition fit for safe and convenient use.

The courts of the State of New Jersey have had occasion to consider charter provisions similar to those contained in the acts incorporating the President and Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company. Their conclusions upon the construction of such provisions have uniformly been that the duty imposed thereby is continuous and that it requires that the company shall

at all times and under all circumstances, maintain the public highways where they cross the railroad in a condition fit for safe and convenient use; and that existing crossings may become insufficient either because of increased operation over the railway, or increased use of the highway, or both.

In *Borough of Metuchen v. Pennsylvania R. R. Co.*, 73 N. J. E. 359, the Court of Errors and Appeals of New Jersey had before it the charter of a railroad company, which provided that it should be the duty of the company to construct and keep in repair, good and sufficient bridges or passages over or under its railroad where any public road should cross the same, so that the passage of carriages, horses and cattle should not be impeded thereby.

And held, that when the tracks of the railroad company have been laid across a public highway at grade, and increasing travel requires the abandoning of the grade crossing for the better conserving of the safety of those using the highway, the right of the company under such a charter provision to construct a passageway under its railroad, as it then exists, of sufficient width and height to accommodate public travel, instead of lowering the grade of the highway and carrying it in its full width under the railroad, is clear in that the imposition of the duty carries with it the power to execute that duty in exact accordance with its prescription.

And further held that, the duty resting upon the company of constructing and maintaining a good and sufficient passage under its railroad at its intersection with a public street *was a continuing duty* and that since the passage was not originally made of equal capacity with the highway, it must, from time to time, be enlarged by the company as public accommodation demands, until it shall reach the full capacity of the highway.

In *Newark v. Erie Railroad Company*, 72 N. J. E. 447, a bill to compel the defendant companies to elevate their tracks where they cross Summer avenue, in the City of Newark. On demurrer to the bill, the demurrer was overruled.

In the course of his opinion the Chancellor said:

"The first contention raises the question of the true construction of the clause contained in the ninth section of the act of incorporation of the Montclair Railway Company, under which act that corporation obtained the franchises which the defendant now exercises, and under which the tracks were laid and are now maintained across Summer avenue at grade. The language in which the legislature expressed its will is the following: 'It shall be the duty of the said company to construct and keep in repair, good and sufficient bridges over or under the said railway, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle across the said railway shall not be impeded thereby.' Was the duty thus imposed completely performed by the construction of 'bridges' under or over the railway, where it crossed Summer avenue, which were at the time of their construction 'sufficient' to prevent the public use from being 'impeded' by the railway? It is impossible to give such a construction to the language of this clause. The bridges which it is the duty of the defendants to construct are to be sufficient to permit the passage, in the use of the easement, of carriages, horses and cattle, so that it shall not be impeded by the railway. If the bridge at first provided becomes insufficient for the required purpose, whether because of the increased business of the railway company, or of the increased use of the public easement in the street, *the duty, which is a continuing one*, has not been performed."

“The ninth section of the charter of the Central Railroad Company of New Jersey contains a clause identical, in all substantial respects, with the ninth section of the Montclair Railway Act above recited. It came under review in *Central Railroad Company ads. State*, 32 N. J. L. (3 Vr.), 220. The Supreme Court, in the opinion of Chief Justice Beasley, declared that the clause imposed a duty on the railroad company in favor of the public, which was continuous, and the performance of which must be measured by circumstances. The prescribed duty was, it was held, to keep at all times and under all circumstances the public highways at points where they cross the railroad, in a condition fit for safe and convenient use. The doctrine was again expressed in the Supreme Court in *Reed v. Camden*, 53 N. J. L. (24 Vr.) 322, and when that case came into review in the Court of Errors and Appeals, while the judgment of the Supreme Court was reversed, there was no criticism of the doctrine. Chancellor McGill, in this court, in construing a similar clause in the General Railroad Act, held that if the crossing constructed originally was not of sufficient capacity, it must from time to time, be enlarged as public accommodation demands. *Raritan v. Port Reading Railroad Co.*, 49 N. J. E. (4 Dick.), 11. In *Clark v. Elizabeth*, 61 N. J. Law (32 Vr.), 565, the opinion of Chief Justice Beasley was cited with approval. Vice-Chancellor Grey declared that the doctrine of a continuing duty, under such legislative prescription, had been adopted by our courts (*West Jersey and Seashore Railroad Co. v. Waterford*, 64 N. J. Eq. [19 Dick.], 663), and his opinion, giving expression to this view, in *Palmyra v. Pennsylvania Railroad Co.*, 62 N. J. Eq. (17 Dick.), 601, was adopted by the Court of Errors and Appeals in affirming the decree made on his advice in 63 N. J. Eq. (18 Dick.), 799. Vice-Chancellor Van Fleet, in *Newark v. Delaware Lackawanna and Western Railroad Co.*, 42 N. J.

Eq. (15 Stew.), 196, declared, and Vice-Chancellor Emery, in *Swift v. Delaware, Lackawanna and Western Railroad Co.*, 66 N. J. Eq. (21 Dick.), 34, assumed that the doctrine of a continuing duty in such case is beyond doubt. See also *S. C.*, 66 N. J. Eq. (21 Dick.), 452."

POINT IV.

The duty imposed by the specific charter provisions of the acts incorporating The President and Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, set out under Point II, extended to public highways in existence at the time that the railroads were laid out, and also to public highways later laid out over the same.

It is submitted that the specific charter provisions contained in the statutes incorporating the President and Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, which have been set out under Point II, imposed a duty alike with respect to public highways existing at the time the railroads were laid out and public highways thereafter constructed over the same.

It is conceded that in passing upon a substantially similar statutory provision, Vice-Chancellor Leaming, in *West Jersey & Seashore Railroad Company v. Woodbury*, 80 N. J. E. 412, reached the conclusion that the provision related only to public roads which existed at the time the railroad was constructed, and did not include highways opened at a later time.

It is contended, however, that the view adopted by the Vice-Chancellor is unsound, and that the contrary view adopted and set forth by Justice Dixon in *M. & E. R. R.*

Co. v. Orange, 63 N. J. L. 253, 273, is sound, and was adopted by the Court of Errors and Appeals of the State of New Jersey in *Erie Railroad Company v. Paterson*, 79 N. J. L. 512, 513.

It is submitted that the proposition which we urge as representing the law of the State of New Jersey has the support of the weight of authority in other jurisdictions.

The conflicting authorities are carefully reviewed and considered in the case of *State of Minnesota ex rel. City of Minneapolis v. St. Paul, M. & M. Ry. Co.*, 98 Minn. 380; 108 N. W. 261 (affirmed by this Court in 214 United States 497), where it was held that the provision of the charter of the Minnesota & Pacific Railroad Company to the effect that:

“That said company shall have the right and authority to construct the said railroad and branches upon and along, across, under or over any public or private highway, road, street, plank road or railroad, in such condition or state of repair as not to impair or interfere with its free and proper use.”

was applicable to streets and highways laid out over the railroad after its construction.

POINT V.

The leases under which the rights of the Erie Railroad Company exist, and which leases were confirmed by the act of the Legislature of New Jersey, enacted in 1853, (Laws of New Jersey 1853, p. 480) vested the power, privileges and rights of the lessor in the lessee. The powers, privileges and rights, however, were vested subject to the duties imposed by the respective acts incorporating the lessors.

Whatever rights the Erie Railroad Company has in the railroads of The President and Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, respectively, are derived from the confirmatory act of the Legislature of the State of New Jersey (Laws of New Jersey, 1853, page 480).

In the absence of precedent legislative authority conferred for that purpose, or of a confirmatory act, a lease made by a railroad corporation of its road and franchises in New Jersey would be absolutely null and void.

Black v. Delaware & Raritan Canal Co., 24 N. J. E. 455, reversing same case, 22 N. J. E. 130.

As before indicated, the acts incorporating the lessor companies, respectively, each imposed upon the company the duty at all times and under all circumstances to keep the public highways where they cross the railroads in condition fit for safe and convenient use.

The confirmatory act provided:

“That the said leases and contracts shall not be held to grant any power, privilege or right not granted to said companies respectively by their charters and the supplements thereto.”

It therefore follows that the powers, privileges and rights acquired by the lessee were vested subject to the duties imposed by the respective acts of incorporation.

If authority in support of this proposition is needed, it may be found in the following cases:

In *Buffalo Stone & Cement Co. v. Delaware, Lackawanna & Western R. Co.*, 130 N. Y. 152, it was held that where a railway company organized under the laws of the state leases its property to a foreign company, and by a covenant in that lease the latter agrees to perform all things in connection with the road which the lessor might be required by law to perform, the lessee must maintain farm crossings, as required by Laws of 1850, Chap. 140, Sec. 44. In the course of the opinion it is said:

"In *Jones v. Seligman*, 81 N. Y. 190, a railroad corporation mortgaged its property to trustees to secure the payment of an issue of bonds, and thereafter defaulted in the payment of the interest. Under a power in the mortgage the trustees entered into possession, completed and operated the road for the benefit of the bondholders. An action was brought to compel the trustees to build fences and farm crossings, which was defended on the ground that no corporations or persons could be compelled to perform either of these statutory duties except those mentioned in the statutes. It was held that the trustees being in possession with power to make reparation and additions, they had the right, and it was their duty, to construct fences and necessary farm crossings; that being in possession of the property, and engaged in operating it, they must carry out the provisions of the statutes as the representative of the corporation. In this case the defendant, by a covenant in the lease above quoted, expressly agrees to perform all things in connection with the road which the lessor might be required by law to perform.

This provision plainly includes the duties imposed by statute on the lessor, and brings the case within the principle of *Jones v. Seligman*. The position that the defendant is not liable because it is not a corporation of this state, or organized under Chapter 140, Laws 1850, is not tenable. It having the right to operate its leased lines under the statutes of this state, it must be held to have assumed to discharge the same duties to the public and adjoining owners as are imposed upon such corporations organized and existing under our own statutes."

In *Thayer v. Flint & P. M. R. Co.*, 93 Mich. 150; 53 N. W. 216, the Court said:

"The statute makes it the duty of railroad companies to restore the highway to its former state, as near as may be, and to construct suitable crossings for the passage of teams. How. St. Sec. 3323. The obligation imposed by the statute continues until its proper discharge. By the transfer to it, the defendant took subject to the obligations and duties prescribed by the general railroad laws of the state. Laws 1889, p. 11."

In *St. Louis & S. F. R. Co. v. Hale* (Ark.), 100 S. W. 1148, the Court said:

"This is an appeal by a railroad company, from a judgment rendered against it . . . for a penalty of \$200 for failing to construct stop gaps at two places, where the railroad operated by defendant passed through inclosed land owned by plaintiff.

"The first contention on the part of the defendant is that it is only the lessee of the railroad, and not the owner thereof, and that the statute requiring railroad companies organized under the laws of this state to construct stop gaps in certain cases does not apply. But our statutes provide that any railroad corporation of another state leasing any railroad in this state shall become

subject to all the regulations and provisions of the law governing railroads in this state and held liable for the violation of any such laws. Kirby's Dig., Nos. 6732, 6743, 6757, 6758. These sections put the defendant in the same position, so far as this statute in reference to stop gaps is concerned, as the railroad company which first constructed the road, and any failure to obey the statute, subjects it to the penalties pronounced by the statute. *Russell v. Railroad*, 71 Ark. 451, 75 S. W. 725."

This question is taken out of the realm of argument by the inclusion in the lease of the property and franchises of the Paterson and Hudson River Railroad Company (Exhibit R. 15, Case Vol. II 986, 992) of the following undertaking by the lessee:

"And the parties of the second part do hereby covenant and agree with the parties of the first part, that the said parties of the second part and their assigns, will keep and maintain and run said railroad and other premises hereby demised, in such manner, order and condition as the said parties of the first part are bound to keep and maintain and run the same by the charter of the said parties of the first part, and the statutes supplementary thereto, and that they will indemnify and save harmless the said parties of the first part from all damages to which they may be subject by reason of said road and premises not being so kept, maintained and run."

And further by the inclusion in such lease (Case Vol. II, p. 993) of a provision to the following effect:

"It is in like manner further agreed . . . that if any erection or improvements shall . . . be made on said demised premises or appurtenant thereto, the same shall, at the termination of said term or terms, and the cessation of the interest of the parties of the second part of, in and to the same, by the expiration thereof, or other termina-

tion thereof, be valued by arbitrators * * * and the award of a majority of such arbitrators shall be conclusive as to the value of the said erections and improvements; and the parties of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns."

The lease of the property and franchises of the Paterson and Ramapo Railroad Company (Ex. R. 15, Case Vol. II, p. 1025) contains identical undertakings and provisions (Case Vol. II, pp. 1030, 1029).

POINT VI.

Independent of the common law and of the specific charter provisions before referred to the Laws of New Jersey impose upon railroad companies operating within the State a continuing duty at all times and under all circumstances to keep the public highways where they cross the railroad, in a condition fit for safe and convenient use. The duty so imposed is applicable alike to public highways existing at the time of the laying out of the railroad or later extended thereover.

Section 14 of the original General Railroad Act, "An Act to authorize the formation of railroad corporations and regulate the same" (Laws of New Jersey, 1873, p. 88), provided:

"That it shall be the duty of any company incorporated under this act to construct and keep in repair, good and sufficient bridges and passages over, under and across the said railroad, where any public or other roads, *now or hereafter laid*, shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby * * * provided that in case said railroad shall cross any street or high-

way in any city it shall be either above or below the grade thereof, at such distance as shall not interfere with the free and uninterrupted use of said streets or highways; provided further, that the common council of any city may grant permission to cross such streets or highways at grade, if they shall deem it to the best interest of said city."

This section of the law has gone through a process of change and expansion.

By a supplement, Laws of New Jersey, 1882, page 245, the section was amended so as to apply to "any company incorporated under this act or owning or operating any railroad, or owning any complete or incomplete right of way for a railroad within this state."

In addition this supplement provided:

"That in the event that such company shall not within a reasonable time after notification from the common council of the city, or committee of the township, in which such bridges and passages are to be constructed or repaired, proceed to construct or repair the same as required by this act, said common council or committee may proceed to construct or repair such bridges or passages, and when the cost thereof shall have been ascertained, the same may be collected of and from said corporation by the said common council or committee, by an action at law in any court of competent jurisdiction; and further provided, that the said council or committee, in the name of the city or township, may institute proceedings against said company to compel the specific performance of the requirements of this act."

In 1887 (Laws of New Jersey, 1887, p. 226), the Legislature further amended Section 14, making its provisions applicable to

“any company incorporated under this act, or any company owning, leasing or controlling any right of way for a railroad within the state which has been graded in the whole or in part, but upon which right of way the track or tracks have not been completely laid, shall construct good and sufficient bridges and passages over, under and across the said railroad.”

The foregoing act was declared unconstitutional in *N. Y., etc., R. R. Co. v. Montclair*, 47 N. J. E. 591.

The changes attempted to be made by it were accomplished by the supplement of March 17, 1891, Laws of New Jersey, 1891, page 169, which contains the further provision:

“That the permission of the common council of any city hereinbefore referred to shall not be necessary for the purpose of crossing any street or highway at grade, unless the said street or highway at the point where said railroad shall cross, or at some point between the crossing of said railroad and the nearest terminus of said street or highway shall be in actual use by and for pedestrians and teams at the time of the acquirement of the right of way of said railroad across such street or highway.”

The foregoing provisions became Sections 26, 27 and 29 of the Act Concerning Railroads (Revision) Laws of New Jersey of 1903, page 645, and therein are made applicable to “every railroad company owning, leasing or controlling any right of way for any railroad within this state.”

Section 26 contains the proviso:

“that this section shall not enlarge the duty imposed by its charter upon any railroad company incorporated by special act, and whose railroad was constructed before the second day of April, eighteen hundred and seventy-three.”

As to the effect of this proviso, see:

South Amboy v. P. R. R. Co., 76 N. J. E. 57;
same case, 77 N. J. E. 244.

The duty imposed by these general statutes is a continuing duty.

In the *Central R. R. Co. vs. The State*, 32 N. J. L. 220, the Court had under review and set aside a judgment convicting a railroad company for obstructing a public street, the grade of which the company had begun to depress so as to pass the street beneath the tracks.

Chief Justice Beasley, delivering the opinion of the Court and referring to a specific provision of the charter of the company similar to the general provision now contained in the general railroad act, said (224):

“This provision, it will be perceived, imposes a duty on the company in favor of the public. It is to be taken most strongly against the corporation, but it is to receive a reasonable construction. It is a continuing duty to which the company is made subject, which in its performance must be measured by circumstances. Thus, a bridge or passageway which at one time would be adequate to the public accommodation might at a subsequent period, from an increase of business or population, be totally inadequate and consequently a provision which at one juncture would be a discharge of the duty would at another amount to its infraction. Suppose a public street in a town to have been originally laid by the company over the surface of their

track, and that by reason of the growth of their business at that locality their trains should pass in such quick succession as to render such street almost impassible; under these circumstances could it be contended that the company could discharge themselves from the obligation which the section in question imposes except by passing the street thus obstructed under their road so as to restore it to public use? The duty prescribed is to keep at all times and under all circumstances the public highways at the point where they cross the railroad in a condition fit for safe and convenient use. * * * So also if the passageway, which has been constructed, is insufficient, or is not kept in good condition, the defendant may undoubtedly be held criminally responsible."

From the position so taken the Courts of New Jersey have not receded. On the contrary, the rule as stated by Chief Justice Beasley is recognized to be the established law of the state by the court of last resort in *State v. Lackawanna Railroad Co.*, 84 N. J. L. 289, 293, and is there declared not to be restricted to cases in which a grade crossing had previously existed, but to be applicable as well to cases in which the original crossing was not at grade.

That the duty so imposed by the General Railroad Act extends alike to highways existing when the road was laid out and to highways later constructed thereover is established by the cases cited and quoted under Point IV above.

POINT VII.

The Law of the State of New Jersey (New Jersey Laws of 1913, page 91, hereinafter referred to as the Grade Crossing Elimination Act, under which the proceedings which terminated in the judgments here under review were initiated, simply provides a definite method of enforcing the duty imposed by the common law, the provisions of the charters and the provisions of the General Railroad Act, in specific cases.

The proceedings which resulted in the judgments here under review were initiated under the law of the State of New Jersey, which for brevity we hereafter refer to as the Grade Crossing Elimination Act. This act is chapter 57 of the New Jersey Laws of 1913 (page 91). It is in form a supplement to the act providing for the creation of the Board of Public Utility Commissioners of the State of New Jersey, and is entitled: "A supplement to an act entitled: 'An Act Concerning Public Utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers', approved April 21, 1911." The act is set forth in full in the Brief of Erie Railroad Company, plaintiff in error, at page 11,

Section 1 of the act provides that:

"Whenever a public highway and a railroad cross each other at the same level and it shall appear to the Board that such crossing is dangerous to public safety, or that the public travel on such highway is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad, within such time as said Board may fix, to alter such crossing according to such plans to be approved by said Board by substituting therefor a crossing not at the grade of such public highway, either by carrying such public highway under or over such rail-

road, or by reconstructing such railroad under or over such public highway, or by vacating, relocating or changing the lines, width, direction or location of such highway and the opening of a new highway in the place of the one ordered vacated."

Section 5 of the act provides for the initiation of a proceeding under its provisions, either:

(a) By the board or body having charge of the finances of any municipality wherein any such crossing exists;

(b) By any railroad company whose tracks cross or are crossed at grade; and

(c) By the Board of Public Utility Commissioners of its own motion.

The provisions of the act are applicable, as are the provisions of the General Railroad Act to railroad corporations, irrespective of whether they were created, or their rights acquired before, or after, the enactment of the statute. This proposition is supported by *Hudson County v. Central R. R. of N. J.*, 68 N. J. E. 500, where the Court said (508):

"The twenty-sixth section of the revised railroad law (Statutes of New Jersey, 1903, p. 659) prescribes the duty of railroad companies with respect to highways crossed by said companies."

"Similar provisions will be found in the charters of almost all, if not all, of the railroads chartered by special act. *Palmyra v. Pennsylvania Railroad Co.*, 62 N. J. Eq. (17 Dick.), 601 (Vice-Chancellor Grey, 1901).

"And there seems to be no doubt that the legislature has the power to provide, as enacted in this section, in the public interest, and the railroads previously chartered would be subjected to such provisions. *Palmyra v. Pennsylvania Railroad Co.*, *supra*; *Montclair v. New York and Greenwood Lake Railway Co.*, 56 N. J. Eq. (18 Stew.), 436 (Chancellor McGill, 1889)."

The provisions of the act are applicable alike, as are the provisions of the General Railroad Act, to highways existing when the railroad was laid out and to highways constructed thereover thereafter. This position is sustained by the cases cited and quoted under Point IV above.

Sections 2, 3 and 4 provide for the distribution of expense, section 2 providing that the entire expense of the alterations, changes, relocation or opening, including damages to adjacent property, shall be paid by the railroad company unless a street railway uses the crossing, in which event the Board may order, not exceeding ten per centum of such expense directly chargeable to the crossing used by the street railway company, to be paid by the company operating the street railway; the balance to be paid by the company operating the railroad.

Section 3 provides that the expense of removing, relaying or relocating any municipal water or sewer pipes or other municipal pipes, conduits or subways, shall be borne by the municipality owning the same; and also the expense of paving, curbing and flagging the highway constructed as the result of the change of grade.

Section 4 provides that, where the order of the Board shall require changes in, or the removal of, the property or construction of any telegraph, telephone, gas, electric lighting, sewer, water, oil, pipe lines, or other company or corporation, co-partnership or individual, they shall at their own expense move or change the grade or location of their property or constructions in conformity with the order.

Section 6 provides that all the powers, supervision, regulation of, jurisdiction and control over public utilities granted by the act to which this act is a supplement,

are vested in the Board of Public Utility Commissioners and courts of the State, as may be necessary to carry the provisions of the act into effect.

The duty imposed by the common law, by the original acts of incorporation and by the General Railroad Act, is a general duty.

The Grade Crossing Elimination Act provides a method of administrative procedure, by means of which this general duty may be converted into a specific and definite duty, with respect to particular crossings at which the conditions set out by the statute; viz., that the crossings are "dangerous to public safety" or "that the public travel on such highway is impeded thereby," are found to exist.

POINT VIII.

The provisions of the Grade Crossing Elimination Act involve merely an exercise by the Legislature of the State of the police power of the State.

(a) *The source of the State's authority to adopt regulations for public safety at grade crossings is the police power of the State.*

This proposition is too elementary to require elaborate citation of authority.

The rule is concretely stated in *The Pittsburg & Corvellsville Railroad Co. v. The Southwest Pennsylvania Railway Co.*, 77 Pa. St. 173; where, at page 186, the Court said:

" * * * Besides, we cannot presume the legislature ever intended to divest itself of the exercise of the police power of the state. The right to regulate railroad crossings naturally flows from

that reserved power. It is by the exercise of the same power that the speed of trains is limited in populous districts."

In *M. & E. R. R. Co. v. Orange*, 63 N. J. L. 252, the Court, at page 258, said:

" * * * the duty of erecting and maintaining gates at the crossing of streets over a railroad, whether for the protection of the public using the street or of the railroad company in operating its road, is referred to the police powers of the government."

(b) *The elimination of grade crossings is within the scope of this power.*

The cases demonstrating this proposition and illustrating the manner in which the power has been exercised through legislation in the several states are many. Of these we direct the attention of the Court especially to the following:

In *N. Y. & N. E. Railroad Co. v. Bristol*, 151 U. S. 556, the case arose under "An Act relating to Grade Crossings," Pub. Laws, Conn., 1889, p. 134. Chief Justice Fuller, reading the opinion of this Court, at page 566, said:

"It must be admitted that the act of June 19, 1889, is directed to the extinction of grade crossings as a menace to public safety, and that it is therefore within the exercise of the police power."

In *re Selectmen of Norwood, et al.*, 161 Mass. 259; 37 N. E. 199, the Supreme Court of Massachusetts had under consideration the statute of that State enacted in 1890, which provided for the abolition of grade crossings, and required the cost of changes made to be paid by the town, the railroad company, and the state, in proportions

fixed, without reference to the value of the property owned by them, or the benefits which they severally received.

The Court distinguishing between the taxing power and the police power said:

"It is contended that the statute under which these proceedings are had, as construed by the superior court, is unconstitutional. It is quite clear that a statute providing for general public improvements to be paid for as the changes of grade are to be paid for under this statute, would be unconstitutional, as an attempt to impose taxes which would not be proportional. The cost of these changes is to be paid by the town, the railroad company and the state, in proportions which are fixed, without reference to the value of the property owned by them, respectively and without reference to the benefits which they severally receive in any particular case. This would not be a legitimate exercise of the power of taxation to meet public charges (cases cited). The validity of this statute does not depend upon the right of the legislature to levy taxes. It was enacted rather in the exercise of the power of the legislature to enact all needful laws to prevent accidents, and provide as well for the convenience as the safety of the public while traveling on highways across railroads, and while being transported in the cars of the railroad companies. It would have been in the power of the legislature, in granting charters to railroad companies, to provide that the railroad should not be constructed across a public highway without carrying the highway over or under the railroad, and that all the expenses of changing the grade of the way and constructing the approaches to the railroad, should be borne by the railroad corporation. If, by an increase in the amount of travel at a grade crossing, or of the number of trains running over the railroad, or changes in the manner of running trains, or of

the mode of travel on a highway, or if for any reason, it should seem to the legislature best for the public interest that a grade crossing should be abolished, it would be within the constitutional authority of the legislature to forbid the continuance of it, and to require the railroad company to pay the whole, or any part, of the cost of making the change (cases cited). This it might do, in the exercise of the police power, for the protection of the people, and its decision in regard to what is right and proper in each particular case, or in any class of cases, would not be subject to revision by any other tribunal. This would not be taking from the railroad company its property, or any vested right. It would be merely prescribing, in the interest of the public, the mode of constructing its road. Of the power to prescribe such regulations for railroad corporations, there can be no doubt. These corporations are creatures of the state, engaged in doing a public business, and are bound by any reasonable statutes for the regulation of this business which the legislature chooses to enact (cases cited)."

In *Illinois Central R. Co. v. Copiah County*, 81 Miss. 685; 33 So. 502, the statute considered by the Court provided that where a railroad is constructed so as to cross a highway, and it is necessary to raise or lower the highway, it shall be the duty of the company to erect and keep in order all bridges at such points as bridges may be necessary to cross the railroad.

The Court said:

"All statutes like this, and statutes requiring roads to fence their tracks, and to establish farm cattle guards, etc., are plainly ascribable to the police power of the state for their justification."

In *St. Louis & S. F. R. Co. v. City of Fayetteville*, 75 Ark. 534; 87 S. W. 1174, it was held that in a proceeding

to condemn a street crossing over a railroad right of way, the necessity of an overhead crossing, or the fact that the railroad company may be compelled to construct either such overhead or grade crossing and to keep it in repair, as an exercise of police power, are not elements of damage.

The Court said:

"But if we concede that an overhead crossing is necessary at this place, it would not, in our opinion, entitle a company to any increase in the amount of damages. For what the city is seeking now is to acquire for the public a right to cross the railway track, and the right of way of the company at the point named. If we concede that the legislature has not empowered the city to compel the company to construct the crossing and keep it in repair, as a police regulation, yet, as the legislature can do this at any time—as it can compel the company, without compensation, to construct and keep in repair either an overhead or a grade crossing, as the circumstances may require—it follows that those matters are not elements of damage in this case. *Railroad Co. v. City of Chicago*, 166 U. S. 226; 17 Sup. Ct. 581; 41 L. Ed. 979."

In *Cincinnati, I. & W. R. Co. v. Connerville*, 218 U. S. 336, in error to the Court of last resort of the State to review a judgment affirming the assessing of the damages of a railway company in a street opening proceeding, where the expense of constructing a bridge over the highway was not taken into consideration, this Court held that the expense of constructing a railway bridge over a highway, made necessary by the action of the municipality in opening such highway through the railway company's embankment, may be cast upon the railway company without denying the due process of law guaranteed by the Federal Constitution, which requires that com-

pensation be made when private property is taken for public use.

Mr. Justice Harlan, reading the opinion of this Court, said:

"The question as to the right of the railway company to be reimbursed for any moneys necessarily expended in constructing the bridge in question is, we think, concluded by former decisions of this court . . . (cases cited). The railway company accepted its franchise from the state, subject necessarily to the condition that it would conform at its own expense to any regulations, not arbitrary in their character, as to the opening or use of streets, which had for their object the safety of the public, or the promotion of the public convenience, and which might, from time to time, be established by the municipality when proceeding under legislative authority, within whose limits the company's business was conducted. This court has said that 'the power, whether called police, governmental, or legislative, exists in each state, by appropriate enactments not forbidden by its own constitution or by the constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and, therefore, to provide for the public convenience and the public good.' *Lake Shore & M. S. R. Co. v. Ohio*, 173 U. S. 385, 397. Without further discussion . . . we adjudge, upon the authority of former cases, that there was no error in holding that the city could not be compelled to reimburse the railway company for the cost of the bridge in question."

In *Mo. Pac. Ry. v. Omaha*, 235 U. S. 121, Mr. Justice Day, reading the opinion of this Court, on page 127, said:

"That a railway company may be required by the state, or by a duly authorized municipality acting under its authority, to construct overhead crossings or viaducts at its own expense, and that the

consequent cost to the company as a matter of law is *damnum absque injuria*, or deemed to be compensated by the public benefit which the company is supposed to share is well settled by prior adjudications of this court (cases cited).

"This is done in the exercise of the police power, and the means to be employed to promote the public safety are primarily in the judgment of the legislative branch of the government, to whose authority such matters are committed, and so long as the means have a substantial relation to the purpose to be accomplished, and there is no arbitrary interference with private rights, the courts cannot interfere with the exercise of the power by enjoining regulations made in the interest of public safety which the legislature has duly enacted."

POINT IX.

The order of the Board of Public Utility Commissioners, which was affirmed by the judgments here under review, is merely an act of administration in execution of the Grade Crossing Elimination Act which statute, as heretofore indicated, merely exerts the police power of the State.

The Grade Crossing Elimination Act does not empower the Board of Public Utility Commissioners to require a separation of grades whenever a public highway and a railroad cross each other at the same level, but commands the Board to effect such separation when it shall appear to it that "such crossing is dangerous to public safety or that the public travel on such highway is impeded thereby."

Prior to the enactment of this statute there were adjudications of the courts of the State clearly indicating

the effect that would be given to the words so employed in the statute. These cases are as follows:

In *Mayor, etc., of Newar v. Central R. R. Co.*, 73 N. J. E. 469, the Court, at page 470, said:

"Under the recent decision of the Chancellor in the case of *Newark v. Erie Railroad Co.*, 72 N. J. Eq. (2 Buch.), 447, there can be no doubt that the court of chancery may compel railroad companies, whose roads cross streets at grade, and whose charters contain provisions like those of the defendant, to elevate or depress their tracks or the highways crossing them.

"Under that decision, the question remaining for determination is whether, in the given case, the situation is such that this court should, in the exercise of its power to regulate conflicting easements, compel the change.

"Railroads whose tracks have been laid at grade are lawful structures. The legislature has not as yet seen fit to condemn them. If their tracks are to be elevated or depressed, it must be because of some peculiarity which makes them especially dangerous."

In *Newar v. Erie Railroad Co.*, 75 N. J. E. 20, the Vice-Chancellor, after reviewing the development of the legislation of the State relating to grade crossings, said, at page 29:

"In view of this legislation it is quite impossible to hold that grade crossings are *per se* illegal structures, even in cities, or that streets are not safe in the legislative sense of that word, merely because they are crossed at grade by railroad tracks. There must be something in the situation so peculiar as to compel the court to say that gates will not adequately protect the public; that flagmen will not; that nothing but track elevation will." * * *

"The question then must be, as I have said, whether gates and flagmen and other expedients are,

in the given case, so inefficacious that nothing but track elevation will give to the public in fact as well as in name, the joint use of the highway. It is obvious that a street may be so encumbered with tracks that the public is practically shut out from using it. As neither party is at liberty to destroy the right of the other, the appropriate remedy in such a case would appear to be an injunction restraining the excessive use. *Newark v. Central Railroad Co.*, 73 N. J. Eq. (3 Buch.), 469; *Newark v. Delaware, Lackawanna & Western Railroad Co.*, 42 N. J. Eq. (14 Stew.), 196. If on the other hand, the number of tracks be not excessive, it is still conceivable that the trains might run over them with such frequency and speed and at such an angle or with such curves that the joint user of the crossing would be practically gone. The question is, then, one of fact, to be determined according to the circumstances of the case.

"In considering the question, it must, however, be remembered that it is no light thing to order a change in the grade of a steam railway. In the language of Chief Justice Church, in *People v. New York Central & Hudson River Railroad Co.*, 74 N. Y. 302, 'the grade necessarily embraces considerations of convenience, expense and facility of construction and operation and is fixed at a particular point with reference to grades at other points.' The legislature has, therefore, necessarily vested the company with a considerable discretion in determining what and where it shall be."

The court of last resort on appeal affirmed the rule so stated by the Vice-Chancellor and his application thereof to the facts of the case, *Newark v. Erie R. R. Co.*, 76 N. J. E. 317.

The words of the Grade Crossing Elimination Act must be construed in the light of these decisions.

Following these decisions the Board of Public Utility Commissioners was required to and did treat the question as to whether a crossing was, within the meaning of the Grade Crossing Elimination Act, dangerous to public safety, or the public travel on such highway was impeded thereby, as one of fact, to be determined according to the circumstances of each case; and acted upon the theory that the power conferred upon it by such act was to be exercised only where it appeared to it, with respect to such crossings, that elements existed making them *peculiarly* dangerous and a *serious* impediment to public travel.

The testimony before the Board amply establishes that with respect to each of the crossings in question elements exist which make them peculiarly dangerous and a serious impediment to public travel. This testimony is referred to in the report made by the Board of Public Utility Commissioners under date of January 11, 1915 (Case, Volume IV, page 1753, etc.), and is made the basis of the determination of the Board contained in its order of April 20, 1915 (Case, Volume IV, page 1787), to the effect that the said crossings "are, and each of them is, dangerous to public safety, and that the public travel on such highways and each of them is impeded thereby."

The protection afforded at each of the crossings is shown in "Schedule A" attached to the Board's report of January 11, 1915. (Volume IV of case, 1766.)

The traffic over each of the crossings and a characterization of the view thereat is set forth in "Schedule B" attached to the report (Case, Volume IV, page 1768).

That, notwithstanding the protection afforded at the several crossings, casualties have occurred, is shown by the admittedly incomplete list of accidents which appears

in the record (Case, Volume I, page 173, etc.), (Case, Volume II, page 905, etc.).

Referring to this question, the Supreme Court of the State of New Jersey in its opinion (Case, Volume V, page 2257), at page 2272, said:

“The next ground of attack is that the evidence taken before the Board of Public Utility Commissioners does not justify nor reasonably support the Board’s conclusions or findings. To that end the insistence is that the court has power and should review the Board’s finding of fact. We understand such to be the power of this court. The rule on this point is stated thus by Chief Justice Gummere, speaking for the Court of Errors & Appeals in the case of *West Jersey & Seashore Railroad Co. v. Board of Public Utility Commissioners*, 88 N. J. L., 94 Atl. 60, ‘that court (i. e., the Supreme Court) can, upon certiorari, or under the statutory procedure provided by section 38 of the Act of 1911, page 374, review such action for the purpose of ascertaining whether or not it is purely arbitrary, whether or not it has a reasonable basis to rest upon, whether or not it is supported to any extent by the facts submitted to the Board for its consideration; and, if it shall be made to appear to the court that such action is purely arbitrary, or that it has no reasonable basis upon which to rest or is unsupported by the facts laid before the Board, the court may declare it null and void and order it to be set aside. So, too, if the Board refuses to consider the matter at all, the court by mandamus can compel it to do so. * * * Our reading of the record shows that a mass of testimony was presented to the Board, particularly with reference to the various elements of danger and the impediments to travel, at all of the level crossings of the highways, such as a list of accidents at some of the crossings; obstructions to the view of persons traveling along the highways in

both directions; a series of photographs, made and produced by the railroad company, showing the obstructions of the view at each crossing; delays to travel in general; the fact that at the crossings where there are trolley tracks every street car is stopped near the railroad crossing until the conductor goes over it on foot and releases a derail switch; schedules made at different times as to the number of persons, vehicles drawn by horses, automobiles, bicycles and trolley cars passing over such crossings, in a given period; testimony that the crossings were protected by gates and automatic bells; the number of trains and drill locomotives passing over the crossings within a given time; operation of gates, etc.; from which the Board found the facts in its report that each of the crossings was dangerous to public safety, and we think, after reading the evidence, the conclusion of the Board is supported by the facts that were before it. The question is one of fact to be determined according to the circumstances of each case. * * * This applies to both conditions called for in the statute; viz.: that such crossings are dangerous to public safety, or the public travel on such highway is impeded."

POINT X.

The Grade Crossing Elimination Act and the order of the Board of Public Utility Commissioners made in pursuance thereof impose upon the railroad company part of the cost of the separation of grades. Neither the act nor the order is obnoxious in this particular to the due process clause of the Constitution.

It is well settled that the inhibition of the Constitution of the United States upon the deprivation of the property without due process is not violated by the imposition upon

a railroad company of the *entire* expense of separation of grades, since the requirement of such separation finds its source in the police power.

The requirement of uncompensated obedience to a regulation enacted for the public safety under the police power of the State is not a taking of property without due compensation, and any injury sustained in observing such a regulation is but *damnum absque injuria*. The following authorities fully support this proposition.

In *N. Y. & N. E. Railroad Co. v. Bristol*, 151 U. S. 556, this Court was called upon to consider the act of Connecticut entitled "An Act relating to Grade Crossings" (Pub. Laws, Conn., 1889, p. 134), Mr. Justice Fuller, reading the opinion of this Court, after indicating that the act was directed to the extinction of grade crossings as a menace to public safety, and that it was therefore within the police power, said (page 567):

"It is likewise thoroughly established in this court that the inhibitions of the constitution of the United States upon the impairment of the obligation of contracts, or the deprivation of property without due process or of the equal protection of the laws, by the states, are not violated by the legitimate exercise of legislative power in securing the public safety, health and morals. The governmental power of self-protection cannot be bargained away, nor can the exercise of rights granted, nor the use of property, be withdrawn from the implied liability to governmental regulations in particulars essential to the preservation of the community from injury" * * *

"The conclusions of this court have been repeatedly announced to the effect that though railroad corporations are private corporations as distinguished from those created for municipal and governmental purposes, their uses are public, and

they are vested with the right of eminent domain, only to be exercised for public purposes; that therefore, they are subject to legislative control in all respects necessary to protect the public against danger, injustice and oppression; that the state has power to exercise this control through boards of commissioners; that there is no unjust discrimination and no denial of the equal protection of the laws in regulations applicable to all railroad corporations alike; nor is there necessarily such denial nor an infringement of the obligation of contracts in the imposition upon them in particular instances of the entire expense of the performance of acts required in the public interest, in the exercise of legislative discretion; nor are they thereby deprived of property without due process of law, by statutes under which the result is ascertained in a mode suited to the nature of the case, and not merely arbitrary and capricious; and that the adjudication of the highest court of a state, that, in such particulars, a law enacted in the exercise of the police power of the state, is valid, will not be reversed by this court on the ground of an infraction of the Constitution of the United States."

In *C. B. & Q. Railway Co. v. Drainage Commissioners*, 200 U. S. 561, it appeared that:

A public corporation, charged by law with the duty of causing a large body of lands, principally swamp and slough lands, to be drained, and made capable of cultivation, had, under direct legislative authority, adopted a reasonable and suitable plan to accomplish that object. The plan required the enlarging and deepening of the channel of a natural water course running through the district, which is the only natural outlet or way of drainage of lands of the district—the best and only practicable mode by which the lands could be made tillable. The plan could not be carried out unless the timbers and stones in

the creek—placed there by the railroad company when it constructed the foundation for its bridge—were removed. The timber and stones could not, however, be removed without destroying the foundations of the bridge and rendering it necessary to construct another bridge with an opening underneath wide enough to permit a channel sufficient to carry off the water of the creek as increased in volume under the drainage system adopted by the Commissioners.

The contention of the railway company was that, as its existing bridge was lawfully constructed, under its general corporate power to build, construct, operate and maintain a railroad, and as the depth and width of the channel under it were sufficient, at the time, to carry off the water of the creek as it then flowed and now flows, the foundation of the bridge could not be removed and its use of the bridge disturbed, unless compensation be first made or secured to it in such amount as would be sufficient to meet the expense of removing the timber and stones from the creek and of constructing a new bridge of such length and with such opening under it as the plan of the Commissioners required. The company insisted that to require it to meet these expenses out of its own funds would be, within the meaning of the constitution, a taking of its property for public use without compensation, and, therefore, without due process of law, as well as a denial to it of the equal protection of the laws.

Mr. Justice Harlan, delivering the opinion of the Court, at page 594, said:

“It remains to deal with a particular aspect of the case. The opening under the present bridge, we assume from the record, was sufficient, when the bridge was constructed, to pass all the water

naturally flowing in the creek from lands in that locality. It is sufficient if the channel of the river be left as it is now. The commissioners demand, however, as they may rightfully do, in the public interest, a larger, deeper and wider channel in order to accommodate the increased volume of water in the creek that will come from the proposed plan of the commissioners. But that is a matter which concerns the public, not the railway company. The duty of the company will end when it removes the obstructions which it has placed in the way of enlarging, deepening and widening of the channel. It follows, upon principles of justice, that while the expense attendant upon the removal of the present bridge and culvert, and the timbers and stones placed by the company in the creek, as well as the expense of the erection of any new bridge which the company may elect to construct in order to conform to the plan of the commissioners, should be borne by the railway company, the expense attendant merely upon the removal of soil in order to enlarge, deepen and widen the channel must be borne by the district. The expense to be borne by the district and the railway company respectively can be ascertained by the state court in some appropriate way, and such orders made as will be necessary to facilitate the execution of the plan of the commissioners.

“Without further discussion, we hold it to be the duty of the railway company, at its own expense, to remove from the creek the present bridge, culvert, timbers and stones placed there by it, and also (unless it abandons or surrenders its right to cross the creek at or in the vicinity of the present crossing) to erect at its own expense and maintain a new bridge for crossing that will conform to the regulations established by the drainage commissioners, under the authority of the state, and such a requirement, if enforced, will not amount to a taking of private property for public

use within the meaning of the constitution nor to a denial of the equal protection of the laws."

In *Chicago, M. & St. P. R. Co. v. Minneapolis*, 232 U. S. 430, this Court held that the expense of constructing and maintaining the necessary bridge over the gap in a railway right of way made by the municipal construction across it of a canal or waterway with footpaths on each side connecting two lakes used for public recreation may be cast upon the railway company without denying it the due process of law guaranteed by the Constitution.

Mr. Justice Hughes, in delivering the opinion of the Court, said:

"The question . . . presented is whether the refusal to allow compensation for the cost of constructing and maintaining the necessary railroad bridge across the gap in the right of way, made by the building of the canal, amounts to a deprivation of property without due process of law.

"It is well settled that railroad corporations may be required, at their own expense, not only to abolish existing grade crossings, but also to build and maintain suitable bridges or viaducts to carry highways newly laid out over their tracks, or to carry their tracks over such highways. (Cases cited and considered.) . . .

"Under the doctrine of these decisions, it necessarily follows that if the city of Minneapolis had opened a public road through the embankment of the plaintiff-in-error, the latter would have had no grounds to complain that its constitutional rights had been violated because it was compelled to bridge the gap at its own cost. No different rule could be applied, because the highway was laid out in order to increase the advantages of a public park. In this respect, it would be equally a crossing devoted to the public use (*Shoemaker v. United States*, 147 U. S. 282, 297; 37 L. ed., 170, 184; 13 Sup. Ct. Rep. 361); and we see no basis

for a distinction in principle in the case of an intersecting public road opened under competent authority, because such a highway might lead to public recreation grounds instead of places of business, or might connect lakes instead of avenues.

"If there is a distinction in the present case, it must lie in the fact that the crossing is an artificial waterway instead of a road. But it is none the less a public highway established to afford an appropriate place of public passage. Walks are provided for those who go afoot, and it does not concern the plaintiff-in-error that others go in boats instead of vehicles. * * * It cannot make a difference in the constitutional rights of the railway company that this way was not constructed entirely, or chiefly, of solid earth; it is the fact, and not the mode of public passage, that is controlling. The case must be regarded as being one of the public crossings provided by law; and the authorities we have cited lead to the conclusion that the state, without infringing the guarantees of the Federal Constitution, could require the railway company to make suitable provision for carrying its tracks over the crossing without compensation."

In *Denver & Rio Grande R. Co. v. Denver*, 250 U. S., page 241, this Court held that an ordinance of Denver which required removal of so much of a railroad side track as lay within the intersection of two streets just opposite the entrance of the Union Depot, practically within the gateway of the city, was not obnoxious to the due process clause.

Referring to the scope of the police power Mr. Justice Van Devanter, delivering the opinion of the Court, said:

"The scope of the power and instances of its application are shown in the decisions sustaining regulations (a) requiring railroad companies at their own expense to abrogate grade crossings

by elevating or depressing their tracks and putting in bridges or viaducts at public crossings (*Northern P. R. Co. v. Duluth*, 208 U. S. 583; 52 L. Ed. 630; 28 Sup. Ct. Rep. 341; *Chicago, M. & St. P. R. Co. v. Minneapolis*, 232 U. S. 430; 58 L. Ed. 671; 34 Sup. Ct. Rep.; *Minneapolis P. R. Co. v. Omaha*, 235 U. S. 121; 59 L. Ed. 137; 35 Sup. Ct. Rep. 82), (b) requiring a railroad company at its own cost to change the location of a track and also to elevate it as a means of making travel on a highway safe (*New York & N. E. R. Co. v. Bristol*, 151 U. S. 556; 38 L. Ed. 309; 14 Sup. Ct. Rep. 457), (c) prohibiting a railroad company from laying more than a single track in a narrow, busy street, although its franchise authorized it to lay double tracks there (*Baltimore Trust & G. Co.*, 166 U. S. 673; 41 L. Ed. 1160; 17 Sup. Ct. Rep. 696) and (d) requiring a gas company whose mains and pipe were laid beneath the surface of the street under existing franchises to shift them to another location at its own cost to make room for a public drainage system. (*New Orleans Gas Light Co. v. Drainage Commission*, 197 U. S. 453; 49 L. Ed. 831; 25 Sup. Ct. Rep. 471.)"

If the imposition of the entire cost of effecting a separation of grades upon a railroad company does not involve a violation of the due process clause, then it must follow that the imposition as here of less than the entire cost by a statute and an order made in pursuance thereof is not obnoxious to the due process clause.

POINT XI.

Both the statute and order relate to highways existing at the time of the construction of the railroad and to highways laid out thereafter. In this respect neither the order nor the statute is obnoxious to the due process clause of the Constitution.

That the State may, in the exercise of police power, impose upon a railroad company whose line intersects a public highway laid out after the construction of the railroad, the uncompensated duty of constructing and maintaining at such crossing all such safety devices as are reasonably necessary for the protection of the traveling public, and that a bridge or viaduct over the railroad tracks when necessary to make the crossing safe for public use, is a safety device within the meaning of that expression is now well settled.

In *State ex rel. Minneapolis v. St. Paul, M. & M. R. Co.*, 98 Minn. 380; 108 N. W. 261, the Court said:

"The authorities are not fully agreed upon the question whether the state may in the exercise of police power compel a railroad company, without compensation, to construct and maintain suitable crossings at streets extended over the right of way subsequent to the construction of the railroad. Our examination of the books, however, leads to the conclusion that the great weight of authority sustains the affirmative of that proposition."

In *Northern Pacific Railway Co. v. State of Minnesota ex rel. The City of Duluth*, 208 U. S. 583, this Court said:

"As the Supreme Court of Minnesota points out in the opinion of 98 Minnesota, 380 . . . the state courts are not altogether agreed as to the right to compel railroads, without compensation, to construct and maintain suitable crossings at streets extended over its right of way, after the construc-

tion of the railroad. The great weight of state authority is in favor of such right. (See cases cited in 98 Minnesota, 380.)

"There can be no question as to the attitude of this court upon this question, as it has been uniformly held that the right to exercise the police power is a continuing one; that it cannot be contracted away, and that a requirement that a company or individual comply with reasonable police regulations without compensation is the legitimate exercise of the power and not in violation of the constitutional inhibition against the impairment of the obligation of contracts."

In *Chicago, Milwaukee & St. Paul Railway Company v. City of Minneapolis*, 232 U. S. 428, Mr. Justice Hughes, writing the opinion of this Court and addressing himself to this question, said:

"It is well settled that railroad corporations may be required, at their own expense, not only to abolish existing grade crossings, but also to build and maintain suitable bridges or viaducts to carry highways, *newly laid out*, over their tracks, or to carry their tracks over such highways. (Cases cited.) The rule, as established in the State of Minnesota, was thus declared in the case of *State ex rel. Minneapolis v. St. Paul, M. & M. R. Co.*, 98 Minn. 380: 'A railroad company receives its charter and franchise subject to the implied right of the state to establish and open such streets and highways over and across its right of way as public convenience and necessity may, from time to time, require. That right on the part of the state attaches by implication of law to the franchise of the railroad company, and imposes upon it an obligation to construct and maintain at its own expense suitable crossings at new streets and highways to the same extent as required by the rules of the common law at streets and highways in existence when the railroad was constructed.' In that case,

it appeared that long after the construction of the railroad, the city of Minneapolis had laid out a street across the railroad right of way, building at its own cost a bridge over the railroad tracks. After the bridge had been maintained for several years by the city it was destroyed by fire, and the city then demanded that the railroad company should build a new one. This demand the state court sustained; and, mandamus having thereupon been awarded (101 Minn. 545, 112 N. W. 1142), the case was brought to this court, one of the grounds being that the action of the state deprived the company of its property without due process of law. The judgment was affirmed (St. Paul, M. & M. R. Co. v. Minnesota, 214 U. S. 497, 53 L. ed. 1060, 29 Sup. Ct. Rep. 698), this conclusion being reached upon the authority of *Northern P. R. Co. v. Duluth*, 208 U. S. 583, 52 L. ed. 630, 28 Sup. Ct. Rep. 341. Although the *Duluth* case was earlier in this court, the decision therein by the supreme court of the state immediately followed that of the same court in the Minneapolis case, and applied the principle which had been there announced. *State ex rel. Duluth v. Northern P. R. Co.*, 98 Minn. 429, 108 N. W. 269. The facts were that after the railroad had been built, a street had been opened across the right of way, and subsequently a viaduct for the crossing had been constructed at the joint expense of the city and the railroad company, the former agreeing to maintain it. Later, the city, repudiating the agreement, insisted that the company should repair the viaduct at its own expense. The state court entered judgment for the city, holding that the obligation to construct and maintain the viaduct rested upon the railroad company, and that hence the contract was invalid. This court affirmed the judgment, saying: 'As the supreme court of Minnesota points out in the opinion in 98 Minn. 380, * * * the state courts are not altogether agreed as to the right to compel railroads,

without compensation, to construct and maintain suitable crossings at streets extended over its right of way, after the construction of the railroad. The great weight of state authority is in favor of such right. See cases cited in 98 Minn. 380. *There can be no question as to the attitude of this court upon this question * * *.*"

POINT XII.

The statute provides for the imposition of not exceeding 10 per cent. of the cost directly chargeable to the elimination of the crossings used by the street railway company, upon that company. The order made in pursuance of the statute imposes 10 per cent. of such costs upon the street railway company. Neither the statute nor the order in this respect is obnoxious to the due process clause of the Constitution.

Both the railroad and the street railway make special use of the highways occupied and crossed by them. The right to make such special use must find its source in a legislative grant. Both are operated over fixed tracks.

The danger, the elimination of which it is the purpose of the statute to effect, is not in the case in which a railroad crosses the public highway and a street railroad crosses the railroad on such public highway, attributable to the railroad alone nor to the street railroad alone, but to both of them.

Where, as here, the electric cars run at frequent intervals across the railroad over which trains are run at frequent intervals, a place of unusual danger is created to both the passengers in the railroad cars and to the passengers in the street railroad cars.

In such circumstance the State may, in the exercise of the police power, require the elimination of the danger and may require one of the companies interested to perform the work of elimination at its own expense, or may distribute the cost among the companies which have contributed to the condition.

In making such distribution the State is not required to ascertain the exact quantum of damage caused by each road, and by that standard to assign the cost of protecting the public.

In *Mo. Pac. Ry. v. Omaha*, 235 U. S. 121, this Court had the question here considered before it and through Mr. Justice Day said (129):

"It may be that it would be more fair and equitable to require the street railway company to share in the expense of the viaduct, and if the municipality had been authorized so to do by competent authority, it would have been a constitutional exercise of the police power to have made such division of expenses. *Detroit, &c., Railway v. Osborn*, 189 U. S. 383, 389. But there is nothing in the statute requiring the municipality to divide the expense of such improvement among those responsible for the dangerous condition of street crossing. Where a number of railroads have contributed to the condition which necessitates such improvement in the interest of public safety, it is not unconstitutional exercise of authority, as this court has held, to require one of the companies interested to perform such work at its own expense."

An analogous rule was stated and applied by this Court in *Northern Pacific Railroad Co., et al., v. Puget Sound and W. H. Railway Co.*, 250 U. S. 332, where this Court held, as to a railroad constructed before, and crossed by another railroad after passage of a statute changing the prior law, that the crossing road should bear all the

expense of necessary interlocking safety devices, the statute did not take property in violation of the due process clause.

Mr. Justice Clark, delivering the opinion of this Court, said:

“It is admitted in the argument that the act assailed would be validly applicable to apportioning the costs of crossings of highways and railroads regardless of the dates of their construction (cases cited), and that it would be valid as applied to crossings of railroad lines constructed prior to its enactment where no contract had been entered into with respect to the protection of the crossing (cases cited). But it is contended that it is not a valid law as applied to the case at bar where the road of the Pacific company was constructed at a time when the state law imposed the entire cost of the construction and the maintenance of the crossing upon the junior company. Obviously this is a slender thread on which to hang a grave constitutional argument and it is difficult to treat it seriously. At most the earlier statute, and the interpretation which the State Supreme Court placed upon it, was a rule or law applicable to the assessment of damages in a proceeding to appropriate a crossing to which a junior company was entitled by the statute. It was no part of the charter of the Pacific company, which was organized under the Wisconsin law, and that company had no vested right to insist that the rule should not be changed by statute or by court decision. While this is sufficient to dispose of the case, it may be added that the act of 1913 was passed in an obviously legitimate customary exercise of the police power of the state to protect travelers and employees from injury and death from such crossings and also to protect property from damage. It has long been the settled law that the imposing of charges, involved in obeying a law passed in reasonable ex-

ercise of a police power is not the taking of property without due process of law within the meaning of the Fourteenth Amendment of the United States." (Cases cited.)

We cannot state the arguments in support of the proposition here involved better than it was put in the opinion of the Supreme Court of the State of New Jersey by Mr. Justice Garrison in the opinion rendered in *Public Service Railway Company v. Public Utility Commissioners and City of Paterson*, 89 N. J. L. 24, 98 Atl. 28; affirmed 90 N. J. L. 713, 103 Atl. 1054, where he said:

"We agree that this imposition of a part of the expense of abolishing dangerous grade crossings is neither a tax nor an assessment for a public improvement, but we think, that it is a legitimate exercise of the police power. The contention of counsel for the prosecutor is placed squarely upon the proposition that the police power is not legitimately exercised in the present case 'unless the property (of the prosecutor) has become a public nuisance and so lost its right to protection;' and he then proceeded to demonstrate that a street railway is not a public nuisance. We, of course, agree to this, but we entirely dissent from the narrow definition of the police power which would restrain its exercise to the case of property that had become in a legal sense a nuisance.

"If such a narrow definition has any place in the doctrine of the police power, it is confined to the appropriatory aspect of that power, *i. e.*, to such appropriation as is incidental to the destruction of property as a nuisance and has no place in the vastly wider scope of such power that is regulative of energies that are curbed, not that they may be impaired or destroyed, but, on the contrary, that they may be of greater service and beneficence to the public.

"Instances of such regulative exercises of the police power are met at every turn and constitute

in fact the chief characteristics of modern social life. There are, to use a rough analogy, two aspects of the exercise of the police power, one so to speak *in rem* and the other *in personam*; and it is to the former alone that the proposition of counsel has any possible pertinence, and even in that connection it is of doubtful value as a definition, and of no apparent service as a criterion.

"The distinction between these two aspects of the police power is perfectly patent. The destruction of a pest house would be an illustration of appropriation of property because it was *per se* a nuisance, *i. e.*, a menace to the public health, while the compulsory vaccination of school children would be in order to prevent them from becoming such. The securing of public safety from anticipated dangers rather than the abatement of concentrated nuisances is the essence of the police power in its broader scope. That there are such dangers to be anticipated from the operation at a grade crossing of a steam railroad and a trolley line is not more obvious than that each of these public agencies contributes its element to such danger. The steam road may indeed furnish in greater degree the active element of danger to human life, but the surface road in its operation brings to such place of danger its human freight in extraordinary numbers and under special conditions, which, or so the legislature might determine, greatly increase and accentuate the normal danger and hence justify its elimination by the joint act or at the joint expense of both of the public agencies that contribute to its production. It is matter of common knowledge that during what are termed the rush hours of the day a single surface car of modern construction carries a hundred or more passengers and that the cars thus crowded follow each other in an almost unbroken procession. The stalling of one of these cars upon the grade crossing by the sudden giving out of the electric current or its

propulsion onto the railroad track by the failure of the brake to work properly, or as in the Newark case (*State v. Young*, 56 Atl. Rep., p. 471), by the failure to sand the track, would imperil the lives of scores, who were brought into such position of peculiar peril by reason of being passengers on a street railway. It is not at all a question of the creating of a common nuisance, but solely of the participation in and contribution to a common source of danger arising from the transportation problem in its relation to grade crossings of common carriers of passengers.

"The state grants this use of its highways for the convenience of its citizens, and the incorporators of such companies eagerly seek the privileges thus granted because of the profits to be derived therefrom; hence, if dangers arise from the very success of such enterprises, it is eminently within the exercise of the police power of the state in the elimination of such dangers to place a portion of the expense of so doing upon those who profit by the very success which has contributed to such dangers.

"The fact that by such a collision as we have suggested the lives of the passengers on the steam railroad are also imperiled, so far from demonstrating that the entire expense of eliminating the dangerous condition would be borne by such railroad, merely emphasizes the participation of each carrier in the production of a common source of danger, and hence points to their joint contribution to the expenses of its elimination.

"In support of this obvious conclusion, counsel for the defendants cites a number of pertinent authorities, but the question which seemed to be at bottom one of fact, from which, when the fact is once established the legal result follows as a necessary consequence. The establishment of such fact is, moreover, a part of the legislative function and as such is not subject to review by the judicial department."

The following cases are to like effect.

In *Detroit, Fort Wayne & Belle Isle Railway v. Osborn*, 127 Mich., 219; 86, N. W. 842; 62 L. R. A. 149, it was held, that under Michigan statute (Act 1893, No. 171, No. 5) authorizing the railroad commission to provide proper safeguards at crossings of railroads and street railroads, and to apportion the expense between the companies affected as they may deem just and reasonable, where a steam railroad has extended its road across an existing street car line, and subsequently, owing to the increase of travel on the street, the erection and maintenance of safeguards at the crossing becomes essential for the protection of the public, the railroad commissioner may require the street railway company to pay a portion of the expense of constructing and maintaining such safety devices, the Court said:

"New dangers upon the public streets require new safeguards in the interests of the safety of the public. It is a matter of common knowledge that where electric cars run at frequent intervals, across a railroad over which trains are frequently run, it is a place of unusual danger, not only to the passengers in the steam cars, but also to the passengers in the electric cars. This danger is occasioned not by the steam road alone, nor by the electric road alone, but by both of them. We have no doubt that under such circumstances the state, in the exercise of its police power, can take such steps as will minimize the danger and can impose the expense of doing so upon the corporation causing the danger."

This Court affirmed the decision above (189 U. S. 383). Mr. Justice McKenna (390) delivering the opinion of the Court, said:

"The record in this case shows that there are thirty-eight daily passenger trains crossing Clark

avenue, and that the cars of the plaintiff-in-error pass every few minutes. It is manifest, as the Supreme Court of the State observed, that the crossing 'is a place of unusual danger, not only to the passengers in the steam cars, but also to the passengers in the electric cars,' and that the danger is caused by both. In such a situation the city is surely not powerless to act, nor before acting must it ascertain the exact quantum of damage caused by each road, and by that standard assign the cost of protecting the public. See *Railroad Co. v. Street Ry. Co.*, 89 Me. 328."

In *Board of Aldermen of Fitchburg v. Boston & M. R. R. Co.*, 203 Mass. 304; 89 N. E. 438, it was held, that under St. 1906, pp. 488, cp. 463, pt. 1, Secs. 23, 25, authorizing the alteration of railroad grade crossings and providing for the appointment of a special commission to determine whether the municipality, or steam railroad company, or street railroad company shall pay the cost thereof, when considered in connection with the legislative power which seeks to make parties specially benefited by alterations of crossings share in the expense of the improvements, and in connection with St., 1908, p. 504, cp. 542, defining the purpose of the Statute of 1906, a street railway company having tracks on a way is a party interested in an alteration of a railroad crossing on or over the way, and is liable to pay its proper portion of the expenses of the alteration.

POINT XIII.

The statute requires that changes in, or the removal of, the property or constructions of any telegraph, water, etc., company, shall be made by such company at its own expense. The order made in pursuance of the statute requires such changes. Neither the statute nor the order is, on this account obnoxious to the due process clause of the Constitution.

That the requirement of the statute and order to this effect does not work a deprivation of property in violation of the due process clause, is amply established by the following adjudications.

In *Jersey City v. City of Hudson*, 13 N. J. E. 420 (Ch.), it was held, that the expense incident to the lowering of the water company's pipes to conform to a new grade established by the municipality must be borne by the water company. It was urged that the right to have the water pipes under the street constituted a right of property which could not be taken without compensation.

On this point the Chancellor said (424):

"The owner of the soil has a common law right to the use and enjoyment of the soil under the highway. He may open a mine, construct vaults or chambers, erect machinery, lay water pipes, or exercise any other right of ownership in the soil not inconsistent with the public easement. But all these rights are held and must be enjoyed in subordination to the public right of way, including the right of construction, alteration and repair. It cannot be successfully maintained that a mere easement in land, though enjoyed and exercised by legislative sanction, can be a more sacred right of property in the eye of the constitution than the right of the land holder himself. It must be held

(and such must be the construction of the legislative grant) in subordination to the public easement."

In re Dering, 93 N. Y. 361, plaintiff, an abutting property owner, complained of the act of the municipality in assuming the expense of relaying gas pipes as part of the cost of grading a street and assessing the same upon abutting owners. The Court modified the assessment so as to exclude such expense, taking the ground that the gas company, in laying its pipes, took the risk arising from such changing as public convenience or security might require and said:

"The learned counsel for the city failed to satisfy us that any authority exists for imposing upon the owners of adjacent property expenses incurred by the gas company in removing and replacing its pipes. . . . For aught that appears here, although authorized to lay pipes through the public streets (Law 1848, chap. 37, sec. 18), the company took the risk of their location and should be required to make such changes as public convenience or security requires, at its own cost and charge."

In *Stillwater Water Co. v. Stillwater*, 50 Minn., 498; 52 N. W. 893, it was held, that the right to lay water pipes in the highways is subordinate to the power of the municipality to grade the highway, and that the municipality is not liable for the expense of lowering the pipes to conform to the new grade established. The Court said:

"When under this ordinance the plaintiff acquired the right to lay pipes in the streets, that right was subordinate to the power of the city to establish grades and grade the streets, . . . and although the exercise of the power may at times cause plaintiff inconvenience and expense, that is nothing more than it took the risk of in accepting the grant. . . ."

In *City of Detroit v. Fort Wayne & E. Ry. Co.*, 90 Mich., 646; 61 N. W. 688, the Court said:

"The charter of the city of Detroit commits the regulation, suspension and control of its streets to the common council. It empowers the council to improve the same and to determine the nature and details of such improvement. It gives to the common council the power to control, prescribe and regulate the manner in which the streets shall be used and enjoyed. These powers are held in trust for the public benefit. They cannot be surrendered or delegated to private parties. All franchises granted or contracts made with reference to the use of streets must be made, not only with due regard to their lawful and proper use by others, but subject to the exercise by the municipality of the powers referred to.

"The permission given respondents to use this street is in subordination to the general power of the municipality over its streets. The city is not under obligation to conform its treatment of its streets to the construction of respondent's road-bed, but on the contrary, respondent must conform the construction of its road-bed to such reasonable regulations as are made by the municipality in the reasonable exercise of its powers respecting the use, control, regulation and improvement of its streets. Street railways occupy public streets subject to the use of such streets by the public, subject to such burdens as may be made necessary by reason of the improvement of such streets, and subject to such changes in the construction of road-beds as improved and changed conditions may demand."

In *Columbus Gaslight & Coke Co. v. Columbus*, 50 Ohio St. 65; 33 N. E. 292, it was held, that a gas company could not recover from a municipality the expense of relaying its pipes in order to accommodate them to a

new grade established by the city, though the pipes were originally laid to conform to an established grade. The Court said:

"The grant by the city must be interpreted in the light of the right and duty of the city to re-grade, whenever in its judgment the public interest demands; and whatever easement the gas company can receive, it must accept and enjoy in common with equivalent rights which have been or may be acquired by other public agencies—rights of a like secondary character; and all must give way to the paramount duty of the city to care for the streets, and keep them open, in repair and convenient for the general public. This duty would be seriously interfered with if the city could not change the grade of its streets save upon the condition that it should make compensation to every gas company, and water company, and telephone company, and electric light company, and street railway company, for inconvenience and expense thereby occasioned. All such agencies must be held to take their grants from the city upon the condition, implied where not expressed, that the city reserves the full and unconditional power to make any reasonable change of grade or other improvement in its streets."

In *Natick Gaslight Co. v. Inhabitants of Natick*, 175 Mass. 246; 56 N. E. 292, it was held, that under a statute relating to grade crossings providing that all damages sustained by any person in his property by the taking of land for, or by, the alterations of the grade of a public highway, may be determined when occasioned by the taking of land for the locating and laying out of public ways, a gas company was not entitled to compensation for the expense which it incurred in taking up and relaying its gas mains, occasioned by a change in the grade of the streets in which they had theretofore been laid.

The Court said:

"The permission to lay down pipes in the public ways, whether or not, so long as the way remains public, and the pipe does not interfere with the other public uses, if be revocable, must be held to have been granted originally upon the condition that the pipes, neither at the time of the laying or thereafter, shall interfere with the public travel upon the way as then existing, or as it may thereafter be changed to meet the reasonable exigencies of such travel. To hold, otherwise, and to say that whenever, under the statutory permission, a gas pipe is laid in a public way, the pipe cannot be disturbed, even to make such changes as are required by public travel, except under the right of eminent domain is to make what is merely a subordinate use paramount to the great important use for which the land is taken. Such a construction seems to us unreasonable."

In *New England Tel. & Tel. Co. v. Boston Terminal Co.*, 182 Mass. 397; 65 N. E. 835, it was held, that the permission to use the highway must be held to have been granted on condition that the structures neither at the time of their laying or thereafter shall interfere with any other public use to which the Legislature sees fit to devote the way and that when the condition takes effect the privilege ceases to exist and that it is not taken or damaged.

The petition in this case was for assessment of land damages. The one petitioner was a telephone company, the other an electric lighting company. Each had conduits and wires in certain streets of the City of Boston when these streets were discontinued and taken for a terminal station.

The petitioners contended that they had rights of property in the streets, for which they were entitled to compensation. The petition was denied.

In *Anderson v. Fuller*, 51 Fla. 380; 41 So. 684, the Court said:

"While municipalities may by ordinance grant to individuals and corporations the privilege of occupying the streets and public ways for lawful purposes, such as railroad tracks, poles, wires, gas and water pipes, such rights are at all times held in subordination to the superior rights of the public and all necessary and desirable police ordinances that are reasonable may be enacted and enforced to protect the public health, safety and convenience, notwithstanding the same may interfere with legal franchise rights. A water company, placing its pipes in the streets under a franchise contract with the city, does so in subordination to the superior rights of the public, through its duly constituted municipal authorities, to construct sewers in the same streets whenever and wherever the public interest demands; and if, in consequence of the exercise of this right, the water company is compelled to relay its pipes, in the absence of unreasonable or malicious conduct, it has no cause of action against the corporation for reimbursements on account thereof."

In *Scranton Gas & Water Co.*, 214 Pa. 586; 64 Atl. 84, it was held, that a gas and water company could not hold the city liable for the cost of making the necessary changes in its pipe lines laid in the street under a franchise, upon the raising by the municipality of the street grade to carry it over a railroad crossing.

The Court said:

"It is the reasonable discretion of the municipal authorities that determines the extent of the change

in streets required to meet public necessities; and to that change, whatever it may be, short of an abrogation or annulment of the company's right to maintain its system of pipe in the public streets, the company must conform at its own cost and expense. The former results from the inherent right of the municipality to the exercise of police power, and the latter from subordinated rights of the gas company in the public streets, under its original grant of privilege, to those of the public."

In *City of Indianapolis v. Indianapolis Light & Heat Co.*, Ind. : 95, N. E. 246, it was held, that a light and heating company is not entitled to an award for damages caused to its property by a change of the grades of streets made by a city in making an improvement under the track elevation statute (Acts 1905, c. 82), since such improvement was made in the lawful and proper exercise of the police power.

In *Walker v. North Bergen*, 84 N. J. L. 248, the Court said:

"A further contention of the prosecutor is that the contract as awarded imposes upon the taxpayers an improper burden of expense, in that it saddles the taxpayers with the cost of shifting the water pipes of the Hackensack Water Company and the gas pipes of the Public Service Company. This contention is sound. These companies are private corporations. They exercise functions of a public nature in the distribution of water and gas to the public. This feature of their business, however, does not give them a vested right to have their pipes remain under the public highway undisturbed when the public good or necessity requires that they should be shifted or relocated. For aught that appears in this case these companies are mere licensees. It will therefore be presumed that they laid their pipes under the public highways sub-

ject to the paramount use of the highway by the public. Under such conditions a natural sense of justice demands that the expense of shifting and relocating the pipes should be borne by the companies owning them, and not by the taxpayers."

The rule applied in the foregoing cases by the courts of the several states has the approval of this Court.

In *New Orleans Gas Light Co. v. Drainage Commission of New Orleans*, 197 U. S. 453, it was held that imposing upon a gas company the cost of changes in the location of its pipes and mains necessitated by the construction of a drainage system, did not impair its contract rights under its exclusive franchise to supply gas to the city through pipes and mains laid in the streets, and that such a gas company had no such property rights in the location of its pipes and mains as to make the imposition upon it of such cost a taking of property without compensation.

Mr. Justice Day, delivering the opinion of the Court said:

"We think whatever right the gas company acquired was subject, so far as the location of its pipes was concerned, to such future regulations as might be required in the interest of the public health and welfare. These views are fully sustained by the authorities. *National Water Works Co. v. City of Kansas*, 28 Fed. Rep. 921; * * * *Chicago, Burlington, &c., R. R. Co. v. Chicago*, 166 U. S. 266, 254. In the latter case it was held that uncompensated obedience to a regulation created for the public safety under the police power of the state was not taking property without due compensation. In our view that is all there is to this case. The gas company by its grant from the city acquired no exclusive right to the location of its pipes in the streets, as chosen by it, under a gen-

eral grant of authority to use the streets. The city made no contract that the gas company should not be disturbed in the location chosen. In the exercise of the police power of the state, for a purpose highly necessary in the promotion of the public health, it has become necessary to change the location of the pipes of the gas company so as to accommodate them to the new public work. In complying with this requirement at its own expense, none of the property of the gas company has been taken, and the injury sustained is *damnum absque injuria*."

POINT XIV.

Neither the statute nor the order requires the **Erie Railroad Company to construct or reconstruct switches, side-tracks or structures for the private use of others.** Neither the statute nor the order, therefore, in this respect, violates the due process clause of the **Constitution.**

It is contended by some of the plaintiffs-in-error that the statute authorized, and that the order directed, the Erie Railroad Company to construct or reconstruct switches, sidings and structures for the private use of others, and that such authorization and direction violated the due process clause of the Constitution. This contention was raised before, considered, and completely disposed of by the courts of the state.

The Supreme Court of the state, in its opinion (case, vol. V, pp. 2257, 2280), said:

"Point VIII is that the order of the Board is invalid insofar as it requires the prosecutor to make changes in switches, side tracks, leads, bridges, yards, structures and other facilities and property of the prosecutor and of other companies, co-part-

nerships or individuals. We think in this respect the order *properly interpreted* is justified by the statute *properly construed*.

"The statute authorizes the Board, in a proper case to order the railroad to alter grade crossings according to plans to be approved by the Board, by substituting therefor crossings not at grade, either by carrying the highway under or over the railroad, or by reconstructing the railroad under or over the highway, or by vacating, relocating or changing the lines, width, direction or location of the highway and the opening of a new highway in the place of the one vacated, and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings.

"Now, the order of the Board directs the railroad company 'to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof * * * and profile of the same also annexed to and made part hereof * * * which said plan and profile are hereby approved; by substituting therefor crossings not at the grade of the public highways known as Madison Avenue, Straight Street, Clay Street, Market Street and Park Avenue, Ellison Street, Van Houton Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Keen Street, Warren Street, Putman Street and River Street; by changing the lines, width and direction thereof and carrying so much thereof as so changed under the said railroad, except in the case of Madison Avenue which is carried over the railroad, according to and as shown on said plan and profile for said purpose, and by vacating the remaining parts of said highways within the lines of the right of way of said railroad company, and further by vacating that part of Madison Avenue lying west of the railroad and the line of the relocated Madison Avenue;

by substituting for the existing crossing at Cedar Street, a crossing under the railroad at Taylor Street and for the existing crossing at Franklin Street a crossing under the railroad at Montgomery Street, and also by widening and altering the existing highways known as Essex Street, Governor Street and Fulton Street, adjusting the structures, spanning them to the proposed grade or grades (which said new highway shall be located, and of the width, length and direction and carried over or under the said railroad where so indicated); by reconstructing said railroad and highways and by performing all other work required according to and as shown on the said plan and profile.'

"It therefore appears, we think, that the order is confined in its direction to the company to the alteration of the crossings in question by changing the highways and by reconstructing the railroad and by performing such work as is required thereby. It does not require the railroad company to make changes in private sidings, and the like, not its property, and not within the limits of its right of way. The closing words of the order 'and by performing all other work required according to and as shown on said plan and profile' do not affect this conclusion as to the scope of the order. These general words follow specific provisions of the order and under an elementary rule of construction, are limited thereby. Further, they refer back to the introductory, general mandate of the order requiring the company to 'alter said crossings and each of them' and are limited thereby.

"Neither does the order require the owners of such private sidings to reconstruct them. The plan which accompanies the order simply suggests to such owners a method by which their property may be conformed to the new conditions so as to admit of a continuance of the siding facilities theretofore enjoyed. The order only requires others than the railroad company to make such changes in and re-

movals of their property and constructions as are necessary to carry the order and plan into effect. In this it accords with section 4 of the statute. Since the mandate of the order to the railroad company is limited to requiring the changing of highways and the reconstruction of the railroads, the changes in, or removal of, such private sidings cannot be said to be necessary to carry the order to the railroad into effect. Of course, the plan does indicate a way in which, in part, existing siding facilities may be continued after the ordered changes in the highways, and the ordered reconstruction of the railroad are made. It is appropriate that it shall do so, for in the adoption of a plan, the effect thereof on existing industrial facilities should be taken into account, and this factor should also be taken into consideration in determining whether the plan adopted is reasonable or unreasonable.

“As we have pointed out, insofar as the order directs the prosecutor to make changes in its own side tracks, and the like, it was within the power conferred by the statute. If such changes were fairly incidental to the changes of grade of the main line tracks, we think that such changes were of that character.”

* * *

The construction so given the statute and the order by the Supreme Court of the state was affirmed by the court of last resort. Such interpretation of the statute and the order by the court of last resort of the state will be adopted by this court.

Tullis v. Lake Erie & Western Railroad Co., 175 U. S. 348;

Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531.

As interpreted by the court of last resort of the State, neither the statute nor the order falls within the condemnation of:

Missouri Pacific Railway Co. v. Nebraska, 164
U. S. 403;

Missouri Pacific Railway Co. v. Nebraska, 217
U. S. 196.

The matter of providing adequate private siding facilities can be taken up during the progress of the work and thereafter. If agreement cannot be reached between the railroad company and adjoining owners who desire such facilities, application can be made by such owners to the Board of Public Utility Commissioners under the statute creating that Board (Laws of New Jersey 1911, chap. 195, p. 374) for relief. Section 16 (k) of that act provides that the Board shall have power, after hearing, upon notice, by order in writing, to direct any railroad company "to construct, maintain and operate upon reasonable terms, a switch connection with any private side-track, which may be constructed by any shipper to connect with the railroad . . . where, in the judgment of the Board, such connection is reasonable and practicable, and can be put in with safety, and will furnish sufficient business to justify the construction and maintenance of the same."

POINT XV.

The statute requires that the order made thereunder shall be directed to the "company operating such railroad." The order made in pursuance of the statute was directed to the Erie Railroad Company, the company operating such railroad. Neither the statute nor the order in this respect was obnoxious to the due process clause of the Constitution.

The Erie Railroad Company operates the railroads to which the order relates as lessee thereof.

Its leasehold rights are perpetual. For all substantial practical purposes, the leases under which it operates the railroads are conveyances in fee.

Black v. Delaware &c. Canal Co., 24 N. J. E. 455.

As such lessee, that company is subject to the continuing duty imposed by the charters of the lessor companies to construct and keep in repair, good and sufficient bridges or passages over and under the said railroads where any public road shall cross the same, so that the passage of carriages, horses and cattle on such roads shall not be prevented thereby.

As such lessee, that company is by force of section 26 of the General Railroad Act, further under a continuing duty to construct and keep in repair good and sufficient bridges and passages over, under and across the railroad right of way where any public road, street or avenue shall cross the same, so that public travel on said road shall not be impeded thereby.

The statute confirming the leases and contracts under which the company operates said railroads (Laws of New Jersey 1853, p. 480, case 977, 1021), refers to the New York and Erie Railroad Company as now in possession of

the Paterson and Hudson River Railroad, and the Paterson and Ramapo Railroad, under certain leases and contracts made by said companies.

It further refers to the New York and Erie Railroad Company, as *now carrying on* the business of said roads under said leases and contracts, and enacts that, "the New York and Erie Railroad Company and any other corporation or individuals using the aforesaid roads or either of them shall be and they are hereby declared liable for all claims, debts, damages, omissions and delinquencies arising from the running or operating said railroads and carrying freight and passengers on the same, as fully as the said Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company are now liable by the laws of this State."

It permits service of summons or subpoena to be made upon the New York and Erie Railroad Company, or any other foreign corporation using said roads, by service thereof, "on any station agent of said corporation."

By the terms of the Grade Crossing Elimination Act the order made thereunder is to be directed to "the company operating such railroad."

The order consequently was directed to the Erie Railroad Company.

This provision of the act is neither arbitrary nor unreasonable.

The dangerous conditions, to the elimination of which the act is directed, are the result of the operation and not the mere ownership of the railroad.

It cannot be seriously contended that to impose upon the company operating the railroad, particularly where its leasehold rights are perpetual, the duty of performing the work necessary to eliminate the dangerous conditions

resulting from such operation, is arbitrary or unreasonable.

Especially is this true where, as here, the leases under which the roads are operated provide that at the termination of the leases any erections or improvements upon the demised property, that may have been made by the lessees or their assigns at their own expense, shall be paid for by the lessors at their appraised and just value (case, pp. 990, 993, 1027, 1029).

The following cases support the propositions advanced under this point.

In *Lee v. Smith*, 42 Oh. St., 458; 51 Am. Rep., 839, it was held that section 2573 of Revised Statutes of Ohio, as amended April 19, 1883 (80 O. L. 188), does not impose upon any owner in fee of a building more than two stories high, the duty to provide a convenient exit from the different upper stories of said buildings when such owner is not in possession or control thereof, although his tenant in possession and control of the building may use the same as a factory or workshop.

The Court said:

"We have considered a single proposition in this case, to wit: the true meaning of the phrase, 'any owner of any factory or workshop.' * * *

"That a factory or workshop is not synonymous with building must be admitted. * * *

"The owner of a building and the owner of a factory which is conducted in the building may be different persons, and when this is so, the owner of the factory and not the owner in remainder or reversion of the building, is the person on whom the statute imposes the duty. * * * If the building were constructed and used for a factory by the owner, who afterwards transfers the building in fee and the business to another, the duty of providing

fire escapes thereafter devolves upon the purchaser who continues the business, and the grantor is relieved therefrom. This proposition will not be questioned. We think the same result would follow the transfer of a life estate or an estate for years. The true test of liability is the possession and right to control the factory by one who is owner of the business or agent for such owner, although owner of the building for the time being only."

In *Schott v. Harvey*, 105 Pa. St., 222, it was held that the provision of P. L. 1879, p. 128, of Pennsylvania, that certain factories, etc., shall be provided with fire escapes by the "owners" or other persons therein designated, does not apply to an owner in fee, not in possession, who has leased the premises to a tenant who occupies the same as such factory and that such tenant in possession, using the premises as such a factory, is the "owner" of the factory within the meaning of said act.

The Court said (227):

"But the question which more immediately concerns us is, who is the 'owner' of a factory within the meaning of the act? The plaintiff contends that the owner is the person who holds the fee in the land on which the factory building stands. The word 'factory' is a contraction of manufactory, which Webster defines to be a building, or collection of buildings, appropriated to the manufacture of goods. But a manufactory is something more than a building. It includes not only the building but the machinery necessary to produce the particular goods manufactured, and the engines or other power requisite to propel such machinery. A building with only bare walls and a roof would no more be a manufactory than it would be a hotel. Such a building would be a mere shell and would not impose the duty of erecting fire escapes. It is only when it is completed by the addition of machinery,

and operatives are introduced to assist in the manufacture, that the duty of erecting fire escapes attaches. To whom does that duty attach? Clearly to the occupant in possession, who places the operatives in a position of danger, and enjoys the benefit of their services. If he is the lessee of the building, then he is a tenant in possession. For all practical purposes he is the owner until the end of his term, which may be in one year or in one hundred years. There is a large amount of property held in reversion in the City of Philadelphia. Some of the leases are for several hundred years. However long the term, the lessee is but a tenant for years; the fee is in him that hath the reversion. Yet the broad principle contended for would make the reversioner, who has practically parted with all control of the property, responsible for the neglect of the tenant in possession to put up fire escapes. And this would be so even if the property leased had been a vacant lot, and the factory building had been erected, and the machinery placed therein by the tenant subsequent to the lease. We cannot impute to the legislature an intention of doing a thing so palpably unjust and absurd as this. When, therefore, they used the term 'owner' in this connection, it is plain the owner at the time of the injury was contemplated without regard to the quantity or duration of his estate. * * * This view meets all of the requirements of the act. It places the responsibility where it properly belongs, upon the person in possession and occupancy of the property as owner for the time being and the nature of whose business renders the erection of fire escapes necessary to protect the lives of his employees."

In *Baltimore & Ohio Railroad Co. v Walker*, 45 Ohio St., 577, it was held that a railroad company which has the possession and control of a railroad in Ohio, and is managing and operating the same as the lessee thereof, is

one "owning the tracks" of such railroad within the meaning of section 3333 of the Revised Statutes, which provides that: "When the tracks of two railroads cross each other, or in any way connect, on a common grade, the crossing shall be made and kept in repair, and watchmen maintained thereat at the joint expense of the companies owning the tracks."

The Court said:

"The necessity for keeping the crossings in repair and maintaining watchmen thereat, grows out of the use and operation of the railroads whose tracks cross each other at a common grade, and lessee companies having the possession and control of the roads and operating them as such, receive all the advantages and securities resulting from safe crossings, and the services of the watchman, as fully in all respects as companies that are the absolute owners thereof could if they were operating them, and it would appear but reasonable, that while operating the roads they should receive the benefits subject to the burden of their expenses as provided by the statute and we are of the opinion that such lessees are companies 'owning the tracks' of the road operated by them, in the sense in which that phrase is used in the statute."

In *Buffalo Stone & Cement Co. v. Delaware, Lackawanna & Western R. Co.*, 130 N. Y. 152, it was held that where a railway company, organized under the laws of the state, leases its property to a foreign company, and by a covenant in that lease the latter agrees to perform all things in connection with the road which the lessor might be required by law to perform, the lessee must maintain farm crossings, as required by Laws of New York 1850, chap. 140, sec. 44.

The Court said:

"In *Jones v. Seligman*, 81 N. Y. 190, a railroad corporation mortgaged its property to trustees to secure payment of an issue of bonds, and thereafter defaulted in the payment of the interest. Under a power in the mortgage, the trustee entered into possession, completed and operated the road for the benefit of the bondholders. An action was brought to compel the trustees to build fences and farm crossings, which was defended on the ground that no corporations or persons could be compelled to perform either of these statutory duties except those mentioned in the statutes. It was held that the trustees being in possession with power to make reparation and additions, they had the right, and it was their duty, to construct fences and necessary farm crossings; that being in possession of the property, and engaged in operating it, they must carry out the provisions of the statutes as the representative of the corporation. In this case the defendant, by a covenant in the lease above quoted, expressly agrees to perform all things in connection with the road which the lessor might be required by law to perform. This provision plainly includes the duties imposed by statute on the lessor, and brings the case within the principle of *Jones v. Seligman*.

"The position that the defendant is not liable because it is not a corporation of this state, or organized under chapter 140, laws 1850, is not tenable. It having the right to operate its leased lines under the statutes of this state, it must be held to have assumed to discharge the same duties to the public and adjoining owners as are imposed upon such corporations organized and existing under our own statutes."

See also *Appeal of Town of Westbrook*, 57 Conn. 95; 17 Atl. 368.

Finally, it should be noted (see title map, Ex. R. 16) that parts of the railroad within the City of Paterson are owned by the Erie Railroad Company and are not held under the leases.

POINT XVI.

Neither the Grade Crossing Elimination Act nor the order made in pursuance thereof impaired the obligation of any contract between the state and the railroad companies.

The power exerted through the enactment of the Grade Crossing Elimination Act, and through the order made in pursuance thereof, was the police power of the state. This power the state could not by contract surrender or bargain away. The contracts contained in and the rights derived from the several charters, were from the beginning subject to the future exercise of this power.

The right which the Erie Railroad Company has, as lessee, in the railroad in question are derived from the statute of the State of New Jersey confirming the lease to the New York and Erie Railroad Company (Laws of New Jersey, 1853, p. 480; case, 977, 979).

Without legislative authority previously conferred, or a confirmatory act, the leases of the roads and franchises would have been wholly inoperative and void.

Black v. Delaware &c. Canal Co., 24 N. J. E. 455;
West Jersey and Seashore R. R. Co. v. Board of Public Utility Commrs., 87 N. J. L. 870; 94 Atl. 57, 59.

The confirmatory act, in its fifth section provides, "that the legislature may at any time, alter, amend or repeal this act."

Under the powers so reserved to the state, the franchises, privileges and exemptions granted by the state may be restricted, and burdens may be imposed, submission to which, is the price of the continued enjoyment of such franchises, privileges and exemptions.

The act incorporating the Paterson and Ramapo Railroad Company (Laws of New Jersey, 1832, p. 24; case p. 1005), in its thirteenth section, provides "that it shall be lawful for the Legislature, at any time hereafter, to alter, amend, or modify this act, whenever in their opinion the public good may require it."

The statute incorporating the President and Directors of the Paterson and Hudson River Railroad Company (Laws of New Jersey, 1831, p. 24; case p. 966) contains no reservation of the power to alter, amend or modify the act.

Irrespective of whether or not the power to alter, amend or repeal was reserved in the several statutes of incorporation and confirmation, the contracts contained therein and the rights derived therefrom were subject to the police power of the state. This power, the Legislature could not by contract surrender or bargain away. The exertion of this power, therefore, through an act of legislation or an administrative order made under an act of legislation, would not impair the obligation of the contracts contained in the several acts of incorporation or the confirmatory acts.

From among the many cases sustaining these propositions we select, as especially pertinent, the following:

In *Minneapolis & St. L. Ry. v. Emmond*, 149 U. S. 364, this Court had before it a statute of Minnesota which provided that all railroad companies in the state should within six months after its passage "build or cause to be built good and sufficient cattle guards at all wagon crossings, and good and substantial fences on each side" of their roads and declared that they should be liable for domestic animals killed or injured by their negligence, and that a failure to build and maintain cattle guards and fences as above provided should be deemed an act of negligence on the part of such companies; and by its fourth section, as amended, provided that any company guilty of the failure or neglect mentioned should be liable for all damages sustained by any person in consequence of such failure or neglect.

The statute so requiring the erection of cattle guards and fences was sustained notwithstanding an assumed contract with the state to the contrary.

Mr. Justice Field, delivering the opinion of this Court, said:

"It was also objected that the statutes of Minnesota, in requiring the defendant to build partition fences for the benefit of adjoining landowners, or to pay damages for not building them, imposed upon the company a duty not required by contract, common law, or its charter, and is, therefore, a violation of the right conferred by the charter to buy and hold lands for specified purposes, the same as any other landowner.

"To this position we answer that the extent of the obligations and duties required of railway corporations or companies by their charters does not create any limitation upon the state against impos-

ing all such further duties as may be deemed essential or important for the safety of the public, the security of passengers and employees, or the protection of the property of adjoining owners. The imposing of proper penalties for the enforcement of such additional duties is unquestionably within the police power of the states. *No contract, with any person, individual or corporate, can impose restrictions upon the power of the states in this respect.*"

In *C. B. & Q. R. R. v. Nebraska*, 170 U. S. 57, this Court held that a contract between the City of Omaha and two railroad companies, founded upon an act of the legislature of Nebraska, for the building of a viaduct along a street at the expense of the two companies, was a contract in such a sense that the respective parties continued to be bound by its provisions so long as the legislation remains unchanged; *but it was not a contract whose continuance and operation could not be affected or controlled by subsequent legislation.*

In *Northern Pacific Railway Co. v. State of Minnesota ex rel. The City of Duluth*, 208 U. S. 583, Mr. Justice Day, delivering the opinion of this Court referring to this subject, at page 598, said:

"The exercise of the police power cannot be limited by contract, for reasons of public policy, nor can it be destroyed by compromise, and it is immaterial upon what consideration the contract rests, as it is beyond the authority of the state or the municipality to abrogate this power so necessary to the public safety."

In *Texas & N. O. R. Co. v. Miller*, 221 U. S. 408, this Court held that a charter provision exempting a railroad company from liability for death of employees, even if caused by its own negligence, does not amount to an irre-

vocable contract within the protection of the contract clause.

Mr. Justice Van Devanter, delivering the opinion of this Court, said:

"The doctrine that a corporate charter is a contract which the constitution of the United States protects against impairment by subsequent state legislation is ever limited in the area of its operation by the equally well settled principle that a legislature can neither bargain away the police power nor in anywise withdraw from its successors the power to take appropriate measures to guard the safety, health and morals of all who may be within their jurisdiction.

. . .

"The subject to which the provision in question relates is the civil liability of a railroad company for the death of its employees, resulting from its negligence. That is a matter of public concern, and not of mere private right. It is closely connected with the safety of the employees, and undoubtedly belongs to that class of subjects over which the legislature possesses a regulatory but not a contracting power. Manifestly, therefore, the charter contract did not embrace that provision, and the contract clause of the Constitution did not prevent its repeal."

In *Denver & R. G. R. Co. v. Denver*, 250 U. S. 241, this Court sustained, against attack upon the ground that it offended the contract clause, a municipal ordinance directing a railroad company to remove its tracks from a busy street intersection.

Mr. Justice Van Devanter, delivering the opinion of the Court, said:

"The track in Wynkoop Street has been there since 1871, and we shall assume, as did the Supreme

Court of the state, that it was put there in virtue of some ordinance of that period, and that the ordinance became a contract and the right granted became a vested property right. But, as this court often has held, such contracts and rights are held subject to the fair exercise by the state, or the municipality as its agent, of the power to adopt and enforce such regulations as are reasonably necessary to secure the public safety; for this power 'is inalienable even by express grant,' and its legitimate exertion contravenes neither the contract clause of the Constitution nor the due process clause of the Fourteenth Amendment."

In *Morris & Essex R. R. Co. v. Orange*, 63 N. J. L. 253, Mr. Justice Depue, writing the opinion of the Court of Errors and Appeals of New Jersey, after pointing out that certain New York and Connecticut decisions were placed upon the ground that the charters of the respective companies were subject to alteration or repeal, but that the opinion of the Connecticut Court and of the Supreme Court of the United States in *New York and New England Railroad v. Bristol*, 62 Conn. 252; 26 Atl. 122; 151 U. S. 556, lays stress upon the fact that the regulations were a proper exercise of the police power of the state, said (264):

"In *Boston and Maine Railroad Co. v. County Commissioners*, 79 Me. 386; S. C., 10 Atl. Rep. 113, an act requiring the expense of building and maintaining so much of the townway or highway as was within the limits of the highway where such way crossed the track at grade, should be borne by the railroad company, was held to be constitutional. This decision was made against a company whose charter provided that it should not be altered, amended or repealed. The power of the legislature to impose such burdens for general safety under the police power was declared to be fundamental

and that the act did not impair any contract in the company's charter. Whether the corporation has an irrevocable contract in its charter or not is immaterial. Police powers are inherent in the government, and the legitimate exercise of legislative powers in securing public safety does not impair the obligation of contracts nor deprive anyone of property without due process of law."

In *Town of Waterbury v. Central Vermont Railway Co.*, 108 Atl. 423, it was held that in its application to the Central Vermont Railway Company, chartered originally by an act of 1843, the application of a later enacted statute requiring the repair of a bridge under the railroad's overpass in a town, did not deprive the railroad of vested rights, its charter having been granted subject to the police power of the state and such later statute being in the exercise of such power.

Mr. Justice Powers, writing the opinion of the Court, said:

"There is nothing in the law more firmly established than this: Every contract made, every charter granted, regardless of its stipulations, is subject to the police power of the state. The Legislature cannot divest itself of the power (which carries with it the corresponding duty) of conserving the health, safety, comfort, and welfare of the people; nor can one legislature bind its successor by any contract to the contrary."

POINT XVII.

Neither the Grade Crossing Elimination Act nor the order made in pursuance thereof contravenes the contract clause of the Constitution by reason of the effect thereof upon the contracts embodied (a) in the leases of the railroads and franchises, or (b) the contracts between the railroad companies and the holders of their obligations and securities, or (c) the contracts between the railroad companies and other utility companies occupying the public highways and crossing the railroad, or (d) the contracts between the railroad companies and others for switch connections and service.

These several contracts and the rights thereunder were, when entered into and acquired, subject to the police power of the State. It was not within the competency of the parties thereto, by their contracts to withdraw the subject thereof from or to restrain or affect in anywise the future exercise of such power by the State.

If, as we contend, the Grade Crossing Elimination Act and the order made in pursuance thereof, are based upon, and justified in the police power, neither such act nor such order operates to unconstitutionally impair the obligation of the several contracts above referred to, nor violates the due process clause. Rights which are subject to the police power of the State cannot be removed from that power by the making of a contract concerning them. The contract in such case carries with it the infirmity of the subject matter. The general principle involved in this point were considered in the following cases.

In *Manigault v. Springs*, 199 U. S. 473, it appeared that Manigault, Springs and others were adjoining riparian owners on the Santee River at the mouth of Kinloch

Creek. Springs and others built a dam across the creek, which interfered with Manigault's passage up the creek and with irrigation. In 1898 a contract was made between the parties by which the obstructions were to be removed to give a clear passage up the creek, and the removal was effected. In 1903 the Legislature of South Carolina authorized Springs to erect and maintain a dam across the creek in order to drain the lowlands on the Santee River and enhance their values. Manigault applied for an injunction against this in the United States Circuit Court of South Carolina. A demurrer to his bill was sustained and appeal was taken. On appeal the judgment below was affirmed.

Mr. Justice Brown, delivering the opinion in this Court, said:

"The main argument was addressed to the question whether the contract of August, 1898, providing for the removal of the obstruction on December 31, and the free ingress and egress through the creek thereafter was impaired by the act of the general assembly of 1903, permitting the defendants by name to construct and maintain the dam in question.

"It is the settled law of this court that the interdiction of statutes impairing the obligations of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected.

"This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances

of this are where parties enter into contracts, perfectly lawful at the time, to sell liquors, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the state, prohibiting the establishment or continuance of such traffic; in other words, that parties, by entering into contracts, may not estop the legislature from enacting laws intended for the public good.

"While this power is subject to limitations in certain cases, there is wide discretion on the part of the legislature in determining what is and what is not necessary, in a discretion which courts ordinarily will not interfere with."

In *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372, this Court held that one having a contract with a public service company fixing rates is neither deprived of property without due process nor is the obligation of his contract impaired in violation of the contract clause by the fixing of higher rates in the exercise of the State's police power of regulation.

Mr. Justice Clark, delivering the opinion of the Court, said:

"Thus it will be seen that the case of the plaintiff in error is narrowed to the claim that reasonable rates, fixed by a state in an appropriate exercise of its police power, are invalid for the reason that if given effect they will supersede the rates designated in the private contract between the parties to the suit, entered into prior to the making of the order by the Railroad Commission.

"Except for the seriousness with which this claim has been asserted and is now pursued into this court, the law with respect to it would be regarded as so settled as not to merit further discussion.

"That private contract rights must yield to the public welfare, where the latter is appropriately

declared and defined, and the two conflict, has often been decided by this court."

"Thus in *Monigault v. Springs*, 199 U. S. 473, 480, 26 Sup. Ct. 127, 130 (50 L. Ed., 274), it was declared that:

'It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from "properly exercising its police powers" for the general good of the public, though contracts previously entered into between individuals may thereby be affected.'"

"This on authority of many cases which are cited."

"In *Hudson Water Co. v. McCarter*, 209 U. S. 349, 357, 28 Sup. Ct. 529, 531 (52 L. Ed. 828, 14 Ann. Cas. 560), it is said that:

'One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. A contract will carry with it the infirmity of the subject-matter.'"

"In *L. & N. R. R. Co. v. Mottley*, 219 U. S. 467, 482, 31 Sup. Ct. 265, 270 (55 L. Ed. 297, 34 L. R. A. (N. S.) 671), this is quoted with approval from *Knorr v. Lee*, 12 Wall. 457, 550, 551, 20 L. Ed. 287, viz.:

'Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.'"

"In the same report, in *Chicago, B. & Q. R. Co. v. McGuire*, 219 U. S. 567, 31 Sup. Ct. 259, 262, (55 L. Ed. 328), it is said:

'There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of lib-

erty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community.' ”

“In *Atlantic Coast Line R. R. Co. v. Goldsboro*, 323 U. S. 548, 558, 34 Sup. Ct. 364, 368 (58 L. Ed. 721), the Court said:

‘It is settled that neither the “contract” clause nor the “due process” clause has the effect of overriding the power of the state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise.’ ”

“And in *Rail and River Coal Co. v. Ohio Industrial Commission*, 236 U. S. 338, 349, 35 Sup. Ct. 359, 362 (59 L. Ed. 607), the state of the law upon the subject is thus aptly described:

‘This court has so often affirmed the right of the state in the exercise of its police power to place reasonable restraints, like that here involved, upon the freedom of contract, that we need only to refer to some of the cases in passing.’ ”

“These decisions, a few from many to like effect, should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state, and the judgment of the Supreme Court of Georgia must be affirmed.”

Cases specifically applying this settled principle to facts such as are here before the Court follow:

In *Swift v. Delaware, L. & W. R. R. Co.*, 66 N. J. E. 34, it was held that Gen. Stats., p. 2689, par. 221, empowers municipal authorities to make such contracts with railroad companies as shall secure greater safety to persons and property, or facilitate the construction and maintenance of other than grade crossings.

Under this statute a city contracted with a railroad company (whose charter bound it to keep its highway crossings fit for safe and convenient use, and gave it power to elevate its tracks) to remove certain tracks at a grade crossing, substituting therefor an elevated crossing.

It was further held that the obligation thus imposed on the company was paramount to the conflicting obligation existing by virtue of a prior contract with a private individual to maintain a switch and siding so that the latter contract would not be specifically enforced in equity in any manner, but that such individual would be remitted to his legal remedies, if any.

Emery, *V.-C.*, (47) said:

"In view of the subsequent contract made by the company with the city, under the acts of 1874 and 1893, for the removal of its tracks, is the agreement with the complainants, if proved, one which a court of equity should specifically enforce? In my judgment, it should not, and for the reason that the track elevation contract was one made for the purpose of carrying out obligations imposed upon the company in the interest of public safety, which are paramount to the private interests of the complainants, and the performance of these public obligations should not be interfered with or prevented by the special enforcement of complainants' supposed private rights. The railroad company at the time

of the alleged contract was, under the express terms of its charter, chargeable with the duty to keep, at all times and under all circumstances, the public highways where they cross the railroad in a condition fit for safe and convenient use, and for this purpose had power, when public exigencies required, to elevate their tracks or alter the grades or highways. *Central Railroad Co. v. State*, 3 Vr., 220 (Supreme Court, 1867); *Newark v. Delaware, Lackawanna & Western Railroad Co.*, 15 Stew. Eq. 196 (*Van Fleet, V.-C.*, 1886). Under the general law of the state as it existed prior to 1874, both the railroad and the municipal authorities were charged with the duty of providing for the public safety, and for carrying out this purpose were empowered, by the statute of 1874, to mutually agree upon the elevations or changes to be made. *Read v. Camden*, 24 Vr., 322, 326 (Supreme Court, 1891). This statute was in force at the time of the agreement now in question. By the act of 1893, similar powers were granted to both companies, which were charged with similar duties in reference to the removal of grade crossings.

"As to the validity of any contract made by a railroad company for such a private use of or interest in its lands used for its railway or any of its appurtenances as would prevent its performance of these public obligations, to arrange for the public safety by the removal of grade crossings in cities, my view would be either that the contracts are altogether void or that they must be considered as made and taken subject to any contract subsequently made to remove its grade crossings.

"Contracts of this character, for the permanent location or use of their road or works, have been held to be subject to termination when even the interest of the road itself requires it. 'Railroad companies, while private corporations, are *quasi* public agencies, engaged in the performance of public duties, and contracts which prevent them from

the discharge of these duties cannot be sustained.' E. & S. &c., R. R. Co. v. McDevitt, 24 Sup. Ct. Rep. 36 (U. S. Sup. Ct. October Term, 1903). This case was an action at law for damages for breach of a contract made on securing the right of way to operate an extension of the railroad over a particular track, and it was held that damages could not be based on the company's obligation to continue permanent use under the contract."

In *Swift v. D., L. & W. R. R. Co.*, 66 Eq. 452 (Ct. E. & A.), in a *per curiam* opinion the Court said:

"We concur in that part of the opinion delivered in this cause by the learned vice chancellor which holds that the alleged contract between the defendant railroad company and private persons for the permanent maintenance of grade crossing over certain streets in the city of Newark must, so far at least as the right to specific performance is concerned, be deemed subject to the public duty of that company and to the police power of the legislature vested by the act of 1893 (P. L. of 1893, p. 157) in the municipal authorities of this city to secure the safety of public highways. The authorities of the city and of the railroad having both determined that those crossings unnecessarily endanger public travel, we think, on that ground, an injunction forbidding their removal was rightly refused.

"This being our conclusion, we refrain from expressing either concurrence in, or dissent from, the other propositions set forth in that opinion."

In *Branson v. City of Philadelphia*, 47 Pa. St. 329, it was held that every person holding license for any public authority, exercising the whole or a portion of the right of eminent domain, necessarily takes it subject to the exercise of this right whenever the public good requires it, and that with respect to the care, regulation and control of the highways within its corporate limits, the City

of Philadelphia exercises a portion of this power of the commonwealth, subject only to the higher control of the state and the use of the public, and therefore a written license, granted by the city for a valuable consideration, authorizing the holder to connect his property with the City Railroad by a turnout and track, is not such a contract as will prevent the city from abandoning or removing the said railroad, whenever in the opinion of its authorized authorities such action will tend to the benefit of the public.

In *Asher v. Hutchinson W. L. & P. Co.*, 66 Kans. 496, 71 Pac. 813, it was held that a contract by ordinance between a city and a water company, that the latter will lay water mains and supply the inhabitants with water on certain streets of the city, may, after such mains are laid, be so modified and changed by the city and water company as to require the water company to remove its mains from certain streets where, in the judgment of the council, public necessity no longer requires their continuance, to other portions of the city where public necessity requires that mains should be laid, and injunction will not lie at the suit of an individual to prohibit the city and water company from making such change, notwithstanding it may greatly decrease the value of his property and render it practically valueless for the purpose for which it was improved.

The Court said:

"An individual can acquire no vested right as against the public in the continued service of a public utility. Such a doctrine, once admitted, would destroy the convenience as a public utility. It would then become hampered, and subject to the control of the individual, and made to subserve such interests, to the detriment of the public welfare."

In *Appeal of New York, N. H. & H. R. Co.*, 53 Atl. 314 (Conn.), it was held that a railroad company having constructed a spur track across a highway at grade, and it being part of its system, and being presumed to have been constructed with due authority, and the company being bound to maintain and operate it till it is legally discontinued, and no steps for discontinuance having been taken, the Court has jurisdiction to order a bridge for support of such track under which a highway may be carried.

The Court said:

“At the hearing in the superior court the appellant claimed that the expense of the change of grade asked for would be so great that no change should be ordered, and included in its estimate of such expense the cost of the bridge for the spur track. Such a bridge would cost about \$5,000, and the appellant now claims that the court had no jurisdiction to order one, since this track was laid simply to facilitate business with the owner of a particular warehouse. The finding does not support this claim. It shows that the track is also used for the delivery of goods to other parties, and that it is part of the appellant's railroad system. That it was constructed without due authority of law is not to be presumed; and it could not have been legally laid on the highway except by virtue of a special franchise, and pursuant to a location duly made by the appellant and approved by the railroad commissioners. *Canastota Knife Co. v. Newington Tramway Co.*, 69 Conn. 146, 160; 36 Atl. 1107. Being a part, and apparently a material part, of the appellant's railroad system in the locality in question, it was bound to maintain and operate this track until it should be legally discontinued. *State v. Hartford & N. H. R. R. Co.*, 29 Conn. 538, 547. No step toward its discontinu-

ance had been taken when the cause was heard in the superior court, and the appellant cannot complain that the judgment was not so framed as to provide for a possibility, which it had not suggested, of a discontinuance at some future period."

In *re Grade Crossing Com'rs of City of Buffalo*, 208 N. Y. 139; 102 N. E. 552, the Court said:

"The railroad company had the right to elevate or depress its tracks without making compensation to abutting owners and irrespective of whether it obtained its right of way by deed or by condemnation. . . . The sum originally paid by the railroad company on its acquisition of the right of way must be deemed to have included compensation for damages occasioned by changes made necessary to meet the increasing demands of the business, or to conform to the requirements of public improvements. The abutting property owners are therefore neither legally nor morally entitled to compensation for changes in the grade of the railroad. . . ."

In *Otis Elevator Co. v. City of Chicago*, 263 Ill. 419; 105 N. E. 338 it was held that the construction by a property owner of improvements used in connection with a railroad does not estop the municipality from requiring an elevation of the railroad tracks in the interest of the public welfare, to avoid danger of injury to persons at street crossings, although the result is to destroy the switch connection.

The Court said:

"In the exercise of the police power, the city had a right, within reasonable limits, to require the railroad company to elevate its tracks so as to avoid grade crossings upon streets, and protect the lives and property of its citizens. *Chicago & N. W. R. Co. v. Chicago*, 140 Ill. 309; 29 N. E. 1109. That

power, like other powers of government, when mere property interests are involved, is subject to constitutional limitations. * * * But the power is incapable of alienation, and no valid contract can be made which assumes to surrender or alienate such a power, which is required to continue in existence for the welfare of the public. *Chicago v. Chicago Union Traction Co.*, 199 Ill. 259; 59 L. R. A. 666; 65 N. E. 243. So far as requiring elevation of the tracks was an exercise of the police power, no equitable estoppel could operate to prevent its existence. All that was alleged in the declaration was that the plaintiff constructed improvements upon its own ground for use in connection with the switch. That gave no right against the city to have the railroad maintained, at the existing grade."

To the claims made under the leases and contracts between the lessor and lessee railroad companies, the following quotation from the opinion of Mr. Chief Justice Waite in *Chicago, Burlington & Quincy Railway Co. v. Iowa*, *supra*, is pertinent (152):

"Neither does it affect the case that before the power was exercised the company had pledged its income as security for the payment of debts incurred and leased its road to a tenant that relied upon the earnings as a means of paying for the leased property. The company could not grant or pledge more than it could give. After the pledge and after the lease the property remained within the jurisdiction of the state and continued subject to the same governmental power that existed before."

POINT XVIII.

Neither the Grade Crossing Elimination Act nor the order made in pursuance thereof impose a direct burden upon or interfere with the regulation of interstate commerce in violation of the commerce clause.

That it is competent for a state to adopt protective measures in the interest of public safety, although interstate commerce may incidentally or indirectly be involved, is a principle too well settled to require elaboration.

In *Smith v. Alabama*, 124 U. S. 463, this Court had before it a statute of Alabama providing that it should be lawful for the engineer of any railroad train in the State to drive, or operate, or engineer any train of cars or engine upon the main line of roadbed, of any railroad, in the state which is used for the transportation of persons, passengers or freight without first undergoing an examination as therein provided. The statute prescribed a penalty for its violation.

It appeared that an engineer of a railroad, whose sole duty was to drive, operate and engineer a locomotive engine drawing a passenger train, regularly plying in one continuous trip between Mobile, in Alabama, and Corinth, in Mississippi, and *vice versa*, was proceeded against under the statute.

In sustaining the statute Mr. Justice Matthews, delivering the opinion of this Court, at page 481, said:

"It is to be remembered that railroads are not natural highways of trade and commerce. They are artificial creations; they are constructed within the territorial limits of a state and by the authority of its laws, and ordinarily by means of corporations exercising their franchises by limited grants from the state. The places where they must

be located, and the plans according to which they must be constructed, are prescribed by the legislation of the state. Their operation requires the use of instruments and agencies attended with special risks and dangers, the proper management of which involves peculiar knowledge, training, skill and care. The safety of the public in person and property demands the use of specific guards and precautions. The width of the guage, the character of the grades, the mode of crossing streams by culverts and bridges, the kind of cuts and tunnels, the mode of crossing other highways, the placing of watchmen and signals at points of special danger, the rate of speed at stations, and through villages, towns and cities, are all matters naturally and peculiarly within the provisions of that law from which these modern highways of commerce derive their existence. The rules prescribed for their construction and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not *per se* regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed will of congress exerted on the same subject, that they can be required to give way to the supreme authority of the constitution.

"In conclusion, we find, therefore, first that the statute of Alabama, the validity of which is under consideration, is not, considered in its own nature, a regulation of interstate commerce, even when applied as in the case under consideration; secondly, that it is properly an act of legislation within the scope of the admitted power reserved to the State to regulate the relative rights and duties of persons being and acting within its territorial jurisdiction, intended to operate so as to secure for the public, safety of person and property; and, thirdly, that so far as it affects transactions of com-

merce among the States, it does so only indirectly, incidentally, and remotely, and not so as to burden or impede them, and, in the particulars in which it touches those transactions at all, it is not in conflict with any express enactment of congress on the subject, nor contrary to any intention of congress to be presumed from its silence."

In *Nashville, &c., Ry. Co. v. Alabama*, 128 U. S. 96, it appeared that the appellant corporation had been indicted and convicted under a State statute for employing a train conductor who had not obtained a certificate from a State Board of Medical Examiners that he was free from color blindness.

In sustaining the judgment of the State Court affirming the conviction, Mr. Justice Field, delivering the opinion of this Court, said:

"It is conceded that the power of congress to regulate interstate commerce is plenary; that as incident to it congress may legislate as to the qualifications, duties and liabilities of employees and others on railway trains engaged in that commerce; and that such legislation will supersede any state action on the subject. But until such legislation is had, it is clearly within the competency of the states to provide against accidents upon trains whilst within their limits. Indeed, it is a principle fully recognized by decisions of State and Federal Courts, that whenever there is any business in which, either from the products created or the instrumentalities used, there is danger to life or property, it is not only within the power of the States, but it is among their plain duties, to make provisions against accidents likely to follow in such business so that the dangers attending it may be guarded against so far as is practicable."

In *Hennington v. Georgia*, 163 U. S. 299, it was held that an act of the State of Georgia forbidding the run-

ning of freight trains on any railroad in the state on Sunday, and providing for the trial and punishment on conviction of the superintendent of a railroad company violating that provision, although it affects interstate commerce in a limited degree, is not, for that reason a needless intrusion upon the domain of Federal jurisdiction, nor strictly a regulation of interstate commerce, but is an ordinary police regulation, designed to secure the well being, and to promote the general welfare of the people within the state, and is not invalid by force alone of the Constitution of the United States.

In *New York, New Haven & Hartford Railroad Co. v. State of New York*, 165 U. S., p. 628, this Court sustained a statute of the State of New York forbidding the heating of cars by stoves, although it extended to cars employed in interstate commerce.

Mr. Justice Harlan, delivering the opinion of the Court, said:

"According to numerous decisions of this Court (some of which are cited in the margin), sustaining the validity of state regulations enacted under the police powers of the state, and which incidentally affected commerce among the states and with foreign nations, it was clearly competent for the State of New York, in the absence of national legislation covering the subject, to forbid under penalties the heating of passenger cars in that state by stoves or furnaces kept inside the cars or suspended therefrom, although such cars may be employed in interstate commerce. While the laws of the states must yield to acts of congress passed in execution of the powers conferred upon it by the Constitution (*Gibbons v. Ogden*, 9 Wheat. 1, 211), the mere grant to congress of the power to regulate commerce with foreign nations and among the

states did not, of itself and without legislation by congress, impair the authority of the states to establish such reasonable regulations as were appropriate for the protection of the health, the lives, and the safety of their people. The statute in question had for its object to protect all persons traveling in the State of New York on passenger cars moved by the agency of steam against the perils attending a particular mode of heating such cars. There may be reason to doubt the efficacy of regulations of that kind. But that was a matter for the estate to determine. We know from the face of the statute that it has a real, substantial relation to an object as to which the state is competent to legislate, namely, the personal security of those who are passengers on cars used within its limits. Why may not regulations to that end be made applicable, within a state, to the cars of railroad companies engaged in interstate commerce as well as to cars used wholly within such state? Persons traveling on interstate trains are as much entitled, while within a state, to the protection of that state, as those who travel on domestic trains. The statute in question is not directed against interstate commerce. Nor is it within the meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce, it is to be regarded as legislation in aid of commerce, and enacted under the power remaining with the state to regulate the relative rights and duties of all persons and corporations within its limits. Until displaced by such national legislation as congress may rightfully establish under its power to regulate commerce with foreign nations and among the several states, the validity of the statute so far as the commerce clause of the Constitution of the United States is concerned, cannot be questioned.

"Counsel for the railroad suggests that a conflict between state regulations in respect of the heating of passenger cars used in interstate commerce would make safe and rapid transportation impossible; that to stop an express train on its trip from New York to Boston at the Connecticut line in order that passengers may leave the cars heated as required by New York, and get into other cars heated in a different mode in conformity with the laws of Connecticut, and then at the Massachusetts line to get into cars heated by still another mode as required by the laws of that commonwealth, would be a hardship on travel that could not be endured. These possible inconveniences cannot affect the question of power in each state to make such reasonable regulations for the safety of passengers on interstate trains as in its judgment, all things considered, is appropriate and effective. Inconveniences of this character cannot be avoided so long as each state has plenary authority within its territorial limits to provide for the safety of the public according to its own views of necessity and public policy, and so long as congress deems it wise not to establish regulations on the subject that would displace any inconsistent regulations of the States covering the same ground."

In *Chicago, M. & E. R. Co. v. Solan*, 169 U. S. 133, Mr. Justice Gray delivering the opinion of this Court, said:

"The rules prescribed for the construction of railroads, and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate commerce, although they control, in some degree, the conduct and liability of those engaged in such commerce. So long as congress has not legislated upon the particular subject, they are rather to be regarded

as legislation in aid of such commerce, and as a rightful exercise of the police power of the state to regulate the relative rights and duties of all persons and corporations within its limits.

"Such are the grounds upon which it has been held to be within the power of the state to require the engineers and other persons, engaged in the driving or management of all railroads passing through the state, to submit to an examination by a local board as to their fitness for their positions; or to prescribe the mode of heating passenger cars in such trains."

In *Chicago, R. I. & P. Co. v. Arkansas*, 219 U. S. 452, it was held that a state statute prescribing a minimum of three brakemen for freight trains of more than twenty-five cars operated in the state, did not amount to an unconstitutional regulation of interstate commerce when applied to a foreign railway company engaged in such commerce.

Mr. Justice Harlan, delivering the opinion of the Court, said:

"It is not too much to say that the state was under an obligation to establish such regulations as were necessary or reasonable for the safety of all engaged in business or domiciled within its limits. Beyond doubt, passengers on interstate carriers while within Arkansas are as fully entitled to the benefits of valid local laws enacted for the public safety as are citizens of the state. Local statutes directed to such an end have their source in the power of the state, never surrendered, of caring for the public safety of all within its jurisdiction; and the validity under the Constitution of the United States of such statutes is not to be questioned in a Federal Court unless they are clearly inconsistent with some power granted to the general government, or with some right se-

cured by that instrument, or unless they are purely arbitrary in their nature. The statute here involved is not in any proper sense a regulation of interstate commerce, nor does it deny the equal protection of the laws. Upon its face, it must be taken as not directed against interstate commerce, but as having been enacted in aid, not in obstruction of such commerce, and for the protection of those engaged in such commerce. Under the evidence, there is admittedly some room for controversy as to whether the statute is or was necessary; but it cannot be said that it is so unreasonable as to justify the Court in adjudging that it is merely an arbitrary exercise of power, and not germane to the objects which evidently the state legislature had in view. It is a means employed by the state to accomplish an object which it is entitled to accomplish, and such means, even if deemed unwise, are not to be condemned or disregarded by the Courts, if they have a real relation to that object."

In *Simpson v. Shepard*, 230 U. S. 350, Mr. Justice Hughes delivering the opinion of this Court (after considering the limitations upon state action), said:

"But within these limitations there necessarily remains to the states until congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. It extends to those matters of a local nature as to which it is impossible to derive from the constitutional grant an intention that they should go uncontrolled pending federal intervention. Thus, there are certain subjects having the most obvious and direct relation to interstate commerce, which, nevertheless, with the acquiescence of congress, have been controlled by state legislation from the foundation of the government because of the necessity that they should not remain unregulated, and that their regulation should be adapted to varying local exi-

gencies; hence, the absence of regulation by congress in such matters has not imported that there should be no restriction, but rather that the states should continue to supply the needed rules until congress should decide to supersede them. Further, it is competent for a state to govern its internal commerce, to provide local improvements, to create and regulate local facilities, to adopt protective measures of a reasonable character, in the interest of the health, safety, morals and welfare of its people, although interstate commerce may incidentally or indirectly be involved. Our system of government is a practical adjustment by which the national authority as conferred by the constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the federal power. In such case, congress must be the judge of the necessity of federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible."

In *South Covington & C. Street R. Co. v. Covington*, 235 U. S. 537, it was held that a municipal regulation of a street railway company principally engaged in interstate commerce with reference to passengers riding on car platforms, unless the same are provided with suitable rails or barriers and with reference to the cleanliness,

ventilation and fumigation of the cars, did not infringe upon the Federal authority over such commerce, at least until such Federal authority is exerted.

In *St. Louis, I. M. & S. Co. v. Arkansas*, 240 U. S. 518, it was held that interstate commerce is not unconstitutionally interfered with by a state statute which forbids railway companies with yards or terminals in cities of the state to conduct switching operations across public crossings in cities of the first or second class with a switching crew of less than one engineer, a fireman, a foreman and three helpers.

In *Vandalia R. Co. v. Public Service Commis. of Indiana*, 242 U. S. 255, it was held that until congress acts in the matter there is no constitutional interference with interstate commerce in an order of a state railroad commission made under legislative authority requiring all engines used in the transportation of trains over any line of railroad within the state to be equipped with headlights of not less than fifteen hundred candle power.

Mr. Justice Pitney, delivering the opinion of the Court, said:

"So far as the attack upon the Act of 1909 and the order made pursuant to it is based upon interference with interstate commerce, it very properly is conceded that, but for the recent act of congress, the case would be controlled by *Atlantic Coast Line Co. v. Georgia*, 234 U. S. 280, 290, where it was held that, in the absence of Federal legislation the states are at liberty in the exercise of their police power to establish regulations for securing safety in the physical operation of railroad trains within their territory, even though such trains are used in interstate commerce * * *."

In *South Covington &c., Ry. Co. v. Kentucky*, 252 U. S. 399, held:

"That a state law requiring interurban railroad companies to supply separate cars or compartments for white and colored passengers, and punishing failure to do so, is not an unconstitutional burden on interstate commerce as applied to such a railroad, owned by a local corporation and lying wholly within such state, while in control of an allied street car company and in practice operated as part of a street car system over which the cars are run to and from a city in another state (where such separation of races is illegal), and passengers are carried through to destination without charge for a single fare, those travelling interstate greatly exceeding in number those travelling wholly within the state making the requirement."

The Justice McKenna, delivering the opinion of the Court, said:

"There was a distinct operation in Kentucky. In operation authorized and required by the charters of the companies and it is that operation, the act in question regulates, and does no more, and therefore is not a regulation of interstate commerce. This is the affect of the ruling in *South Covington Street Ry. Co. v. Covington*, 235 U. S. 537. The regulation of the act affects interstate business incidentally and does not subject it to unreasonable demands.

"The cited case points out the equal necessity, under our system of government, to preserve the power of the states within their sovereignties as to prevent the power from intensive exercise within the national sovereignty, and an interurban railroad company deriving its powers from the state, and subject to obligations under the laws of the state, should not be permitted to exercise the powers given by the state, and escape its obligations to the state under the circumstances presented by this record, by running its coaches beyond the state lines."

POINT XIX.

The police power of the State is, under the Constitution, when exerted in the interest of public safety, unlimited, except by the requirement that the exercise thereof be not merely capricious and wanton. Neither the Grade Crossing Elimination Act nor the order made in pursuance thereof is, in any aspect, capricious or wanton.

It is admitted that the police power of the state is, under the Constitution, even though exerted in the interest of public safety, limited by the requirement, that it be not exerted in mere caprice or wantonness. A reading of the cases in this court, involving legislative acts and administrative orders sought to be justified as exerting the police power in the interest of public safety, demonstrates that, while the Court has said that the power cannot be arbitrarily, needlessly or unreasonably exercised, these words have been used as comprehending merely capricious and wanton acts of legislation and administration.

In *N. Y. & N. E. Railroad Co. v. Bristol*, 151 U. S. 556, where this Court sustained the statute of Connecticut directed to the extinction of grade crossings as a menace to public safety, Chief Justice Fuller, after stating that railroad corporations are subject to legislative control in all respects necessary to protect the public against danger, injustice and oppression, said that such companies are not deprived of property without due process of law, *by statutes under which the result is ascertained in a mode suited to the nature of the case, and not merely arbitrary and capricious; and that the adjudication of the highest court of the state, that, in such particulars, a law enacted in the exercise of the police power of the state is*

valid, will not be reversed by this court on the ground of an infraction of the Constitution of the United States.

It is submitted that neither the Grade Crossing Elimination Act nor the order made in pursuance thereof, is, in any respect, capricious or wanton.

(a) There is a substantial relation between the means adopted by the act and the purpose thereby sought to be accomplished. As we have before shown, the act does not extend to every level crossing, but to such crossings only as involve elements of peculiar danger or serious impediment to public travel. The requirement of the separation of grades, at a crossing where peculiar danger or serious impediment to public travel exists, bears a substantial relation to the end sought to be accomplished, and cannot be said to be adopted in mere caprice and wantonness. In view of the fact that the statute extends only to the crossings at which there is peculiar danger, or serious impediment to public travel, it serves no useful purpose to direct attention to the fact as the plaintiff-in-error, Erie Railroad Company, does at page 45 of the brief submitted by it, that in 1913 there were no less than 2,500 grade crossings in the State of New Jersey, of which 256 were on its line. Whether or not the statute extends to these crossings, depends upon whether peculiar danger or serious impediment to public travel exists thereat. This question could only be determined with respect to each of these crossings, as it has been in the case at bar, through the specific investigation of the conditions there existing.

(b) The record, as we have before indicated, establishes that there exists at each of the crossings, to which the order relates, in varying degree, elements of peculiar danger and of serious impediment to public travel. The

requirement by the order of the separation of the grades at the several crossings, therefore, bears a substantial relation to the end sought to be accomplished and cannot be said to have been adopted in mere caprice or wantonness.

That separation of the grades alone will suffice as a means to accomplish the purpose of the statute and the order is made apparent by the fact that, at the time of making the order the highest form of grade crossing protection existed at the crossings, viz: gates operated by watchmen; that, nevertheless, accidents and casualties have occurred, and that the operation of these gates, through the frequency of the train movements over the crossings, in itself formed an element in the serious impediment to public travel.

(c) The order requires the separation of grades at the several crossings according to a comprehensive plan. This requirement is neither capricious nor wanton. Throughout the proceedings before the board, it was recognized by all of the parties thereto that the situation that existed could only be met through the adoption of a comprehensive plan. With the exception of Madison avenue, which the board required should be carried over the railroad, it was impossible to plan for any one of the crossings without considering and providing for the others. In other words, to effect the elimination of one crossing, it was necessary that a plan be made for all. On this point the board, in its report of January 11, 1915 (Case Vol. IV, p. 1748, 1756), said:

"While the railroad company, in its answer, protested against the inclusion of more than one crossing in the petition, the consideration of the entire subject is simplified by the acquiescence of all parties to the proceeding, that all of the cross-

ings mentioned in the petition must be considered in any plan of elimination. From the beginning to the conclusion of the hearings, there was no intimation from anyone that a change at a particular crossing only should be considered. We will, therefore, deal with the proceeding as involving the adoption of one comprehensive plan or scheme covering all of the crossings. It was never questioned but that a general plan for the separation of grades at the crossings was practicable. Differences of opinion between engineers for the municipality and the utilities affected occurred as to some details, but the chief objection raised was to the expense."

On this point the Supreme Court of the state in the case of the Erie Railroad Company against these defendants (Case Vol. V, p. 2257), dismissing the contention of the company, that the statute required a separate proceeding for each crossing, said:

"The prosecutor does not point out, or even attempt to show, how or in what way, fifteen separate petitions, with fifteen separate hearings, would be more advantageous to it, but on the contrary, rather acquiesces in the idea, that all the crossings mentioned in the petition must be considered in one plan of alteration, if alteration is to be made at all, and that a general plan of the alteration of the grade at the several crossings is practical, as an engineering problem.

"Mr. Brameld, the engineer of the prosecutor, the Erie Railroad Company, at page 509 of the record, testified, 'there are various changes which I think will have to be made.' At page 526, 'Of course, I haven't worked up the detailed solution of every one of them, but from my general knowledge of the situation I think they could be taken care of'; i. e., the details. The testimony further shows that Section D provides for the elimination

of the crossing at Madison avenue, according to a plan submitted by the prosecutor, the Erie Railroad Company, known as Exhibit R. 105, which is an estimated cost of \$192,133.92 less than the plan prepared by the city, and which carries Madison avenue over the tracks of the railroad instead of under the tracks. We think the construction of the statute cannot be limited to a single crossing in a separate proceeding, but in a proper case, where the jurisdictional facts appear, several crossings may be considered in one proceeding, when so related to one another, that the consideration of the one necessarily involves the consideration of the other, as a practical engineering problem."

Recognition of the inseparable relation of the crossings to each other was also made when the company, in course of informal negotiations, as early as 1911 prepared a preliminary sketch providing for their elimination and an estimate of cost.

The City of Paterson proposed before the board that the work involved in the elimination should be executed as a single operation. *The engineer of the company* (Case Vol. I, p. 530, &c.) suggested that the work be divided into sections in its execution. This suggestion the board adopted. It should not be assumed from this, however, that the sections are independent of each other. The fact is the contrary. It appears (Case Vol. I, p. 532) that the completion of the section known as Section A would close Keen and Warren streets until the sections known as Sections B and C can be completed.

(d) Compliance with the statute and order will require the expenditure of a substantial sum of money. This fact, however, renders neither the statute nor the order capricious or wanton. As before stated, it appears from the record that at each of the crossings there are

elements of peculiar danger and that seriously impede public travel; that the relation of these crossings to each other is such as to require the adoption of a comprehensive plan in the separation of grades.

It was not contended before the Board of Public Utility Commissioners, nor, apparently, is it now contended by the Erie Railroad Company, the plaintiff-in-error, that the comprehensive plan that was adopted is unnecessarily costly and that another plan effecting a separation of grades at the crossings might be adopted which would involve a lesser expenditure of money.

In *Erie Railroad Company v. Williams*, 233 U. S. 685, this Court had before it a case in which the police power was not exerted by the state in the interest of public safety, but was exercised to require railway companies to make semi-monthly payment of wages to their employees, and in which the statute was attacked among other grounds because of the cost entailed by compliance therewith. Mr. Justice McKenna, delivering the opinion of this Court, said:

"It is hardly necessary to say that cost and inconvenience (different words, probably, for the same thing) would have to be very great before they could become an element in the consideration of the right of a state to exert its reserve power or its police power (cases cited)."

In *Oregon Railroad, &c. Co. v. Fairchild*, 224 U. S. 863, a statute of the State of Washington authorized the Railroad Commission of that state "to order that additional trackage or sidings be constructed . . . and that additional connections be made." Under the statute the commission made an order that certain connections be made. The statute and the order were sustained by the Court of

that state. The judgment was reversed by this Court. The statute here, too, was one that did not exert the police power in the interest of public safety. It exercised the power in the interest of public convenience merely.

Mr. Justice Lamar, delivering the opinion of this Court, said:

"Since the decision in *Wisconsin, &c. Railroad Co. v. Jacobson*, 179 U. S. 287, there can be no doubt of the power of a state, acting through an administrative body, to require railroad companies to make track connections. But manifestly that does not mean that a commission may compel them to build branch lines, so as to connect roads lying at a distance from each other; nor does it mean that they may be required to make connections at every point where their tracks come close together in city, town and country, regardless of the amount of business to be done, or the number of persons who may utilize the connection if built. The question in each case must be determined in the light of all the facts, and with a just regard to the advantage to be derived by the public and the expense to be incurred by the carrier. For, while the question of expense must always be considered (*Chicago, &c. R. Co. v. Tompkins*, 176 U. S. 167, 174), the weight to be given that fact depends somewhat on the character of the facilities sought. If the order involves the use of property needed in the discharge of those duties which the carrier is bound to perform, then, upon proof of the necessity, the order will be granted, even though 'the furnishing of such necessary facilities may occasion an incidental pecuniary loss.' But even then the matter of expense is 'an important criteria to be taken into view in determining the reasonableness of the order.' *Atlantic Coast Line Railroad Co. v. North Carolina Commission*, 206 U. S. 27; *Missouri Pacific Railroad Co. v. Kansas*, 216 U. S. 262. Where, however, the proceeding is brought

to compel a carrier to furnish a facility not included within its absolute duties, the question of expense is of more controlling importance. In determining the reasonableness of such an order the Court must consider all the facts—the places and persons interested, the volume of business to be affected, the saving in time and expense to the shipper, as against the cost and loss to the carrier. On a consideration of such and similar facts the question of public necessity and the reasonableness of the order must be determined."

Where, as in the case at bar, the statute exerts the police power in the interest of public safety and where it appears, as here, that the order made under the statute is directed to the separation of the grades at crossings having elements of peculiar danger and affording a serious impediment to public travel; where it appears that the highest form of protection is afforded at these crossings and has proved ineffective and that the safety of the travelers on railway and highway can only be effected by the separation of the grade; and where the plan adopted to effect such separation is a plan not unnecessarily expensive, and in the adoption of which plan suggestions by the railroad company for modifications which would reduce the cost thereof have been acceded to; where the outlay required does not outrun the necessity of the requirement for public safety, the expense entailed in compliance with the order, though substantial, cannot be said to have been capriciously and wantonly imposed. Under such circumstances there is a substantial relation between such expense and the danger to be obviated by the execution of the order.

The principle here involved was recognized in *Health Department of the City of New York v. Rector, &c. of Trinity Church*, 145 N. Y. 32. The case which came be-

fore the court of last resort of the State of New York on appeal in an action to recover the statutory penalty for refusing to comply with an order of the Board of Health to place water facilities in certain tenement houses. The statute and order were sustained.

Mr. Justice Peckham, delivering the opinion of the Court, said:

"The exaction must not alone be reasonable, when compared with the amount of work or the character of improvement demanded. The improvement or work must, in itself, be reasonable, proper and fair exaction, when considered with reference to the object to be attained."

In the record of the case at bar, as has heretofore been indicated, it appears that the work required by the statute and the order made thereunder is a reasonable, proper and fair exaction, when considered with reference to the object to be attained; and it further appears that such exaction is reasonable when compared with the amount of work and the character of the improvement required to be executed by the order.

In *Woodruff, et al., Commissioners v. New York & N. E. R. Co.*, 59 Conn. 63; 20 Atl. 17, the case arose under the Grade Crossing Elimination Act of Connecticut in sustaining an order made by the State Commission under this act. The Court said:

"The twelfth paragraph alleges only that the defendants would be subjected to great expense if the order of the commission should be carried out. The resolution and the order being valid, and being required for the protection of life, the contention that the enforcement would subject the defendant to expense is, in not any reason, against its legality. That is an argument to be addressed to the commission."

In *Pennsylvania Railroad Co. v. Ewing*, 241 Pa. St. 581; 88 Atl. 775, it was sought to enjoin the enforcement of the "Full Crew Act." The Court, in sustaining the statute, said:

"The act of 1911, being a valid exercise of the police power by the legislature, the fact that railroad companies affected by it must make additional expenditures to comply with its provisions is an immaterial matter so far as courts are concerned. That fact was for the consideration of the legislature alone in determining whether the act should be passed. Uncompensated obedience to a regulation enacted for the public welfare or safety, under the police power of the state, is not taking property without due compensation, and any injury sustained in obeying such a regulation is but *damnum absque injuria*."

In *New York & N. E. R. Co. v. Bristol*, 151 U. S. 556, in which the Connecticut act relating to elimination of grade crossings was before this Court, Mr. Justice Fuller reading the opinion, said:

"* * * nor is there necessarily such denial or infringement of the obligation of contracts in the imposition upon them in particular instances of the entire expense of the performance of acts required, in the public interest, in the exercise of legislative discretion; nor are they thereby deprived of property without due process of law, by statutes under which the result is ascertained in a mode suited to the nature of the case, and not merely arbitrary and capricious."

In *Chicago and Alton R. Co. v. Tranberger*, 238 U. S. 67, this Court sustained a statute of Missouri compelling railway companies to construct transverse openings in rights of way and roadbeds to take care of surface water.

Mr. Justice Pitney, delivering the opinion of this Court, said:

"We deem it very clear that the act under consideration is a legitimate exercise of the police power, and not in any proper sense a taking of the property of plaintiff-in-error. The case is not at all analogous to those which have held that the taking of a right of way across one's land for a drainage ditch, where no water course exists, is a taking of property within the meaning of the Constitution. The present regulation is for the prevention of damage attributable to the railroad embankment itself, and amounts merely to an application of the maxim *sic utere tuo ut alienum non laedas*. Of course, compliance with it involves the expenditure of money, but so does compliance with regulations requiring a railroad company to keep its roadbed and right of way free from combustible matters; to provide its locomotive engines with spark arresters; to fence its tracks; to provide cattle guards and gates at crossings, or bridges or viaducts, or the like. Such regulations as these are closely analogous in principle, and have been many times sustained as constitutional." Cases cited.

"And it is well settled that the enforcement of uncompensated obedience to a legitimate regulation established under the police power is not a taking of property without compensation, or without due process of law, in the sense of the 14th Amendment." Cases cited.

In *Missouri P. R. Co. v. Kansas*, 216 U. S. 262, where this Court affirmed a judgment ordering a peremptory mandamus to compel a railroad company to obey an order of the State Railroad Commission, requiring passenger train service between the terminus of a branch line within the state and its point of intersection with

the state line. Mr. Justice White, reading the opinion of the Court, said:

"Where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, other considerations are, in the nature of things, paramount, since it cannot be said that an order compelling the performance of such a duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that a corporate charter was purely unilateral; that it was binding in favor of the corporation as to all rights conferred upon it, and was devoid of obligation as to duties imposed, even although such duties were the absolute correlative of the rights conferred."

In *Sullivan v. City of Shreveport*, 251 U. S. 169.

"This court held that the enforcement of a city ordinance requiring each street car to be operated by a motorman and a conductor, as against a company seeking to substitute, *at less cost*, cars run each by one man, with the aid of safety and other operating devices, cannot be declared an arbitrary and unreasonable exercise of police power in the absence of a clear demonstration that the substitutes, thus operated, would prove as safe and convenient for the public as cars operated by two men."

In *Milwaukee E. R. & L. Co. v. Wisconsin*, 40 Sup. Ct. Rep. 306, Mr. Justice Brandeis, delivering the opinion of this Court, said:

"The financial condition of a public service corporation is a fact properly to be considered when determining the reasonableness of an order directing an unremunerative extension of facilities or forbidding their abandonment. *Mississippi Railroad Commission v. Mobile & Ohio R. R. Co.*, 224

U. S. 388, 37 Sup. Ct. 602 L. Ed. 1216; *New York & Queens Gas Co. v. McCall*, 245 U. S. 345, 350, 38 Sup. Ct. 122, 62 L. Ed. 337. But there is no warrant in law for the contention that merely because its business fails to earn full 6 per cent upon the value of the property used, the company can escape either obligations voluntarily assumed or burdens imposed in the ordinary exercise of the police power. Compare *Missouri Pacific Railway Co. v. Kansas*, 216 U. S. 262, 279, 30 Sup. Ct. 330, 54 L. Ed. 472; *Chicago, Rock Island & Pacific Railway v. Arkansas*, 219 U. S. 453, 31 Sup. Ct. 275, 55 L. Ed. 290; *Missouri Pacific Railway v. Omaha*, 235 U. S. 121, 35 Sup. Ct. 82, 59 L. Ed. 157.

See also *Atlantic Coast Line R. R. v. North Carolina Railroad Comm.*, 206 U. S. 1.

Since the record makes it clear that no method other than that adopted by the order would be effective in the separation of the grades at the crossings to which the order relates, the case of *Chicago, M. & St. P. Railroad Co. v. Minneapolis*, 238 Fed. Rep. 384, is not pertinent. In that case it appeared among other things (page 403) that the plan adopted requiring *depression* would cost approximately seven millions of dollars, as compared with less than two millions of dollars under an equally effective *elevation* plan. In that case, therefore, there was, in this fact alone, justification for the conclusion that the power of the state was capriciously and wantonly exerted.

(e) No element of caprice or wantonness is involved in a case such as this in refusing to permit the claimed necessities of a railroad company for the use of its funds for other purposes which, in the judgment of its Board of Directors, will prove more advantageous to the company, to limit the exertion of the police power in the interest of public safety. The substance of the

claim of the company is that the judgment of its Board of Directors as to the most advantageous employment of its funds, transcends, in effect, and nullifies the judgment of the legislature of the state and the judgment of an administrative body created by it and the affirmatory judgments of its Courts, including its court of last resort, as to what is reasonably required in the interest of public safety.

That this is the position taken by the company is apparent from the brief here submitted on its behalf (pp. 32, etc.). This was also the position taken by the company before the board, as appears from testimony of the witness Falconer:

“Q In your judgment, if the railroad company was required at this time to spend three millions or more for the elimination of grade crossings in Paterson, would its ability to handle the improvement, its duty with regard to interstate business be impaired?

“A In my opinion it would. In my opinion that three million, or whatever it is, should be expended in making some improvement that would enable the railroad to earn a greater income and it might thereby be enabled to set aside sums to carry out work which is not non-income producing. The elimination of grade crossings in Paterson or any other city produces no income, adequate, when compared to the expenditure. The saving in expenses is a very small fraction of one per cent. of the cost of the elimination, as a rule, and it will be so in Paterson. In other words, if the Paterson elimination is undertaken, the company will be burdened by fixed charges equal to the interest on the cost of construction and will save practically nothing in operating expenses, whereas, if this same amount of money is expended at a point where operating expenses are reduced, such as

grade reduction or additional tracks where they are necessary, the saving in operating expenses will help to pay for such improvement at a later time. The credit of the company is impaired by expenditures which do not improve, which do not increase its revenue. The credit of the company is improved by expenditures which do increase its revenue and the company, as I see it, cannot make expenditures of such magnitude as the Paterson grade crossing elimination without borrowing money."

Further than this, the Board of Public Utility Commissioners had before it all of the testimony bearing upon the financial condition of the company and the work that it had in contemplation, and upon this testimony conclude as follows (Case, Vol. IV, p. 1756):

"In considering this matter the board has been mindful of the claim of the Erie Railroad Company that it is not now financially able to make the expenditure necessary to do the work. The testimony discloses that the company contemplates spending larger sums than would be required for this purpose, in doing work that, in the judgment of the board, is not so immediately necessary. It seems to the board that some of the money intended to be used for other purposes might more appropriately be used in this work, should it be found necessary to divert it. Nor does the testimony satisfy us that the company will not be able to secure the necessary funds."

In the opinion of the Supreme Court in the case below, *Erie Railroad Company v. the defendants-in-error here* (Case, Vol. V, pp. 2257, 2279), the Court, directing its attention to this point, said:

"It is further urged that, if the Court should hold the statute valid, still the order in the present case should be set aside for the reason that it is

insisted the evidence shows, without dispute, that the prosecutor has not, and in all reasonable probability will not have sufficient funds for the purpose of meeting the cost of complying with the order. The determination of this question is one of fact, in the first instance, devolving upon the Board of Public Utility Commissioners. The board had before it the financial history of the Erie Railroad Company, its indebtedness, its income and many other details bearing upon the finances of the company, and from this evidence the board found adversely to the prosecutor, the Erie Railroad Company. *After a careful reading of the voluminous testimony on this point, we are unable to say that the board's determination is without sufficient facts to support its conclusion.* The prosecutor has eight years in which to comply with the order of the board and do the work. Where the work is in itself a reasonable, proper and fair exaction with reference to the object to be attained, the expense is not a reason against its legality (cases cited), the order being based upon and made in an exercise of the police power, which is a part of the reserved power of the state."

(f) Neither the statute nor the order is capricious and wanton in its distribution of cost. As before shown, it was within the legislative power to impose the entire cost upon the railroad company, or the entire cost of the work at the crossings used by the street railway company upon that company. Neither of these companies are, therefore, in a position to complain on the ground that less than the entire cost was imposed upon it, or, on the other hand, of the fact that part of the cost was imposed upon the municipality and part upon other public utilities using the public highways.

In *C., B. & Q. R. R. Co. v. Nebraska*, 170 U. S. 57, this Court held that it was competent for the legislature of a

state to put the burden of the repairs of a viaduct crossing several railroads upon one of the companies, or to apportion it among all, as it saw fit; and that such apportionment might be made through the instrumentality of the City Council.

Mr. Justice Shiras, delivering the opinion of the Court (76), said:

"Again, it is said that the apportionment made by the ordinance of the expense of the repairs, one-third to the plaintiff-in-error and two-thirds to the Union Pacific Railway Company, was arbitrary, without notice, and contrary to plain principles of justice and equality.

"But if, as we have seen, it would have been competent for the legislature to have put the burden of these repairs upon one of the parties, or to have apportioned them among the parties, as it saw fit, so it may make a due apportionment through the instrumentality of the City Council. The latter was not directed to proceed judicially, but to exercise a legally delegated procession."

The statute provided that not exceeding ten per cent. of the expense directly chargeable to the crossing used by the street railway company should be paid by such company. The order of the board in imposing upon the street railway company the requirement of the maximum payment of ten per cent. was not capricious or wanton, for it was based upon specific testimony as to the comparative use of the crossings by the railroad and by the street railway, and also upon the fact that through the separation of the grades the street railway company would be relieved of the burden of contributing to the expense of the protection of the said crossing which it assumed by agreement with the railroad company. (See Case, Vol. IV, pp. 2034, 2039.)

The imposition by the statute and the order upon the remaining utility companies employing the highway of the expense of changing and removing their property or constructions in neither capricious nor wanton but in accordance with a rule of law well settled, as we have heretofore shown. The imposition upon the municipality of the expense of removing, relaying and relocating its water and sewer pipes, and the expense of paving, curbing, and flagging the highway as the result of the change of grade has a rational basis. It is not wanton or capricious. It requires the municipality to care for the municipal property in the public highways and to discharge the municipal function of paving, curbing, and flagging the highways. If the statute and order, because of the distribution of expense effected thereby, are wanton and capricious, then the several statutes summarized on page 305 of the brief of the plaintiff-in-error, Erie Railroad Company, are subject to attack upon like grounds, for they either provide for a distribution of the expense by the action of a commission or prescribe an apportionment thereof, fixing the proportion to be met by the railroad company, street railway company and municipality and state in greatly *varying* percentages.

It therefore appears that the statute and the order exert the police power of the state necessarily, reasonably and appropriately, and not in caprice and wantonness; and it follows that neither the statute nor the order violates the due process clause, the contract clause or the commerce clause of the Constitution.

POINT XX.

The order does not violate the due process clause because of the action of the Board on the Erie Railroad Company's petition for rehearing.

The proceedings before the Board were initiated by the filing of a petition on September 11, 1913. An answer to the petition was filed by the Erie Railroad Company, the plaintiff-in-error (case, vol. IV, 1664, 1774). The first hearing was held on September 17, 1913. Sixteen hearings were thereafter held, the last on November 4, 1914, when all of the parties to the proceeding rested their case. The hearings therefore covered a period exceeding one year. The Board filed a report containing its conclusions on January 11, 1915, determining the crossings to be severally dangerous to public safety and to impede public travel thereover and requiring the separation of the grades thereat. This report left open only one question, viz.: the time within which work should be commenced and completed. To secure the views of the parties interested the Board fixed February 5, 1916, to hear the parties affected on the question of the "times to be provided in the order within which the work included in each section, and in its entirety, was to be commenced and completed." On that day testimony on this point was taken. The Erie Railroad Company, then filed a petition for further hearing, which appears in case, volume IV, page 1772. In connection with its presentation counsel of the company was given an opportunity to discuss its merits. On April 20, 1915, the Board denied the prayer of the petition for further hearing (case, vol. IV, p. 1793), and in so doing, among other things, said (1794):

"This proceeding was pending for a number of months, during which time ample opportunity was

afforded to all parties interested to present fully and completely all the testimony desired to be submitted. Testimony was in fact submitted touching all questions, except that arising from the suggestion to reduce train movements, and the Board had before it and considered such proofs in arriving at the conclusion. Since the filing of the petition for further hearing the Board has given further consideration to the testimony taken, and the suggestions contained in the petition of the railroad company.

"The Board concludes that as the petitioner had ample opportunity to submit all and any material evidence, and the Board had before it and actually considered the questions raised, that the prayer for an opportunity to submit further testimony on such questions should be denied.

"As to the reduction of train movements, the company was afforded every opportunity to furnish such proof, if it had any, and did not avail itself of such opportunity. In addition, the offer on this score was so indefinite that it does not appear reasonable to delay the proceedings for the purpose."

This denial of further hearing was not arbitrary. It was made in reasonable discretion and was fully warranted by the facts to which the board calls attention as above.

On April 20, 1915, after the denial of further hearing, the order now before the Court was made. It provided that the beginning of the work of construction might be deferred until August 1st, 1916, in accordance with the suggestion of the company. It granted eight years from the date of the order for the completion of the work required, this was also in accordance with the suggestion of the company. It further divided the execution of the work into sections requiring "Section A" to be first con-

structed. This was likewise in accordance with the suggestion of the company.

On June 15, 1915, two months after the order was made and nearly two years after the proceedings were initiated the company filed a petition for rehearing. On June 16, 1915, the company sued out a writ of certiorari to review the order of April 20, 1915. On June 28, 1915, testimony on this petition for rehearing was heard by the board. (Case, vol. IV, p. 1895, 1918). At this hearing the company called but one witness, I. B. Lincoln, who was in charge of operation and had no control over construction. (Case, vol. IV, 1893.)

He had little familiarity with what was contemplated by the company with respect to diversion of trains appears from his examination. He testified (case, vol IV, p. 1896) that of the 118 passenger trains then running through Paterson over the Erie Railroad, 61 would not under the plan in mind run west of the Broadway station on the Susquehanna Railroad. This was a matter of importance. He later admitted under cross examination (case, vol. IV, 1911) that he was in error in this statement. That he did not know how existing train movements contemplated to be changed is apparent. He said (case, vol. IV, p. 1900):

"I am not prepared to answer any detail question, on the adjustment of that timetable, because as I say, it is a matter that will have to be very carefully studied. It has been gone over in a preliminary way, but I don't consider we have exhausted the subject at all, or made *any reasonable, any practical* determination of what we could do there."

No engineer was produced as a witness, nor was any working plan or profile offered. The witness, Lincoln, admitted that neither detail surveys had been made, nor

had detail plans been prepared. (Case, vol. IV, 1893.) He further stated that *preliminary profiles* had *none* been prepared and that the matter had not been gone into in sufficient detail to admit of the submitting of a preliminary plan; that it would not be practicable to "submit it" (the preliminary plan) "as a working drawing." Nothing was offered to show that it would be practicable to work out the plan along the lines generally suggested. The only statement made in this connection by this witness, who was in charge of operation and not construction, was to the effect that he would say it is practicable to get such construction in there" and again "based on the best judgment of the men, the engineers, whom we have had go into the matter again, I believe it is practical." (Case, vol. IV, 1895.)

The purpose of this hearing was specifically stated by the board to the company as follows (case, vol. IV, 1900):

"You are now asked to support your plan sufficiently to appeal to the discretion of this board to give you a rehearing."

At the close of the testimony of the single witness produced, an opportunity to supplement such testimony was offered by the board to the company. The following colloquy occurred (case, vol. IV, 1916):

Commissioner Donges: "Then you don't care to supplement your proofs?"

Mr. Taylor: "Not unless the board wants it."

Commissioner Donges: "It is a matter for your judgment, Mr. Taylor."

The company did not avail itself of the offer to supplement its proofs and the matter was taken into conference.

On July 9, 1915, the board made its report upon the petition for rehearing, and said (case, vol. IV, 1919):

"Application is made by Erie Railroad Company for a rehearing of the proceeding, which resulted in an order of the Board, dated April 20, 1915, approving plans for the separation of the grade of certain public highways, in the City of Paterson, and the tracks of the Erie Railroad, for the purpose of considering a plan suggested in said application for rehearing, in lieu of the plans approved by the Board.

"The Board has carefully considered the petition, the exhibits attached thereto, and the testimony, exhibits and reasons submitted in connection therewith, and concludes that the application should be denied."

We submit that on this record the action of the board in denying the petition for rehearing was not arbitrary but was made in reasonable discretion.

In this connection it should be noted that at best, the general and indefinite proposal of the company contemplated in the main, the decreasing of one of the elements of danger at one set of crossings and seriously increasing this element at another set of grade crossings, and that in one instance at least, it contemplated the creation of a new crossing at grade (case, vol. IV, 1963). It should further be noted that the general and indefinite plan proposed by the company requires the consent of the New York, Susquehanna and Western Railroad Company; that this company was not a party to the proceeding; that it did not appear therein and that consequently the Board had no jurisdiction over it.

Certain arguments advanced by the plaintiffs-in-error not hereinbefore fully answered remain to be met.

We bring these arguments and the answers thereto together under a single point.

POINT XXI.

Collective point in refutation of remaining arguments of plaintiffs-in-error.

(a) Under the law of New Jersey, the exercise of the power of eminent domain in the construction of a new highway over a railroad requires that compensation be made for injury occasioned by necessary structural changes.

It does not follow that an exercise of the police power of the state is limited by a requirement that compensation be made for such changes when exerted in the interest of public safety.

It is conceded that the Court of last resort of the State of New Jersey in *Morris & Essex Railroad Company v. Orange*, 63 N. J. L. 252, held that in a proceeding in which the power of eminent domain was exerted in the laying out of a public highway over a railroad, the award of damages must include compensation for an injury occasioned by necessary structural changes in the railroad, such as the removal of buildings and changes in the tracks.

It is also conceded that the rule so declared has since been adhered to.

Paterson &c. Railroad Co. v. Nutley, 72 N. J. L. 123;

Freeholders v. New York Bay Railroad Co., 84 N. J. L. 354.

In such circumstances the necessity of making the structural changes is due solely to the compulsory subjection of the railroad to an easement of public way there-over through an exercise of the power of eminent do-

main, and not to interests of public safety and an exertion of the police power in furtherance thereof.

This distinction was recognized in *Morris & Essex Railroad v. Orange*, for the Court there held that the company was not entitled to allowance of the expense incident to the erection and maintenance of gates, sign-boards, cattle guards and the like, including the salary of a flagman, nor for the cost of planking between the rails, and the cost of maintaining it, since such expenditures are required either for the protection of the company in running its trains or of the public using the street at such crossing, and therefore expenditures incident to a compliance with police regulations.

This distinction was also recognized in *St. Louis & S. F. A. Co. v. City of Fayetteville*, 75 Ark. 534; 87 S. W. 1174, where it was held in a proceeding in eminent domain that the fact that the railroad company might later be compelled to build an overhead crossing was not an element of damage.

It is submitted therefor that though under the law of the state the exercise of the power of eminent domain in laying out a new highway over a railroad requires that compensation be made for injury occasioned by necessary structural changes, it does not follow that an exercise of the police power by the State is limited by a requirement that compensation be made for such structural changes when such power is exerted in the interest of public safety.

Atlantic Coast Line R. Co. v. Goldboro, 232 U. S. 547.

(b) The Erie Railroad Company, plaintiff-in-error, insists that the common law duty and the duty imposed by the provisions of the charter of its lessor companies relating to crossings, extends only to highways existing at the time the railroads were constructed, and that this is the settled law of the state.

We have hereinbefore considered this claim and demonstrated its fallacy.

On the basis of this insistent it is argued that the Grade Crossing Elimination Act and the order made thereunder, which extend alike to highways existing when the railroads were constructed and to highways later laid out thereover, violate the contract clause of the Constitution and impair the obligation of the contracts existing between the state and the companies, contained in the acts of incorporation and the act confirming the lease, and further violate the due process clause of the Constitution.

If, for the purpose of argument it be conceded that the duty imposed by the common law, and by the acts of incorporation, was confined to highways existing when the railroads were constructed, it by no means follows that a statute, and an administrative order made thereunder, extending the duty to highways laid out after the construction of the railroads, has the effect claimed.

It suffices to answer the claim to again point out that the statute and order exert the police power of the state in the interest of public safety; that in the exertion of this power, the state is not required to confine its mandate to highways existing when the railroads were constructed; that the State cannot by contract abdicate or limit the future exertion of this power and that consequently the contracts existing between the state and the companies respectively, and the rights acquired there-

under, are subject to the exercise of the power to its full extent, even though such contracts have been construed by the courts of the State as claimed by the companies.

(c) There is a fundamental distinction between the police power exerted in regulation of rates exacted in the conduct of enterprises affected with a public interest and the police power exerted in the interest of public safety.

The first is founded upon the power of the state to protect its people against oppression, through the exaction of unjust and unreasonable rates for *quasi* public services. The latter is founded upon the power of the state to protect the person and property of its people against conditions of danger.

The first is limited by the requirement that it be not exerted so as to deny a fair opportunity to earn a fair return upon the fair value of the property devoted to the public use. The inherent nature of the latter inhibits a like limitation upon its exercise.

Atlantic Coast Line R. Co. v. North Carolina Corp. Commrs., 206 U. S. 1, 26;

Missouri Pac. R. Co. v. Kansas ex rel. Taylor, 216 U. S. 262, 278.

The state may surrender and limit the future exercise of the former by contract at least for a reasonable period of time.

Detroit v. Detroit Citizens Ry. Co., 184 U. S. 368, 382;

Home Tel. & Tel. Co. v. Los Angeles, 211 U. S. 265.

The state, as we have fully demonstrated, may not so surrender or limit the future exercise of the latter.

It is submitted that the cases freely cited and quoted in the brief submitted by the plaintiff-in-error, Erie Railroad Company, relating to the power to regulate rates have no relevancy on the issues here before the Court where an exercise of the police power of the state in the interest of public safety is involved.

(d) It has been difficult for us to comprehend the arguments advanced on behalf of the Erie Railroad Company, plaintiff-in-error, on the basis of the claimed course of adjudication and legislation in the state, with reference to which the brief submitted by it is replete.

Apparently it proceeds upon the theory that the rules relating to the duties of railroad companies whose roads are crossed by public highways, as claimed to have been declared by adjudication and legislation in the state, from time to time, before the enactment of the Grade Crossing Elimination Act, have, by some process, become part of the contracts earlier entered into between the State and the companies respectively; and that the companies respectively have contract and vested rights to have these claimed rules of law continue unaltered by subsequent adjudication or legislation, and that these rights are protected by the contract and due process clauses of the Constitution.

The following cases make it clear that argument proceeding upon such a theory has no foundation upon which to rest.

Northern Pac. R. Co. v. Puget Sound &c. R. Co.,
250 U. S. 232;

Chicago & A. R. Co. v. Tranbarger, 238 U. S. 67;
Milwaukee El. R. & L. Co. v. Wisconsin, 40 Sup.
Ct. Rep. 306.

e. The statute provides that where a street railway crosses the railroad, "the board may order not exceeding ten per centum of such expense directly chargeable to the crossing * * * to be paid by the company operating such street railway."

It is argued that this provision violates the due process clause in that it vests arbitrary power in the board, to impose either the maximum of ten per cent. or a lesser proportion of the expense, and prescribes no rule to govern the board in determining whether the maximum or a lesser percentage shall be imposed.

It is submitted in answer that the statute is complete in itself as a law, in that it prescribes the maximum of the imposition to be made; that the factors to be ascertained and considered, in determining whether a lesser percentage shall be imposed in particular cases may be complex and varying; that they cannot be known to, much less defined by, the legislature; that they can only be intelligently ascertained and acted upon in specific cases, through the agency of an administrative commission and that no provision of the Federal Constitution is violated, by the legislative assignment of such task to an administrative commission.

It is further submitted that all of the powers of the powers of the board are, as construed by the courts of the State, limited by the requirement of reasonableness; and that the exercise of its powers is subject, under such act, to judicial review. Consequently no arbitrary power

is, by the provision of the Grade Crossing Elimination Act, now considered vested in the board.

Western Union Tel. Co. v. Richmond, 224 U. S. p. 160.

(f) The findings (a) that conditions of peculiar damage and serious impediment to travel exist at each of the crossings; (b) that the relation of the crossings to each other is such that the situation at one of them cannot be met without providing for the others; a single engineering problem is presented thereby; (c) that the degree of danger and impediment to travel is such as to require elimination; and (d) that it is not without the financial ability of the company to meet the requirements of the order, are, each, findings of fact.

These findings of fact (each supported by the evidence) made by the board and confirmed by the Supreme Court of the State, and by its court of last resort, are conclusive.

Interstate Amusement Company v. Albert, 239 U. S. 560.

(g) The contention of the plaintiff-in-error, Western Union Telegraph Company, that its acceptance of the provisions of the act of Congress of July 24, 1866 (14 Stat. at l. 221, chap. 230, Rev. Stat. secs. 5263 *et seq.*, U. S. Comp. Stat. 1901, p. 3579) removes it and its property from the operation of the police power of the state, though such power is exerted in the interest of public safety, was considered and denied by this Court in *Western Union Telegraph Co. v. Richmond*, 224 U. S. 160.

Conclusion.

It is submitted that the arguments of the plaintiffs-in-error, throughout, overlook the fact that it is a settled principle of constitutional law that the government (here the state) which has the right to do an act, and has imposed upon it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and that those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception.

This burden the plaintiffs-in-error have not met.

It likewise overlooks the fact that the test of the power of the state is not the judgment of the courts that particular means are not the best that could have been employed to effect the end contemplated by the legislative department of the government; that the judiciary can only inquire whether the means devised in the execution of a power granted is forbidden by the Constitution, and that it cannot go beyond such inquiry without trenching upon the domain of the legislative department of the government.

It loses sight of the fact that the Constitution provides a preventive and cure for the extreme case, which is vividly pictured, of the possible adoption of legislation, by each of the states, on the lines of that now before the Court, and coincident state administrative action, under such statutes, producing conflict and chaos and imposing collectively burdens impossible to be borne, for it always remains for Congress under the power to regulate interstate commerce by affirmative action to displace the local laws, substitute laws of its own, and thereby obviate the possibility of the imagined conflict and chaos.

It is finally respectfully submitted that neither the statute nor the order violates the Constitution in any respect and that the several judgments below should be affirmed.

L. EDWARD HERRMANN,
Counsel for Board of Public Utility Commissioner,
Defendant-in-Error.

FRANK H. SOMMER,
FRANCIS SCOTT,
Counsel for City of Paterson and Board of Finance
of said City, Defendant-in-Error.

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THE SOUTHERN RAILWAY

THE SOUTHERN RAILWAY
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FOR PASSENGERS AND FREIGHTS
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William Dundee	110
Michael J. O'Rourke	112
John Kane	115	116
John C. Veenstra	118
Edward Acorn	120

Third Hearing, November 14, 1913.

For Petitioner.	Direct.	Cross.	Re-direct.	Re-cross.
Andrew F. McBride	135	140	..	..
Samuel V. S. Muzzy	140	145	147	148
William Wieda	151, 152	..	..	..
James E. Taylor	153	155	..	..

Fourth Hearing, December 4, 1913.

For Erie Railroad Co.	Direct.	Cross.	Re-direct.	Re-cross.
A. L. Sorensen	178, 198	197, 201	201, 203	
		203	206, 209	205, 210
Francis M. Graff	212	..	..	..
Charles Pfister	228	230	..	..
William H. Willis	231	..	..	..
R. H. Corson	235	..	..	..
Martin Quick	236	..	..	..
George H. Palmer	244	..	..	..

II

Fifth Hearing, December 5, 1913.

For Erie Railroad Co.	Direct.	Cross.	Re-direct.	Re-cross.
William Brameld	258	292	..	..
Robert Hoppen, Jr.	296	..	..	..
J. E. Bailey	305	..	..	..
James C. Patterson	308	315	..	..

Sixth Hearing, December 11, 1913.

For Erie Railroad Co.	Direct.	Cross.	Re-direct.	Re-cross.
William McGill	325	..	..	..
William H. Levi	327	..	..	..
Peter Doremus	330	332	..	..

Seventh Hearing, December 26, 1913.

For Erie Railroad Co.	Direct.	Cross.	Re-direct.	Re-cross.
A. L. Sorensen	336	337	..	..
James Burke	338	341	342	343
H. W. McGrath	343	..	..	..

For Switch Owners.

Daniel O'Connell	350	354	..	..
Charles Agnew	357	360	..	..
A. A. Beckman	364	368	..	..
R. J. Stell	370	374	..	..
Elmer E. Hassan	375	377	..	..
James Wilson, Jr.	381	..	..	..
Jacob Meyer	384	..	..	..
William Kearns	388	..	..	..
William Elliott, Jr.	390	391	..	..
Robert H. Smith	392	394	..	..

Eighth Hearing, January 9, 1914.

For Erie Railroad Co.	Direct.	Cross.	Re-direct.	Re-cross.
W. H. Brameld	396	..	..	..
W. H. Willis	397	..	..	..
George R. Wheeler	444	453	..	..

For Switch Owners.

Frank Vance	399	403	406	..
William M. Decker	407	411	415	..
Henry M. Post	420	422	424	..
George P. Carroll	426	429	..	..
Frederick G. Hopper	434	440	443	..

III

Ninth Hearing, January 29, 1914.

For Erie Railroad Co.	Direct.	Cross.	Re-direct.	Re-cross.
W. M. Dawley	456	..	..	..
George W. Auchenback	462, 470	..	..	..

Tenth Hearing, May 21, 1914.

For Petitioner.	Direct.	Cross.	Re-direct.	Re-cross.
Henry Ryon	475	..	..	..
H. J. Harder	503	504	..	..

Eleventh Hearing, July 9, 1914.

For Respondent.	Direct.	Cross.	Further direct.	Re-cross.
W. H. Brameld	508	526	528	..
Robert Falconer	535	..	..	..

Twelfth Hearing, July 13, 1914.

For Respondent.	Direct.	Cross.	Further direct	Further cross.
W. H. Brameld	541	547	552	554
For Petitioner.				
Henry Ryon	556	558	..	..
For Property Owners.				
William Elliott, Jr.	560	562	..	..
Abraham A. Beekman	564	565	..	..
Frank Vance	568	570	..	..
Jacob Meyer	571	..	..	..
Joseph Agnew	581	582	..	..

(No witnesses in Hearing 12-A.)

Thirteenth Hearing, October 16, 1914.

For Public Service Rwy. Co.

	Direct.	Cross.	Re-direct.	Re-cross.
L. D. H. Gilmour	589	..	..	..
W. L. Bartholomew	597	604	..	..

Fourteenth Hearing, October 23, 1914.

(No witnesses.)

IV

Fifteenth Hearing, October 29, 1914.

	Direct.	Cross.	Re-direct.	Re-cross.
For P. S. R. Co.				
R. George	613	616	620	623
For Respondent				
W. H. Brameld	628	631	..	..
D. E. Minard	633	..	..	..
Charles P. Crawford	633	691	..	..

Sixteenth Hearing, November 2, 1914.

	Direct.	Cross.	Re-direct.	Re-cross.
For Respondent.				
Charles P. Crawford	699	706	..	..
F. B. Lincoln	707	733	..	..

Seventeenth Hearing, November 4, 1914.

	Direct.	Cross.	Re-direct.	Re-cross.
For Respondent.				
Robert C. Falconer	747	783	..	..

Eighteenth Hearing, February 5, 1915.

	Direct.	Cross.	Re-direct.	Re-cross.
For Petitioner.				
H. J. Harder	818	819
For Respondent				
Robert C. Falconer	829	837

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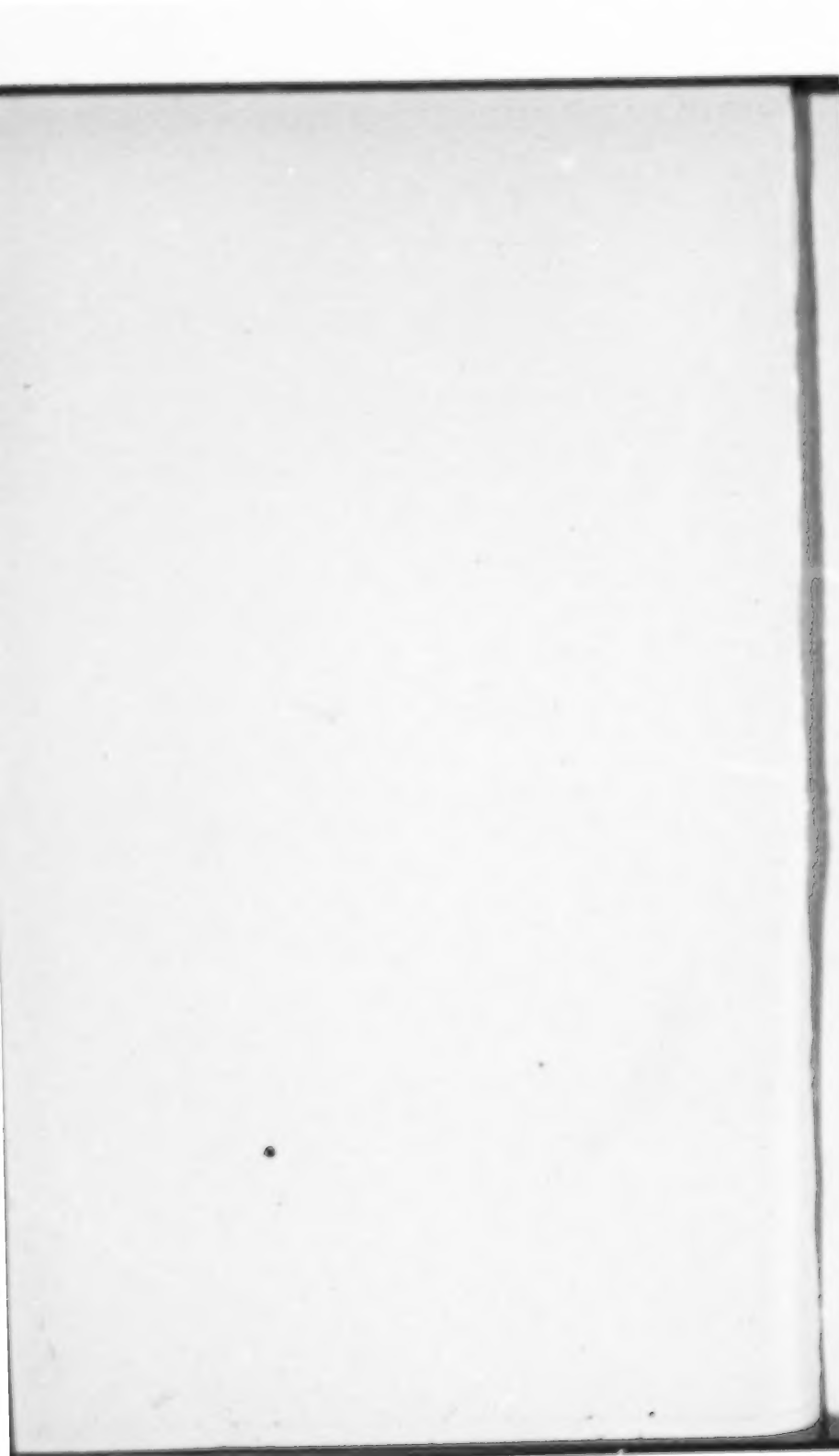
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Board of Public Utility Commissioners

Newark, N. J., Friday, October 17, 1913.

PATERSON GRADE CROSSING ELIMINATION— } 10
ERIE RAILROAD COMPANY, *et al.*

Before Commissioners Donges, Hillery and Daniels.

F. H. Sommer, Esq., Counsel.

J. Maybury, Jr., Esq., Railroad Inspector.

For the City of Paterson appears E. F. Merrey, Esq.

For Erie Railroad Company appears H. A. Taylor, Esq. 20

Mr. Taylor. I would like leave to file an answer but not at this time. Messrs. Collins and Corbin represent us in this proceeding but unfortunately Mr. Hobart is engaged in court. I have come here not prepared to file an answer but will do so at a future date. I would like permission to do that.

Commissioner Donges. That permission will be granted.

Mr. Merrey. You will file an answer for the Paterson & Hudson River Railroad Company and the Paterson and Ramapo Railroad Company? 30

Mr. Taylor. We do not represent those companies.

Mr. Merrey. They are served.

Mr. Taylor. Perhaps they have; I do not represent them.

Mr. Merrey. You will find on page 37 a list of the various corporations. They are arranged in groups.

Commissioner Donges. Notices have been given to all parties in interest. Does any one represent the Public Service Railway Company, Public Service Gas 40

Opening.

Company, Public Service Electric Company, Passaic Water Company?

(No response.)

For New York Telephone Company appears P. H. Burns, Esq.

Commissioner Donges. Is the Paterson, Passaic & Suburban Telephone Company represented?

10 (No response.)

Commissioner Donges. Are there any other persons represented? Is the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad Company represented?

Mr. Taylor. I do not represent them. I know some gentlemen spoke to me before the meeting about wanting to be heard who haven't as yet appeared. I think they are still here.

20 *Commissioner Donges.* You may proceed with any testimony, Mr. Merrey.

Mr. Merrey. I was going to say, we have quite a lengthy petition here setting forth the question. I presume the practice would have been to have the railroad company answer. They would answer and admit some of the facts and it would seem unnecessary to prove them. The situation is now we will have to go ahead with our proof, which may take a great deal of time and is not necessary.

30 *Commissioner Donges.* Perhaps Mr. Taylor will stipulate some of the allegations in the petition.

Mr. Taylor. We can see about that as we go along. I don't propose that they take up time with unnecessary proofs.

Mr. Merrey. It is set forth in paragraph 1 that the Board of Finance of the City of Paterson is the body having charge of the finances and its petition seems necessary, and the action of the board is attached to the petition in certified form. Can you admit paragraphs 1 and 2 are true?

40 *Mr. Taylor.* I admit this is the petition of the Board of Finance of the City of Paterson in accord-

Opening.

ance with the application attached to the petition. The question of the jurisdiction of the Board of Finance is governed by the statute and the statute speaks for itself. I don't understand you have to prove that.

Mr. Merrey. I want to prove that this action—

Commissioner Donges. What Mr. Merrey wants, as I take it, is an admission the Board of Finance is the financial body of the City of Paterson. 10

Mr. Taylor. I think Mr. Merrey filed a certified copy.

Mr. Merrey. It is.

Mr. Taylor. You filed a certified copy, I don't ask that you bring the clerk.

Mr. Merrey. Too?

Commissioner Donges. It is admitted the Board of Finance is the financial body of the City of Paterson. 20

Mr. Taylor. The statute governs that.

Commissioner Donges. The statute says the petition must be filed by that body.

Mr. Taylor. The statute shows that body. Whether the action was taken by that body or not, as Mr. Merrey has filed a certified copy of the action—

Mr. Merrey. It is admitted the Board has taken the action specified in paragraph 2, that is all we ask. Paragraph 3; will you admit the facts set forth there, "the Erie Railroad Company operates a railroad running through the City of Paterson," and so on? That seems so plain. 30

Mr. Taylor. Yes, I believe that is the fact.

Commissioner Donges. Paragraph 3 is admitted.

Mr. Merrey. Paragraph 4 says that the crossings are dangerous to public safety.

Mr. Taylor. I don't think I better admit anything in paragraph 4.

Mr. Merrey. Paragraph 5 is a matter really within the knowledge of the railroad company more than ours; it operates under a lease— 40

Opening.

Mr. Taylor. If you are prepared to take up the proof in the order of these paragraphs I imagine you better go ahead with the first four. I am quite willing to answer now, to go categorically through the petition and admit or deny the paragraphs we can't agree on. That is enough to furnish you with a basis of proof for some time.

10 *Mr. Merrey.* The fifth, you don't know about that.

Mr. Taylor. That fifth is correct, except the lease runs to the Union Railroad Company in the first place and by various conveyances vests finally in the Erie Railroad.

Commissioner Donga. So the Erie Railroad Company is operating these.

Mr. Taylor. The Erie Railroad is operating them.

20 *Mr. Merrey.* I am somewhat handicapped in that the railroad company has not filed an answer, because the details they are familiar with better be annexed by them rather than put in by our proof.

Mr. Taylor. There is no difficulty about that.

Mr. Merrey. The sixth is along the same line. I may say here, that the line between the Paterson and Ramapo Railroad and the Paterson and Hudson River Railroad is at Market street.

30 *Mr. Taylor.* Paragraph 6 is not precisely correct. I am not in a position to say just what it is. It is not exactly correct. That may be a point of importance in this case.

Commissioner Donga. How soon will you be prepared to file an answer?

Mr. Taylor. I think in a short time, only a matter of a few days.

40 *Mr. Merrey.* That is a matter that is not covered, I will expect the commission to direct the company to answer on those things which they only know. My information on that came from the case of paving of Market street and the book put in showed the point at just about that point.

Opening.

Mr. Taylor. The Hudson Company does own some property in the vicinity; I don't think it extends as far as recited.

Mr. Merrey. Number 7 would be the same thing.

Mr. Taylor. I might just as well answer this petition as go through in this manner. I haven't the answer prepared, and will go on with it later. I think I have furnished enough to start.

Commissioner Donges. It is somewhat embarrassing in view of the fact that the answer has not been filed, to know what facts are to be proven and what facts to take as admitted.

Mr. Taylor. I think we will have to insist that the city make full presentation of the physical situation.

Commissioner Donges. I think, Mr. Merrey, perhaps time will be saved by taking up the question of the physical situation and then we will see what there is to prove.

Mr. Merrey. We are about at that point now. We are just about reaching that point. These other questions are ones we need information on.

Mr. Taylor. You raised that point in paragraph number 4.

Mr. Merrey. We passed over that. We practically have covered it all now.

Mr. Taylor. At that point, if Mr. Merrey is prepared to proceed with testimony as to the physical situation, I think we should be furnished by the city, under the rules of the commission, with much more complete maps than are furnished here. We have no data of our own from which we can prepare that information; either the city will have to prepare it or we will have to. It seems to me the city should prepare it. Without attempting to make a complete statement, I will say the maps are deficient; they don't show the property owners affected; they don't show all the railroad tracks; they don't show our yard; they don't show the side tracks, they don't show

10

20

30

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Opening.

any profile, except as they might make a rough profile from certain information on the map. It seems to me in that respect they don't comply with paragraph C of rule 9 which the board fixed in respect to filing petitions.

10 "The petition shall have attached thereto a map, plan or drawing of the area that may possible be affected by an order which may be made granting the relief sought, upon which shall be located the railroad" (I presume that means all the railroad tracks), "the crossing or crossings, to which the petition relates, and also all other crossings within such area; the municipal water or sewer pipes, or other municipal pipes, conduits or subways, the street railways, and any property or construction of any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe line, or
20 other public utility located within the limits of such crossing and within such area."

Commissioner Donges. If it appeared, Mr. Taylor, that the maps filed are not in accordance with the rule the petitioners will be required to furnish whatever maps are needed.

Mr. Merrey. Of course, the rule requires us to furnish a map showing all the property that is to be affected. Our request is that the tracks be depressed; under those circumstances, if that order be made
30 there will be very little property injured. If the order be that the grade of the street be changed we will need a much more detailed plan. We can't see the possibility of such an order. We haven't gone in and made a detailed map of what is possible under an extreme plan would cause the change in the adjoining property line; we haven't done that. We haven't gone to the fullest extent an order of this commission might cover. We admit that. We can't imagine of any view of the case that the commission would make an order
40 of that sort. If the tracks were ordered to be elevated

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then there would be property damaged and it might be more than any of these maps show. If that is the case we would furnish those details later.

Mr. Taylor. The City of Paterson asks that the tracks be depressed or in the alternative be raised; it doesn't ask any other relief. The point I have in mind particularly is there is approximately sixty side tracks in Paterson. I haven't made a detailed study of the situation, but from the nature of things, if our tracks were lowered through Paterson I don't see how a single one of these side tracks can be preserved. If the tracks are elevated which is the City of Paterson's alternative request, it would be a hard matter to preserve any of the tracks and very expensive to do so. It seems to me those parties are interested whose property is affected by an such change, and that the map should show what the present situation is with regard to the side tracks and such things so it may be before the commission as to what the effect of such work as this will be. 10 20

Commissioner Donges. If it appears the map is insufficient the petitioner may be required to furnish another map.

Mr. Merrey. The railroad company having this information by the nature of the business they are engaged in, are more familiar with it than we are and could in the answer give the information; say how many side tracks and so on would be affected by this change. 30

Mr. Taylor. We will give you a list of the side tracks in our answer, as far as that is concerned. My point is simply—

Commissioner Donges. I think, Mr. Taylor, that the board will order that the additional maps be furnished if it is found these maps are insufficient.

Mr. Merrey. This act is a new act; there has not been much practice on it. We are proceeding finding out what is wanted. That is the reason I am 40

Opening.

taking a little more time than I otherwise would do. It seems to me it results in this—if the board decides the change is to be made some plan must be adopted. The question is how is that plan to be prepared.

- 10 *Mr. Taylor.* It seems to me we are getting a long way ahead of the game in making that suggestion now. As to that I would simply say the cost of this elimination through Paterson would be so enormous that the Erie Railroad Company has never been in a position where it could even contemplate the expenditure of the amount of money necessary to do the work and we never have made any plans, that is any plans which would be in any sort of shape for submission to the commission if we had gotten to that point.

- 20 *Mr. Merrey.* I merely make that suggestion because we are going to travel the road and it would be a good idea to show the steps we are to pursue and the course to be preserved.

Commissioner Donges. The first question is whether or not the situation presents such hazards as to demand the elimination of the grade crossings.

Mr. Merrey. I will proceed now to prove the maps we have submitted.

For the Passaic Water Company appears Cuddebach, Esq.

For McNab & Harlin Mfg. Company appears Daniel O'Connor, President, having sidings in Paterson.

- 30 *Mr. Taylor.* I suppose, Mr. President, any other owner of side tracks whose interest is affected may come in.

Commissioner Donges. Yes, any person affected or interested may come in at any time; that is during the course of the hearing.

For R. J. Steel appears B. S. McKirk, Esq.

For John Agnew Company appears John Agnew, Esq.

- 40 For Herrmann Company appears E. E. Hassin, Esq.

John C. Veenstra, direct.

Q Have you those maps which are lettered from A, I believe to N, with you?

A Yes.

Q Are those blue prints of those maps?

A Those represent the blue prints of those maps.

Q Have you the map there of Madison avenue?

Mr. Taylor. Has this map (indicating) been offered? 10

Mr. Merrey. I will offer that in evidence.

Mr. Taylor. This isn't the same map as attached to the petition.

Mr. Merrey. It is.

Mr. Taylor. It covers more area than the one we have.

Mr. Merrey. I can't understand that.

Mr. Taylor. The map I have River street is on one side and Madison avenue on the other. Is this the same map except that it extends further? 20

Mr. Merrey. We will find out.

Q The key map which you annexed to the petition filed by the city in this case seems not to include as much territory as this map does.

A We first made a map showing Madison avenue to River street then we were instructed to go on to Gould avenue and to Hawthorne; then we made a second map.

Q How was the second made? 30

A It was traced from the other and then added on from River street to Hawthorne and from Madison avenue to Gould avenue.

Q Is there any difference in the body of the map now before us and the one annexed to the petition?

A No difference at all.

Q Except these additions were made.

A Simply extended.

Q Have you found the map of Madison avenue?

Commissioner Donges. You have another copy for the Erie? 40

John C. Veenstra, direct.

Mr. Merrey. We will furnish copies of these and the matter of the change or two in the new map in addition is probably not a matter of importance to the commission because there are no crossings which we refer to in our petition in the extended part of the map.

10 *Commissioner Donges.* But a copy of this map has been filed with the commission.

Mr. Merrey. Mr. Mead called on us and got a map and we have taken it from Mr. Mead.

Commissioner Donges. If there is no objection this map will be admitted.

(Same is marked Exhibit P-1.)

Q Mr. Veenstra, can you tell us how Madison avenue, marked A, is protected?

A By gates.

20 Q On this map, marked A, which I now offer the commission in evidence, are such gates shown?

A Yes.

Q They are indicated by the word "gate"?

A Exactly.

Q There is a bell at the crossing also?

A Yes, sir.

Q The position of the bell is indicated?

A Yes, sir.

30 Q By the word "bell." Can you tell us what obstructions there may be to the view of persons using Madison avenue at the crossing of the tracks of the Erie Railroad?

A In what respect.

Q Obstructions to the view of persons going by. What buildings or structures are there?

A There are telegraph poles along the line, then there is the American Locomotive Works.

Commissioner Donges. If there is no objection to this it will be admitted and marked.

40

(Same is marked Exhibit P-1A.)

John C. Veenstra, direct.

For J. Wilson & Son, Inc., appears J. Wilson, Jr., Esq.

For Meyer & DeVogel appears Jacob Meyer, Esq.

For Paterson, Passaic & Suburban Water Company appears R. E. Lindsey, Supt.

JOHN C. VEENSTRA, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

10

Q Where are you employed?

A Mr. Harder's office, City Engineer, Paterson.

Q How long have you been there?

A I have been with him for the last twelve or thirteen years.

Q Did you make a survey of the line of the Erie Railroad Company through the City of Paterson and also make certain maps showing that survey?

A Yes.

20

Q Have you copies of those maps here?

A I have them here.

Q The first is the key map.

A (Produces map.)

Q This map before you is a blue print; was that made from a tracing you made yourself?

A Yes, sir.

Q It is marked, "Map showing grade crossings of the Erie Railroad," and dated October, 1913, H. J. Harder, City Engineer. At what point does that map begin? 30

A Gould avenue, and she ends at Hawthorne.

Q Is Gould avenue near the line of South Paterson?

A Yes, near Crooks avenue.

Q Near the southerly line?

A Near the southerly line.

Q How far is Gould avenue from Crooks avenue?

A I should judge, maybe, 2,000 feet.

40

John C. Veenstra, direct.

Q Have you shown on this map the various streets of the City of Paterson close or near to the main line of the Erie Railroad?

A Yes, sir.

Q Was this map from a survey?

A Yes, made from a survey.

Q Who made the survey?

10 A I made the survey.

Q What is the scale of the map?

A The scale is 150 feet to the inch.

Q Is the map drawn true to the scale?

A Yes, sir.

Q I presume there is some little shrinkage due to the blue printing.

A Yes. with the wetting the blue print shrinks a little.

20 Q I notice on this map you have a number of letters marked on the line of the railroad company where certain streets cross them. What is that, do you know?

A That represents the different maps we have showing the different details, or as an index.

Q I notice that the letter A is on the crossing at Madison avenue.

A Exactly. That represents the cross map at Madison avenue.

30 Q You have a more detailed map of that crossing?

A Yes, sir.

Q How were those maps made, the detail maps?

A Those were made from actual survey.

Q By whom?

A By myself.

Q Drawn to scale?

A Drawn to scale, yes, sir.

Q And the blue print made from the original map?

40 A The tracing made from the original and the blue print made from those.

John C. Veenstra, direct.

Mr. Taylor. They might be telephone or telegraph wires.

Witness. I don't know.

Q There are how many wires?

A Twenty-seven.

Q How high?

A Twenty-five feet.

Q Above the rail?

10

A Above the ground underneath the wires. I should judge about the same at the railroad, the same elevation.

Commissioner Hillery. What other obstructions are there in the highway?

Q Are there any other obstructions?

A Only the tower that operates the gates?

Q Is that noted on the map?

A Yes, sir.

20

Q Do you know what the distance is to the nearest passenger station from this crossing?

A I haven't got it positively, no.

Q About. Can you tell us from the map.

A I could scale it.

Q What is the nearest passenger station?

A The nearest passenger station is South Paterson on the Newark branch.

Q On this railroad?

A It would be Market street.

30

Q No, it is Lakeview. Just scale it from Madison avenue to Lakeview station.

A I haven't got it.

Q You have told us how far off the map, you said it was about 2,000 feet away. Approximately how far away.

A About 2,000 feet.

Q How far is it to the main Paterson station on Market street from this crossing, from Madison avenue.

40

John C. Veenstra, direct.

A About 6,000 feet.

Q What is the nearest overhead or underground crossing; what is the next one?

A Essex street.

Q How far is that from this crossing?

A I should judge about a mile.

Q Just let us have it please.

A 4,500 feet.

10

Q Do the elevations which you have marked on the map show the grade of the highway in the vicinity of the railroad tracks?

A Yes, sir.

Q Is there any street railway using this crossing?

A Not at Madison avenue, no, sir.

Q Will you find the map B relating to Clay and Straight streets.

A (Produces map.)

20

Q Is this map made by you from actual survey?

A Yes.

Q What is the scale?

A One inch to sixteen feet.

Q This map shows two streets crossing the railroad.

A Straight street and Clay street crosses the railroad.

Q Are both crossings near together?

A Yes.

30

Q Give the distance between the center lines along the center line of the railroad.

A About 150 feet.

Q Tell us what obstructions there are to the view of persons passing along the street.

A Clay street we have a frame building and we have the tower.

Q Just tell us going along Clay street from the west toward the east what buildings we would find in the view to the south.

40

A South we have a frame building.

John C. Veenstra, direct.

Mr. Taylor. The American Locomotive Works is a brick building.

Mr. Merrey. Yes.

Q As you approach the Erie Railroad from the west going east, what buildings or structures are there that would interfere with your view of the railroad?

A The American Locomotive Works. 10

Q And that is to the south?

A To the south of Madison avenue.

Q And is indicated on your map by lines and the words "brick building"?

A Exactly.

Q Does that show the exact location of it?

A Yes, sir.

Q Are there any buildings to the north coming from the west?

A No, no buildings at all. 20

Q Coming from the east, are there any buildings?

A No buildings there.

Q Have you indicated on this map the elevations above the sea level?

A Yes.

Q Can you tell me what it is at the track?

A The elevation at the rail is 110.44.

Q What is the scale of map A?

A Sixteen feet equals one inch.

Q (*By Mr. Taylor.*) Are all these maps alike in that respect? 30

A Yes, sir.

Q (*By Mr. Merrey.*) Can you tell us some other elevations nearby on Madison avenue?

A Well, I have an elevation at the center of East Railway avenue and Madison avenue of 111.32. Then I have one on beyond I should judge I have taken that about 700 feet east, and that elevation is 114.59. Another elevation is at Getty avenue and Madison avenue, 139.32. 40

John C. Veenstra, direct.

Q These elevations are marked on the map in figures?

A Yes.

Q At the point they were taken?

A At the point exactly where taken.

Q Can you tell us what water pipe or gas pipe crosses this railroad under the rails?

10 A The pipe of the water company.

Q The Passaic Water Company?

A The Passaic Water Company. The Public Service has a six-inch pipe.

Q What size pipe is the water company's?

A Sixteen-inch pipe.

Q Do any wires cross at this point?

A Yes.

Commissioner Donges. What size gas pipe?

Witness. Six inch.

20 Q There are two gas pipes, one six inches and one sixteen inches?

A Yes.

Q Do any wires cross?

A Yes, sir.

Q Do you know what they are?

A There is electric wires, three electric wires cross.

30 Q Are there a number of wires running along the right of way which are evidently operated by the railroad company?

Mr. Taylor. I object to that. He can testify who operates them if he knows.

Mr. Merrey. He don't know.

Mr. Taylor. Can the engineer state whether they are telegraph wires or wires for the operation of signals.

Witness. The majority of them seem to be telephone wires.

40 *Mr. Taylor.* Telephone or telegraph?

Witness. They are about one-eighth of an inch in diameter.

John C. Veenstra, direct.

Q Do you know who occupies that building?

A No, I do not.

Q It is indicated on your map by a frame building?

A Exactly.

Q And to the north coming from the same direction along Clay street, what do you find?

A Find a tower of the Erie Railroad.

Q Coming from the east along Clay street what obstructions are there to the north? 10

A A brick building.

Q Is that indicated on the map?

A Yes, sir.

Q What obstructions are to the view?

A No obstructions on Straight street.

Q You mean on Clay street from the east and looking to the south.

A No, sir, no obstructions.

Q Coming south along Straight street what obstructions would there be on Straight street to the view to the south? 20

A No obstructions there.

Q What obstructions to the view of a train coming from the north while you were going south along Straight street?

A You have got that same brick building. That would be a hindrance.

Q People passing along Straight street to the north, what are the obstructions to the view of a person to the north? 30

A A frame building on the west side.

Q Is that shown on your map and marked?

A Yes, sir.

Q What is to the south or southeast?

A There is a stone structure, stone building rather.

Q What is that?

A I think that represents the office of the iron works. 40

John C. Vecenstra, direct.

Q The Passaic Iron Works?

A Yes.

Q Is that a large building?

A The building itself is about two stories high, brown stone.

Mr. Taylor. That is shown on the map?

Mr. Merrey. Yes.

10 Q Is there a curve at this point?

A There is partly a curve in the railroad, yes, sir.

Q Does that interfere with the view? Can you see it on the key map there?

A Answer, it does.

Q Are there any other obstructions to the view than those you have mentioned?

A Different poles.

Q Are they all indicated there?

20 A Yes.

Q Have you on this map indicated every building, pole or structure of any kind that might interfere with the view?

A Yes, sir.

Q The names are given, the character of the obstruction?

A Exactly.

Q Tell the distance to the nearest passenger station from these crossings.

30 A About three thousand feet to the Market street station.

Q What is the nearest overhead or underground crossing?

A Essex street.

Q How far is that from these crossings?

A About 1,200 feet—rather 1,800 feet.

Q Is there a street railway at this point crossing the tracks?

A No, sir.

40 Q There is, however, nearly, is there not; shown on Straight street?

John C. Vecastro, direct.

A Yes, sir.

Q Running north and south on Straight, then turning east and west on Clay street, but not crossing the railroad.

A Not crossing the railroad.

Q Tell us what pipe crossings there are.

A At Clay street we have a fifteen-inch pipe sewer and we have another forty inch.

Q That is a city sewer?

10

A Yes. We have a forty-inch brick sewer. We have the Passaic Water Company crossing with a twelve-inch pipe. That is all underground. On Straight street we have an eighteen-inch pipe sewer.

Q That is the city's?

A The city's. The Passaic Water Company has an eighteen-inch pipe and the Public Service Gas Company has a six-inch main.

Q What is there overhead?

20

A Overhead there is three wires crossing the railroad at Straight street, twenty-four feet high.

Q Running from a signal tower?

A Running from the tower, yes, sir.

Q Are there any other lines running across Straight street, wire lines?

A No other wires.

Q On Clay street what wires are overhead?

A Eight wires, forty-one feet high.

Q Which side?

30

A The north side.

Q What is there on the south side?

A Thirty-three wires, thirty-nine feet high.

Mr. Taylor. What lines are there at the crossing starting at the south side of Clay street marked twenty-four feet high; fifty-two wires?

Q You have on your map fifty-two wires, twenty-four feet high; what are they? Are they a continuance of the wires which cross Madison avenue?

40

A Yes, sir.

John C. Veenstra, direct.

Q Are the same character as those wires?

A Exactly.

Q And they run along the right of way?

A Parallel with the railroad.

Commissioner Donges. That map is offered?

Mr. Merrey. Yes.

Commissioner Donges. It will be marked.

10 (Same is marked Exhibit P-1B.)

Q Give us the grade of the highway. What is the elevation above sea level of Clay street on the rails?

A The elevation of Clay street is 95.57.

Q At Straight street?

A At Straight street 95.95.

Q At the west of the railroad on Clay street tell us the elevation.

A The elevation there is 99.02.

20 Q About what point is that?

A The first street west of the railroad.

Q Is the elevation marked?

A At the intersection.

Q At the point the elevation was taken?

A Yes.

Q What is the elevation at the intersection of Straight street and Clay street?

A 91.60.

30 Q And south of the railroad on Straight street have you an elevation?

A Yes, sir.

Q What is that?

A 97.03.

Q And how far from the center of the track is that taken?

A 240 feet, about.

Q I ask you to produce map annexed to the petition which is marked C, Cedar street crossing.

A (Produces map.)

John C. Veenstra, direct.

Q We find on the map, and to the north of Clay street, a street marked Taylor street; does that cross the right of way?

A It does not cross the right of way.

Q It is not open for travel?

A No.

Q So the next street north of Clay street is Cedar street?

10

A Cedar street.

Q Of which I ask you now, and is annexed to the petition?

A Yes.

Q And is from a survey made by you?

A Yes.

Q And the scale is the same?

A The scale is one inch equals sixteen feet.

Q How many tracks are there at Cedar street?

A Four main tracks and there seems to be four switches. 20

Q (*By Mr. Taylor.*) Five switches.

A Five switches, yes, Ramapo avenue.

Q (*By Mr. Merrey.*) How is it protected?

A By gates.

Q A single set or a double set?

A A double set, four gates.

Q Do you know whether a watchman is maintained on the ground?

A I couldn't tell you that.

30

Q This section is getting into the main yards of the railroad?

A Yes.

Q Can you tell us the obstructions to the view of the public passing along this street to trains?

A Passing up Cedar street on the west.

Q Coming from what direction?

A Coming from Straight street.

Q From the east?

A From the east going to the west, the northerly side there is a brick building. 40

John C. Vecnstra, direct.

Q A large brick building?

A Yes, a large brick building.

Q Is the building built close to the right of way and these switches?

A Yes.

Q How near to the nearest switch is that building?

10 A About eight feet.

Q What do you find coming from the same direction to the south?

A A large brick building.

Q How near is that building to the nearest switch?

A Also eight feet.

Q Now then, coming from the other direction, coming from the east and going west on Cedar street.

A The south side we have a large brick building.

20 Q On the north?

A On the north we have no buildings.

Q Are there many cars on the switches?

A Yes, there is always.

Q At the time you were there were there any?

A Yes, sir.

Q How frequently were you there?

A I was there two or three times.

Q Can you tell us the distance to the nearest passenger station, what it is?

30 A Market street is the nearest passenger station; eighteen hundred feet.

Q And the distance to the nearest overhead or underground crossing.

A The underground crossing is Essex street.

Q How far is that?

A Nine hundred feet.

Q Are there any overhead crossings on this line of the railroad between the points we are considering?

A No, there is not.

40 Q Or underground crossings there?

John C. Veenstra, direct.

A Essex street and Straight street.

Q That is lower Straight street you mean?

A Lower Straight street.

Q Where does Straight street cross again, other than the point you testified to?

A Not the furtherest point we have on our map, no.

Q What other points are there?

10

A Straight and Fulton is the same point.

Q Is there another one?

A Another beyond Straight street, Governor street.

Q That is all?

A That is all.

Commissioner Donges. The tracks at those streets pass over the street at those points?

Witness. Yes, sir.

Q Can you give us the grade of the highway by the elevation of the track from nearby points at Cedar street?

20

A Yes. The elevation of the rail is 89.93; on the center of Railroad avenue and Cedar street, that is west of the railroad, 88.26; on Cedar street east of the Erie Railroad at Straight and Cedar streets, 89.38.

Q Is there any street railway tracks crossing at this crossing?

A No, sir.

30

Q Any pipe crossings?

A Yes, sir, the Passaic Water Company has an eight-inch pipe; the Public Service Gas Company has a six-inch pipe.

Q Any overhead wires crossing?

A Yes; seven overhead wires crossing.

Q You say there is seven wires?

A Seven wires crossing from a pole at the north-east corner of Railroad avenue and Cedar street to

40

John C. Vecnstra, direct.

Ramapo avenue, there is seven. The north side of Cedar street there are sixteen wires thirty-seven feet high; on the south side there are four wires twenty feet high.

Q Is that line of wires paralleling the railroad crossing at this point, too?

10 A Forty-eight wires twenty-two feet high paralleling the railroad.

Q Can you tell us whether the wires on the south-erly side are electric light wires or telephone wires?

A I couldn't tell you that very well on the map.

Mr. Taylor. Which do you mean by the south-erly side?

Mr. Merrey. The railroad company I suppose calls that the east.

20 *Mr. Taylor.* The seven wires shown on the map?

Mr. Merrey. Yes. I will offer this map in evidence if the commission please.

Commissioner Donges. There is a street indicated on the map paralleling the tracks.

Witness. Yes.

Commissioner Donges. The tracks appear to be laid in this street.

Mr. Taylor. Ramapo avenue.

Mr. Merrey. That street is open.

30 Q Do you know whether Ramapo avenue, which is shown on this map, is open and used at that point at Cedar street?

A It is used by switching, they drive in and out and unload cars. But for public use I doubt it.

Mr. Taylor. I understood it was open as a public street.

Witness. On the assessment map they have it as a street and lots assessed as on Ramapo avenue.

John C. Veenstra, direct.

Q (*By Mr. Merrey.*) Do you know whether the people on those buildings use it to go to and fro to their buildings?

A I am pretty sure they do.

Mr. Merrey. I offer this map.

Commissioner Donges. It will be admitted and marked.

(Same is marked Exhibit P-1C.)

10

Q I ask you to produce map D, Market street crossing.

A (Produces map.)

Q This map was made by you after survey by you?

A Yes, sir.

Q What is the scale?

A One inch equals sixteen feet.

Q Do you know how this crossing is protected?

A Yes, sir, by gates.

Q Operated from a tower?

20

A Operated from a tower, and I think a flagman at the station.

Q Can you tell us what obstructions there are to the view of people passing at this place—obstructions to the view of the railroad track?

A Yes, sir. Going west on Park avenue from straight street there is a row of buildings; the side of that block is built in full.

Q There is a small open street called Crosby Place?

30

A Yes, sir.

Q Between those buildings and the railroad track?

A Yes, sir.

Commissioner Donges. How wide is that street?

Q How wide is that?

A It varies.

Q Right at the point of Park avenue.

40

John C. Fernstra, direct.

A Forty feet.

Q Do you know there is a sign placed there stating that Crosby Place is not a public thoroughfare, set up by the Susquehanna Railroad Company?

A I have never seen it. I have never noticed it there.

10 *Mr. Merrey.* We will show that later. We will show later that it is claimed to be owned by the Susquehanna and that it is not a public street.

Commissioner Donges. It is not used by the public.

Mr. Merrey. It is used by the public. The main station of the Susquehanna is right here (indicating), and a spur runs in and stops at this point (indicating); those are reached by this short street and Straight street.

20 *Mr. Taylor.* It is used for access to the Susquehanna station?

Mr. Merrey. Yes, the public use it. It is used like an ordinary public street. They have a sign to protect their right and claim ownership.

Commissioner Donges. You claim it is a private way?

Mr. Taylor. So Mr. Merrey says; I am not familiar with the facts.

30 Q Continue and show what obstructions there are coming from the east on Market street.

A On Market street?

Q What is it coming from the east on Market street.

A We have a brick building on the right; then we have a row of brick buildings on the left.

Q How near are these buildings to the track?

A About sixty feet to the track.

Commissioner Donges. These triangular-shaped buildings?

40 *Mr. Merrey.* Yes.

John C. Vecenstra, direct.

Q And the building on the left that you spoke about.

A Thirty-six feet to the track?

Q What are the obstructions to the west of the track on Market street?

A We have a brick building on the corner on the intersection of the railroad.

Q That is on the left?

A Along that whole block is a brick building.

10

Q And to the right.

Commissioner Donges. What is the distance of this brick building at the northwest corner to the tracks?

Witness. Thirty-four feet.

Q Do you know who owns that building?

A It is occupied by Morrin Company.

Commissioner Donges. Are there any other obstructions between that brick building and the railroad track? 20

Witness. There is a tower and flag station.

Q To the south on Market street from the west?

A The Erie Railroad station.

Q The passenger station at Market street?

A The passenger station, yes, sir.

Q Any other obstructions?

A Then we have on the other side, on the east side of the railroad—

Q You told that.

30

A The poles.

Mr. Merrey. You admit the ownership of that building at this point, Nelson Morris?

Mr. Taylor. Owned by the Erie Railroad?

Mr. Merrey. Yes.

Mr. Taylor. I don't know.

Q Do you know that the railroad has a part of its workshop, partly occupied by Nelson Morris Company?

40

John C. Veenstra, direct.

A Yes, sir, in the rear.

Q Do you know that the freight cars on the Susquehanna Railroad obstruct the view any?

A They do, yes, sir. The switching of the Susquehanna obstructs the view to the north.

Q As you are coming from the east.

A Yes.

10 Q (*By Mr. Taylor.*) What street?

A They are not on the street.

Mr. Merrey. They are on the Susquehanna Railroad.

Mr. Taylor. This map doesn't show.

Mr. Merrey. It will show on the other?

Mr. Taylor. The witness should be a little more definite.

Q You don't show the Susquehanna here?

20 A No, we don't show the Susquehanna here.

Q The nearest passenger station is located right at this street?

A Market street.

Q And the nearest underground crossing is where?

A The nearest underground crossing is Essex street.

Q How far is that?

A About 1,000 feet.

30 Q Can you give us the grade of the highway? First tell us the elevation on the rail at Market street above the sea level.

A The elevation on the rail at the intersection of Market street and Park avenue where both intersect, that elevation is 79.29; the elevation at Railroad avenue and Market street 75.03; the elevation at Park avenue and Straight street 88.22. The elevation on Straight street and Market street 85.98.

Q What street railway tracks cross at this point?

40 A The Public Service crosses Market street and also Park avenue

John C. Veenstra, direct.

Q How many cross?

A Double tracks on Park avenue and single track on Market street.

Q What pipe crossings are there?

A The Public Service has a twelve-inch gas pipe and the Public Service Electric Company has two two-inch tubes; the gas company has a six-inch pipe; the telephone company has nine conduits; the Public Service Electric Company has twelve conduits; and there is a thirty-inch brick sewer owned by the City of Paterson; the Passaic Water Company has a twelve-inch pipe; the Public Service Gas Company has another six-inch pipe. 10

Q How many tracks cross at this point?

A Two tracks.

Q Two tracks?

A Two main tracks.

Q What wire crossings are there? 20

A Across Park avenue and Market street and parallel to the railroad forty-one wires, thirty feet high, on the east side of the railroad. Crossing the railroad track we have got trolley wires; two trolley wires on Park avenue, one trolley wire on Market street; four on the other side, the south side of Market street, twenty-six feet wide.

Q And then the same set of wires paralleling the railroad company that you spoke of, not crossing.

A Forty-one wires, thirty feet high. 30

Q Which side of the railroad?

A East side of the railroad.

Commissioner Daniels. What is the covering over the sewer trunk; the distance between the crown of the street and the top of the sewer?

Witness. They average eight feet; eight to ten feet.

Mr. Taylor. Your answer applies to all these crossings, or only Market street?

John C. Veenstra, direct.

Witness. They average about eight to ten feet, the depth of the sewers all through the city.

Mr. Taylor. Below the surface?

Witness. Below the surface of the street.

Q I might say, some of our records were destroyed, records of the sewers.

A Yes, our records there were all destroyed by
10 fire.

Q When was the fire?

A 1902.

Commissioner Donges. What about Ramapo avenue at this point?

Witness. Ramapo avenue is a public street.

Q A paved macadam street, Ramapo avenue?

A It is asphalt, I think.

Q Used by the public?

A Yes.
20

Mr. Merrey. I will offer this blue print in evidence.

Commissioner Donges. It will be marked.
(Same is marked Exhibit P-1D.)

Recess from 12:20 to 1:20.

AFTER RECESS.

JOHN C. VEENSTRA resumes the stand.

30 *Direct examination by Mr. Merrey (continued).*

Q Mr. Veenstra, will you produce map E, showing crossing at Ellison street.

A (Produces map.)

Q How is that protected?

A That is protected by gates.

Q Will you tell us the obstructions to the view of people passing along Ellison street?

A Traveling from Straight street towards the
40 railroad, right of way, a brick building, and on the south side a concrete building.

John C. Veenstra, direct.

Q How near are they to the railroad tracks?

A About five feet.

Mr. Taylor. May I ask a question here?

Mr. Merrey. Yes.

Q (*By Mr. Taylor.*) In measuring from the railroad track to the buildings are you measuring from the nearest rail?

A Yes.

10

Q In each case?

A Yes.

Q (*By Mr. Merrey.*) Not the end of the ties; the rail.

A The rail.

Q Just continue and give us the other side.

A The west side of the track going towards Paterson street north side of Ellison street, is a lumber shed, and the south side we have the freight station; then we have a tower.

20

Q How near are they to the tracks?

A The lumber shed is about nine feet and the freight station about sixteen feet.

Q How many tracks of the railroad company cross this street?

A Three.

Q What is the nearest passenger station and how far is it?

A Market street; six hundred feet.

Q And how far is the nearest underground crossing or undergrade crossing?

30

A That would be Governor street.

Q Governor street or Essex street; tell us both.

A Essex and Governor both. Essex street is about nine hundred feet and Governor street about twenty-four hundred feet.

Q Take the Essex street again; not from Market street, from Ellison street.

A About eighteen hundred feet.

40

Mr. Merrey. We wish to correct that testimony.

John C. Veenstra, direct.

Q Can you give us the grades of the highway? What is the elevation of the tracks above sea level?

A The elevation of the tracks above sea level is 78.68; Straight street is 81.34; the elevation of Straight and Ellison.

Q (*By Mr. Taylor.*) What was the other?

10 A The intersection of the Erie Railroad and Ellison street 78.68. The intersection of Ellison and Paterson street, 70.52.

Q No street railway tracks cross here?

A No street railway.

Q Tell us the pipe crossings under the railroad?

20 A The Public Service Gas Company has a six-inch pipe; the Public Service Electric Company has a tube; there are four conduits; thirty-six inch brick sewer of the city and an eighteen-inch pipe sewer of the city; the Passaic Water Company has a six-inch pipe; the Public Service Electric Company has two tubes; the Public Service Gas Company has another four-inch pipe.

Q What overhead wires cross?

A There are fifty-one wires on the west side of the track parallel with the track, forty feet high.

Q The same line that started at Madison avenue?

A The same line crossing over.

Q Are there any wires running east and west?

A The south side sixteen wires, forty feet high.

30 Q (*By Mr. Taylor.*) Do you know whose wires they are?

A No.

Q (*By Mr. Merrey.*) Are they electric wires?

A Electric and telephone.

Mr. Merrey. I offer that map in evidence.
Commissioner Donges. It will be marked.
(Same is marked Exhibit P-1E.)

Q Get map F.

40 A (Produces map.)

John C. Veenstra, direct.

Q What street crossing does this show?

A Van Houten street.

Q How is that protected?

A That is protected by gates.

Q They are operated from a tower?

A Yes, sir.

Q What is the obstructions to the south of this crossing?

10

A The north side, from State street, east side of the railroad, there is a frame building; along the west side a brick building. On the south side of the street from State street to Paterson street, a brick building on the east, and the west of the railroad there is a brick building.

Q How near are these to the tracks?

A On the east side of the railroad they are about five feet; on the west side about ten feet, that is on the north side of Van Houten street. On the side of Van Houten street, east side of the track, sixteen feet along the west side, ten feet.

20

Q What is the nearest passenger station, and how far down?

A Market street, about 1,200 feet.

Q What is the nearest undergrade crossing and how far is it from Van Houten street?

A Governor street is the nearest one; about 1,500 feet.

Q Give us the grade of the highway?

30

A The grade of the railroad at the intersection of Van Houten street, 77.63; and the intersection of Straight street and Van Houten, 84.07; and the intersection of Paterson and Van Houten street, 72.31.

Q Do any street railways cross at this point?

A No street railways.

Q What pipe crossings are there under these rails?

A The Public Service Electric Company has two; the New York Telephone Company has six conduits;

40

John C. Veenstra, direct.

the Passaic Water Company has a twenty-four inch pipe; the City of Paterson has an eighteen-inch pipe sewer; the Passaic Water Company, on the south side, has a six-inch pipe; the Public Service Gas Company has, on the south side, two three-inch mains; the Public Service Electric Company has twenty conduits and two tubes.

10 Q What overhead wire crossings are there?

A The west side, parallel with the Erie Railroad, forty wires thirty feet high.

Q Is that the same line of wires following the railroad?

A Yes. Crossing the railroad on the south side of that Van Houten street, seven wires fifty-two feet high.

Mr. Merrey. I offer this map in evidence.

20 *Commissioner Donges.* It will be received and marked.

(Same is marked Exhibit P1-F.)

Q Give me map G.

A (Produces map.)

Q What crossing does it show?

A Broadway crossing.

Q How is that protected?

A That is protected by gates and I think there is a flagman.

30 Q The gate is operated by a tower?

A Operated by a tower.

Q And a flagman on the ground?

A A flagman on the ground.

Mr. Merrey. I might mention that this crossing we are now on is the one at which an accident happened and a report made to the commission of a man named Foley killed there. I haven't the notice here.

Commissioner Donges. How recently?

40 *Mr. Merrey.* August 26, 1911.

John C. Veenstra, direct.

Q What obstructions to the view are there on Broadway?

A The north side, east side of the tracks, a frame building, and west side of the tracks, north side of Broadway, a brick building; the south side and east side of the track, a frame building; the west side of the track and south side of Broadway, a brick building.

10

Q How near are those buildings to the rails?

A On the south side, east side of the tracks, we have four feet to the nearest rail, and on the west side of the tracks and south side of Broadway, seventeen feet to the nearest rail. On the north side of Broadway, east side of the track, thirty feet to the nearest rail; on the west side of the track, north side of Broadway, we have thirty-seven feet.

Q What is the distance to the nearest passenger station?

20

A Market street is the nearest passenger station; 2,100 feet.

Q What is the nearest undergrade crossing?

A Governor street.

Q How far is that?

A That is 2,100 feet.

Q Let us have the grade of the highway.

A The grade at the railroad track, intersection of Broadway, 86; the intersection of Paterson and Broadway, 67.26.

30

Q How many railroad tracks cross at this point?

A Two.

Q And street railway tracks?

A Double tracks, two tracks.

Q What pipe crossings are there?

A On the north side, Public Service Electric Company, six conduits; Public Service Gas Company, three-inch pipe; Passaic Water Company, sixteen-inch pipe; City of Paterson, twelve-inch pipe sewer;

40

John C. Veenstra, direct.

Suburban Telephone Company, four conduits; Public Service Gas Company, four-inch pipe; Public Service Electric Company, two two-inch tubes.

Q How many pipes of the gas company?

A Four-inch pipe, it don't say how many.

Q Isn't there one three-inch?

A One three-inch pipe on the north side.

Q State the overhead wires crossing.

10 A Parallel with the railroad, on the west side of the track, fifty-two wires, thirty-five feet high.

Q Is that the same line of wire following the railroad?

A Yes. Seven wires crossing diagonally, fifty-three feet high, and then the trolley wires, two trolley wires, feed wires.

Mr. Merrey. I will offer this map in evidence.

Commissioner Douges. It will be admitted and

20 marked.

(Same is marked P-1G.)

Q I ask you to produce map H.

A (Produces map.)

Q This shows Fair street?

A Yes.

Q How is it protected?

A By gates.

Q Operated from a tower?

A Yes, sir.

30 Q What obstructions are there to the view along this right of way?

A North side of Fair street, east side of the track, a frame building; west side of the track and north side of Fair street, a frame building; south side of Fair street, east side of the track, a frame building; west side of the track, south side of Fair street, a frame building.

Q How near are these buildings to the rail?

40 A The one on the north of Fair street and east side of the track, about twenty-eight feet; the one on

John C. Veenstra, direct.

the north side of Fair street and west side of the track, eighty-eight feet; the one on the south side of Fair street, east side of the track, thirty-four feet; the one west of the track is seventy feet.

Q Are there poles and other obstructions?

A Electric poles and telegraph poles.

Q All shown on the map.

A Yes; gas light; trees.

Q What is the distance to the nearest passenger station? 10

A Market street is the nearest passenger station; 1,600 feet.

Q And the nearest undergrade crossing?

A Governor street, about 1,200 feet.

Q Let us have the grade of the highway.

A The grade of the intersection of the Erie Railroad and Fair street is 73.15; at the intersection of Straight street and Fair street, 83.43; at the intersection of Fair street and Paterson street, 59.12. 20

Q Are there any street railway tracks crossing over here?

A No.

Q Pipe crossings?

A The Passaic Water Company has a six-inch pipe, the City of Paterson has a twelve-inch pipe sewer.

Q Wire crossings?

A There are wires paralleling the railroad on the west side; thirty-six wires, thirty-four feet high; on the east side, twenty-three wires, twenty-nine feet high. 30

Mr. Merrey. I will offer this map in evidence.

Commissioner Donges. It will be admitted and marked.

(Same is marked Exhibit P-1H.)

Q Produce map I, showing Hamilton avenue.

A (Produces map.) 40

John C. Veenstra, direct.

Q How is that protected?

A Protected by gates.

Q Operated from a tower?

A From a tower.

Q Tell us what obstructions to the view there are at this crossing.

10 A The north side of Hamilton avenue, east of the track, a brick building; the west side of the railroad, north side of Hamilton avenue, a brick building; on the south side of Hamilton avenue, east of the track, a frame building; south side of Hamilton avenue, east of the track, another frame building.

Q How near are these buildings to the rail?

20 A North side of Hamilton avenue, east of the track, the building is fifty feet; on the west side of the track, north side of Hamilton avenue, we have sixty-four feet; on the south side of Hamilton avenue, east of the track, we have got forty-four feet; on the south side of Hamilton avenue, west of the track, we have got twenty-two feet.

Q What is the distance to the nearest passenger station?

A Eighteen hundred feet.

Q What is the nearest undergrade crossing?

A Governor street.

Q How far is that?

A About eight hundred feet.

30 Q What is the grade of the highway?

A The grade at the intersection of Hamilton avenue and the Erie Railroad, 70.86; at the intersection of Straight street and Hamilton avenue, 80.79; at the intersection of Paterson street and Hamilton avenue, 54.33.

Q Are there any street railway tracks across this point?

A No, sir.

Q Pipe crossings?

John C. Veenstra, direct.

A Passaic Water Company, six-inch pipe; City of Paterson, twelve-inch pipe sewer; Public Service Gas Company, four-inch pipe.

Q Any wire crossing?

A A set of wires paralleling the track, west side of the track, twenty-six wires, thirty-six feet high; east of the track, twenty-three wires, twenty-five feet high.

10

Q No wires directly on the street?

A No wires crossing at this street.

Mr. Merrey. I will offer this map in evidence.

Commissioner Donges. It will be received and marked.

(Same is marked Exhibit P-11.)

Q I ask you to produce map J, crossing at Lafayette street, and ask you how that crossing is protected?

20

A (Produces map.)

Q That is protected by gates?

A Yes.

Q From a tower?

A Yes.

Q Tell us what obstructions to the view there are.

A On the north side of Lafayette street, east of the railroad, a frame building; on the south of Lafayette street, west of the railroad, a frame building.

Commissioner Donges. Between Hamilton avenue and Lafayette street there are no grade crossings? 30

Witness. No grade crossings.

Commissioner Donges. The streets indicated on the map have no railroad crossings?

Witness. Have no railroad crossings. (Continuing.) South side of Lafayette street, east of the tracks, frame building; south side of Lafayette street, west of the tracks, another frame building. 40

John C. Veenstra, direct.

Q What is the distance to the nearest passenger station?

A River street.

Q What is it?

A 1,200 feet.

Q What is the nearest undergrade crossing?

A Governor street.

10 Q Is Governor street nearer than Fulton?

A Fulton street, 800 feet.

Commissioner Donges. There is an undergrade crossing at Fulton and Straight street?

Mr. Merrey. Yes; and then there is one at Governor street. I think he testified to that this morning.

Q What is the grade of the highway?

20 A Intersection of Lafayette street and the Erie Railroad, 55.91; intersection of Summer street and Lafayette street, 48.21; intersection of Straight street and Lafayette street, 45.71.

Q Are there any street railway tracks crossing at this point?

A No.

Q What pipe crossings are there under the railroad?

30 A North side, Public Service Gas Company, six-inch main; Passaic Water Company has a six-inch pipe; twelve-inch pipe sewer of the City of Paterson; thirty-inch brick sewer owned by the City of Paterson.

Q What overhead wires crossing?

A West of the track and parallel with the track we have got eight wires forty-one feet high; parallel with the track, east of the track, twenty-three wires twenty-one feet high; north side of Lafayette street crossing the railroad, six wires, forty-one feet high; south side, one cable, thirty feet high, and three telephone wires.

John C. Veenstra, direct.

Mr. Merrey. I will offer that map in evidence.

Commissioner Donges. It will be admitted and marked.

(Same as marked Exhibit P-1J.)

Q I ask you to produce map K, showing Franklin street crossing.

A (Produces map.)

Q How is that crossing protected?

10

A By gates operated from a tower.

Q What obstructions to the view?

A North side of Franklin street, east side of the tracks, a brick building; north side of Franklin street, west of the tracks, we have a frame building; south side of Franklin street, east of the track, we have got a small frame house; on the west side of the tracks and south side of Franklin street, another brick building.

Q Are there any other obstructions in the way of poles?

20

A Poles and tower, gate tower.

Q All indicated on the map?

A Yes, sir.

Q What is the distance to the nearest passenger station?

A River street, 1,000 feet.

Q And what is the nearest undergrade crossing?

A Fulton street, about 780 feet.

Q Give us the grades of the highway.

30

A The grade at the intersection of the railroad and Franklin street, 54.76; Summer street and Franklin street, 50.12; River street and Franklin street, 47.72.

Q Do any street railway tracks cross?

A No, sir.

Q What pipe crossings are there under the railroad?

A Passaic Water Company, six-inch pipe, that is all.

40

John C. Veestra, direct.

Q What wires cross above?

A West of the railroad and parallel to the tracks, eight wires, thirty-eight feet high; east of the tracks; parallel, twenty-five wires, twenty-four feet high; north side of the Franklin street crossing the railroad, twenty wires, thirty-one feet high.

Mr. Hervey. I offer that map.

10 *Commissioner Douglas.* It will be received and marked.

(Same is marked Exhibit P-1K.)

Q I ask you to produce map L, showing Keen street crossing, and tell us how that is protected.

A (Produces map.) That is protected by a flag-man.

Q And a bell is there also?

20 A I have got the poles mentioned but I haven't the bell mentioned.

Q Tell us what obstructions to the view there are.

A On the north side of Keen street, east of the track, a brick building; on the west side of the track, north side of Keen street, a frame building; on the south side of Keen street, west of the track, a frame building; then on the south side of Keen street and east of the railroad, we have a brick building; then there is flag station.

Q Any other obstructions, poles?

30 A Poles, a few poles, yes, sir.

Q What is the distance to the nearest passenger station?

A 700 feet.

Q What is the nearest undergrade crossing?

A Fulton street.

Q What is the distance?

A About 1,300 feet.

Q Tell us the grade of this highway.

40 A The grade at the intersection of Keen street and the Erie Railroad, 54.26; the intersection of Sumner

John C. Vernesten, direct.

street and Keen street, 52.48; at the intersection of River street and Keen street, 50.61.

Q Are there any street railway tracks crossing?

A No, sir.

Q What pipe crossing?

A Twenty-four inch pipe sewer.

Q Maintained by the city?

A Yes, sir.

Q What wire crossings are there?

19

A Eight wires on the west side of the track and parallel with it, thirty-eight feet high; east of the track and parallel with the railroad, twenty-seven wires, twenty-seven feet high; north side of Keen street, eight wires, forty-seven feet high on the north side of Keen street passing over the railroad.

Mr. Merrey. I offer this map in evidence.

Commissioner Donges. It will be admitted and marked.

20

(Same is marked Exhibit P-11.)

Q I ask you to produce map M, showing Warren street crossing. How is this crossing protected?

A (Produces map.) By gates from the tower.

Q What is the obstruction to the view?

A North side of Warren street, east side of the track, a brick building; on the west side we have River street; we have got a tower on the west side; south side of Warren street, east of the track, a frame building; and on the west side a frame building.

30

Q How near are these buildings to the rail?

A On the east side of the track, thirty-three feet to the rail; on the west side they are seventeen.

Q What is the distance to the nearest passenger station?

A River street is the nearest passenger station, about 500 feet.

Q What is the nearest undergrade crossing?

A Fulton street, 1,700 feet.

40

John C. Veenstra, direct.

Q What is the grade of the highway?

A The grade at the intersection of the Erie Railroad and Warren street is 35.08; then on Warren street, 225 feet east of the tracks, the elevation is 59.85; then at the intersection of River street and Warren street, 52.85; at the intersection of Warren street and East Fifth street, 47.25.

10 Q Are there any street railway tracks there?

A No, sir.

Q What pipe crossings are there?

A North side, Passaic Water Company, six-inch pipe, and an eighteen-inch sewer pipe owned by the City of Paterson; the Passaic Water Company has a pipe and the Public Service Gas Company has a four-inch pipe.

Q That is two water mains?

A Yes.

20 Q What overhead wires cross?

A Parallel to the track? On the east side, twenty-three wires twenty-seven feet high.

Q Twenty wires cross directly?

A Diagonally eight wires, thirty-four feet high, at the north side at right angles about crossing the railroad two telephone wires.

Mr. Merreg. I offer that map in evidence.

Commissioner Douglas. It will be admitted and marked.

30 (Same is marked Exhibit P-1M.)

Q I ask you to produce map X, showing River street and Putnam street crossings.

A (Produces map.)

Q How is this crossing protected?

A By gates from a tower.

Commissioner Douglas. Both streets?

Witness. Yes, sir.

Q Are there several gates there?

40 A A flagman is stationed there.

John C. Veestra, direct.

Q This street cuts the railroad at quite an acute angle, River street?

A Yes, sir.

Q Tell us what angle.

A An angle of about thirty degrees.

Q What are the obstructions to the view? Give us River street first.

A River street, on the east side of the track, east side of River street, a brick building; on the west side we have the Erie depot; on the south side of Putnam street, east of the Erie Railroad, we have a brick building. 10

Q Are there any others?

A That is all on River street.

Q On Putnam street.

A Putnam street, east of the railroad, north side of Putnam street, a frame building; south side of Putnam street, east of the railroad, a brick building; west of the track on Putnam street, south side, a brick building; on the north side we have a large wall, about eight feet high. 20

Q There is a passenger station at these streets?

A Yes.

Q Called River street?

A Yes.

Q What is the nearest undergrade crossing?

Commissioner Donges. Back of the passenger station to the north of River street, are there any buildings? 30

The Witness. There is a building in through here (indicating).

Mr. Merrey. Mention where that is.

Witness. On the triangular spot; on the west side of River street and east side of the railroad; between River street and the Erie Railroad there are buildings.

Q What is the distance to the nearest undergrade crossing? 40

John C. Vecnstra, direct.

A About 2,000 feet.

Q And what is the grade of this highway?

10 A At the intersection of River street and the Erie Railroad 56.55; at River street and Lyon street, 65.03; that is the first street north of Putnam street; it isn't marked on the map. At the intersection of River street and Putnam street is the same thing. Another elevation is at the intersection of Putnam street and Wait street, 56.05.

Q Is there a sharp rise in River street as it goes toward the northeast?

A Yes, sir; there is. At Lyon street, 65.03.

Q How many tracks cross at this point?

A Two tracks.

Q Of the railroad?

A Two tracks of the railroad, yes; one of the Public Service Electric Company.

20 Q The street railway cross?

A One track, yes, sir.

Q What pipe crossings are there?

A Pipe crossing on River street, Public Service Gas Company, one three-inch main and a six-inch main; the City of Paterson has got a twenty-four inch brick sewer; the Passaic Water Company has a six-inch pipe. Across Putnam street the Public Service Gas Company has an eight-inch main.

30 Q Just count the number of mains they have there.

A Then there is the Public Service Gas Company with a twelve-inch main.

Q How many mains has the Gas Company got altogether?

A Three.

Q And counting Putnam street, too?

A Yes.

Q The gas house of the gas company is located near by, isn't it?

40 A Yes, sir, opposite the Erie depot, River street.

John C. Veenstra, direct.

Q What wire crossings are there?

A Parallel to the railroad, on the east side, we have thirty-seven wires, twenty-six feet high, and crossing the railroad on the west side of River street, there is thirty-nine wires, fifty-two feet high. Then we have the trolley wires of the trolley tracks.

Q Tell us the distance from the Madison avenue crossing on the south to the River street crossing on the north; the entire length of this work. 10

Mr. Taylor. I don't think it is the length of the entire work.

Mr. Merrey. I didn't mean the work that may have to be done.

Q Give us the distance from Madison avenue on the south along the railroad line to River street.

A 10,800 feet.

Q That is approximately? 20

A Approximated, yes, sir.

Q What is the distance from the River street crossing to the city line on the north?

A 3,600 feet.

Q Are there any other streets across the railroad at grade; the main line of the railroad in the city?

A Fifth avenue.

Q Is Sixth avenue?

A We have Crooks avenue at the city line.

Q (*By Mr. Taylor.*) How is that? 30

A Crooks avenue at the city line.

Q (*By Mr. Merrey.*) The southerly line of the city?

A The southerly line of the city.

Q Is Delaware avenue open?

A It is not a crossing, not a grade crossing.

Q How about Michigan avenue, is there a crossing; or don't you know about that?

A I don't know about that, no.

John C. Veenstra, cross.

Q At this point I refer to at Sixth avenue application was made some time ago by the city for a grade crossing at that place.

Mr. Taylor. Is that shown on the map?

10 *Mr. Merrey.* Yes, Sixth avenue is shown on the map. We haven't any grade crossing there because the commission refused permission. The street is open; I presume the city would try to get the Court of Chancery to give a crossing there.

Mr. Taylor. I don't think that is so—

Mr. Merrey. As they said we couldn't have a grade crossing there; they didn't say we couldn't have anything.

That is all I care to show by this witness.

I will offer this map in evidence.

20 *Commissioner Donges.* It will be received and marked.

(Same is marked Exhibit P-1N.)

Cross examination by Mr. Taylor.

Q You said, Mr. Veenstra, you made this map from a survey made by yourself.

A Yes, sir.

Q I don't suppose you surveyed the whole area shown on the map?

30 A I surveyed each crossing; we have an assessment map which we have from actual survey.

Q So that this map, this map referred to as the key, which I think is Exhibit P-1, is really made from the assessment map?

A The majority is the assessment map and we used the survey of the crossings.

Q You surveyed the individual crossings?

A Exactly.

40 Q How far did your survey extend each side in each case?

John C. Veenstra, cross.

A The first street east and west of the railroad. If a street was, say, 700 feet from the railroad, I didn't go as far as that.

Q That is at right angles to the railroad; did your survey at the different crossings overlap?

A No.

Q There was some space in between?

A Space in between.

Q You pieced your survey together in accordance with the assessment map, is that the idea?

10

A Yes, sir.

Q This line, which apparently indicates the line of the railroad off to the south between the crossing marked A and B on Exhibit No. 1, what does that represent; the Newark branch of the Erie?

A That represents the Newark branch, yes, sir.

Q There is a crossing shown there at Getty avenue, isn't there?

20

A Yes, sir, over the Newark branch.

Q Is that a grade crossing?

A Yes, sir.

Q That is not included in your petition?

Mr. Merrey. No.

Q There are other grade crossings on the Newark branch, are there not, in the City of Paterson?

A I think there are overhead crossings; Main street.

Q Is that near the South Paterson station?

30

Q Did you say there is open to travel the crossing at Fifth avenue, near the north end of the city?

A Yes.

Mr. Taylor. That is not included in the petition.

Mr. Merrey. Not included.

Commissioner Donges. Fifth avenue you said?

Mr. Taylor. Yes.

Commissioner Donges. Where is that?

40

John C. Veenstra, cross.

Mr. Taylor. Near the river; I described it as near the northerly end of the city.

Commissioner Donges. That is a grade crossing?

Witness. Yes, sir.

10 Q There are undergrade crossings, as I understand it, indicated by dotted lines on this map at Essex street and at Fulton street and Straight street?

A Well, Fulton street, the same thing; Governor street is the other one. This one here is Governor street (indicating).

Q Is there an undergrade crossing there?

A Yes, sir.

20 Q It isn't indicated there the same way; the dotted line shows an undergrade crossing at Governor street, another undergrade crossing at Fulton street, which is also the crossing at Straight street, which is at right angles to Fulton street—

A About at right angles.

Q —with those exceptions have you included all of the grade crossings in the City of Paterson in this petition?

Mr. Merrey. This engineer has nothing to do with the filing of the petition.

Mr. Taylor. Can you tell us whether they are all here with those exceptions?

30 *Mr. Merrey.* No; there are some crossings in the southern section.

Mr. Taylor. East of Madison avenue?

Mr. Merrey. Yes. My examination of Mr. Veenstra he was not sure of them. There was a crossing at Michigan avenue which is planked.

Mr. Taylor. That isn't shown on the map at all?

Mr. Merrey. No.

40 *Commissioner Donges.* What do you mean by "Planked"?

John C. Veestra, cross.

Mr. Merrey. It is planked each side of the rail so that traffic can go over it.

Mr. Taylor. He means an actual existing crossing. That is what you mean?

Mr. Merrey. Yes.

Q Are there any other streets physically open across the railroad south of Madison avenue?

A There is no grade crossing, no. 10

Q Are there any other crossings of any sort?

A Between Crooks avenue and Madison avenue, or between Gould avenue and Madison avenue.

Q Between Gould avenue and Madison avenue, that being the extreme southerly end of the map.

A I couldn't tell you. I doubt if there is any grade crossings.

Mr. Taylor. I understand from you there are some grade crossings. 20

Mr. Merrey. Gould avenue is open and the one opposite Michigan avenue, I think that is all. Gould avenue, Michigan avenue, and Crooks.

Q I notice on a number of these maps you have wires not paralleling the railroad but crossing the railroad in the street, overhead wires, I don't think in any case have you given on your map the owners of those wires.

A I couldn't tell you who was the owner. I couldn't tell whether it was telephone, electric, or what they were. 30

Q Do you know whether they were wires for the transmission of electric current or not?

A Some of them were.

Q What other kinds were there?

A They are all here.

Q You don't know whether they are electric light, power, or telegraph or telephone?

A No. 40

Joh. C. Veenstra, cross.

Q You don't know, I gather from your testimony, who owns or operates the wires parallel to the railroad shown on these maps?

A I do not.

Mr. Taylor. I can state from my general knowledge the Western Union Telegraph Company is interested in some of those wires.

10

Mr. Merrey. I intended that, after completion of the examination of this witness, to ask the commission to order the different parties to this suit to file a report here showing what wires they did own; the Western Union Telegraph Company we now learn should be made a party. I supposed they were controlled by the railroad and they would give them in their answer. We found difficulty in determining who owned these wires and underground conduits. The company couldn't tell us; we didn't get it. I think under the circumstances the commission should order each party in the suit specifically, really to answer the petition, to really answer the petition as to what they do own.

20

Mr. Taylor. As far as the wires on the railroad right of way, I know enough about it to state that the Western Union has an interest, that interest varies along the railroad; I am not prepared to say what its interest is in Paterson. They do have some interest.

30

Commissioner Donges. In your answer you can state the ownership of the wires on your right of way.

Mr. Taylor. Yes, I presume we can. I merely raise the point now to indicate that the Western Union is the necessary party in this case under the statute.

Mr. Merrey. It seems to me that the changes that would be necessary in the wires is a very, very small part of the case. They are necessary

40

John C. Vecenstra, cross.

and should be brought in; the expense of changing the wires is to be trifling as compared with the main work. Therefore, I thought we would save time to go ahead and get that as we go on.

Mr. Taylor. It is necessary and a part that is not in. I notice you have no testimony nor do the maps show the extent of the view up and down the track at these various crossings.

10

Q Did you take any views to show how far you could see up and down the track?

A It all depends if it is a straight or curve in the railroad, you can't see far.

Q Did you take any observations?

A I did not.

Q Did you make any notes of it?

A I did not.

Q In referring to Cedar street you designated four of the tracks as main tracks. That is covered by map C. Do you know as a matter of fact whether they are main tracks or side tracks or yard tracks?

20

A I couldn't tell you that.

Q Why did you call them main tracks?

A Between those gates the main traffic goes by those tracks.

Q (*By Mr. Merrey.*) The four tracks between the gates?

A I think there were.

Q (*By Mr. Taylor.*) You don't know whether, as a matter of fact, they are running tracks?

30

A No, I couldn't tell you that.

Q In connection with Market street, you refer to the Susquehanna cars obstructing the view?

A Yes.

Q There is nothing on the map to indicate that; what do you mean by that?

A There is nothing shown on the map.

Q Will you kindly explain what you mean by that?

40

John C. Veenstra, cross.

A It seems to be the end of a spur of the Susquehanna Railroad; they got a kind of a switch yard there and they back trains and unload, with ice and things.

Q Where do they back and unload them?

A Right in here (indicating).

Q (*By Mr. Merrey.*) Mention where it is.

10 A Between Crosby Place and Ellison street, north of Straight street. In through here (indicating).

Q (*By Mr. Taylor.*) Two or three tracks running at right angles to the Erie tracks?

A About, yes.

Q And ending—

A Ending there (indicating).

Q Do you know what the elevation of those tracks is as compared with the Erie track?

20 A I should judge maybe six feet higher, five or six feet higher.

Q How near to the end of those tracks do the freight trains have to be to obstruct the view?

A Well, they would have to be right up at the end.

Q If they were not right up at the end the view would not be obstructed by the cars?

A Not so much.

Q Could you say how far they would have to be to avoid any obstruction to the view?

A I should say two lengths of the car.

30 Q Have you ever measured that?

A I never measured it.

Q Beginning with map of Ellison crossing, map E, running through to map I, inclusive, and then again on map J (perhaps some of the others), you show all the streets that cross the railroad track some distance east or west of the railroad, or perhaps on both sides, show a broken line which runs across the street, sort of a broken line which runs across the street to a broken line, a dash.

40 A That simply cuts off the scale of the map; I would have to make the map much larger.

John C. Vecustra, cross.

Q In that respect the map is not drawn to scale?

A They are drawn to scale; that is simply broken off. You can't scale from the railroad up to the next street.

Q That is what I mean.

A No.

Q Take map G-1 for example. That happens to be a handy one; on Broadway near Paterson street and again near Straight street you will see the broken lines extend across Broadway; that indicates a portion of the map was left off, as I understand it. 10

A Yes, sir.

Q So you couldn't get a grade by scaling from the railroad up to the elevation shown on Paterson street.

A You couldn't figure that exactly.

Q You would have to know how much was left out—

A Between Paterson street and the railroad. 20

Q That would be true of all these maps on which the broken line appears.

A Yes.

Q You could get the distance in an approximate way by reference to this key map I suppose?

A Yes, sir.

Q Do you undertake to show all the railroad tracks across the street at the crossings?

A Yes, sir.

Q But you didn't undertake to show all the railroad tracks between the streets, did you? 30

A No, sir. There may be switches in between.

Q There may be switches or sidings in between the crossings not shown on the large map or on the small map?

A Yes, sir.

Q As far as the large map is concerned you didn't undertake to show the tracks that are across the street, did you?

A What do you mean, the trolley tracks? 40

John C. Vecenstra, cross.

Q No, the railroad tracks.

Mr. Herrey. You mean the key map?

Mr. Taylor. The key map.

A No, just the two main tracks.

Q The small map, you show the number of tracks actually at each crossing?

A Yes.

10 Q But not between crossings?

A No; there may be switches.

Q For example, at River street on map I, there might be a siding to the Public Service property.

A Railroad sidings.

Q There are, as a matter of fact?

A Yes, sir.

Q There are yard tracks and station delivery tracks not shown here?

A Yes, sir.

20 Q That might be true elsewhere.

A Yes, sir.

Q There is a flagman at Market street?

A A flagman, and there is gates.

Q On map I, which shows Hamilton avenue crossing, I notice on the north side of Hamilton avenue, and the east side of the railroad, the words "Ramapo Avenue" on the map; what does that mean?

A That is a street.

Q The map doesn't show the dimensions of that street, does it?

30 A It varies.

Q Now, on the key map at that same point I notice two lines parallel with the track on the east side of the track; is the first of those lines supposed to indicate the line between the railroad right of way and this Ramapo avenue, so-called?

A Yes, sir.

Q It is?

A That is right.

40 Q So that the space between the two lines parallel to the railroad running from Hamilton avenue to

John C. Veestra, cross.

Governor street is supposed to indicate Ramapo avenue?

A It indicates the street Ramapo avenue.

Q That you say is a public street?

A Yes, sir.

Q Have you prepared any maps showing the property which might be affected by any changes in the grade at these highways or by the closing of some of them with diversion into other streets?

10

A I have not, no. This index map here has all the lot numbers on, from the lot numbers you can get the assessment map of the different property owners.

Q It has—

A The lot numbers of the different properties adjoining the railroad.

Q Yes, but not along the streets crossing the railroad.

A It has got them on all over.

20

Q Take Lafayette street, J, for example, on the south side of Lafayette street and the east side of the track you only show one lot number.

A That is the lot adjoining the track.

Q That is the lot adjoining the track. Now, supposing for example, that this matter should be settled in part by the lowering of the grade of Lafayette street, that map wouldn't indicate all the property that would be affected by that?

A No.

30

Q You haven't made such a survey or calculated anything on that?

Mr. Taylor. Mr. Merrey, do you propose to introduce any person in support of the allegation in your petition that it is impractical to change the grade of any of the said highways?

Mr. Merrey. We may later, Mr. Taylor.

Mr. Taylor. Because I think that is information of a character which would naturally be put in support of that allegation and is something

40

John C. Veestra, cross.

that ought to be shown by these maps. It is something which is essential to any study of the situation because you can't make an intelligent study of it, if anything ought to be done, without the information of the consequent damage which is likely to ensue from any particular treatment.

10

Mr. Merrey. That is all a matter of the plan which is afterwards adopted. I don't know but what we would be trespassing if we went on the right of way to make the map you require. We confined ourselves to the streets. We have shown what is on the highways. I don't think strictly we have any right to go on the track. I think it is clearly information the railroad company has on file.

20

Mr. Taylor. It is information you have got in the records of the City of Paterson with respect to properties along the streets we are talking about.

Mr. Merrey. We will undoubtedly, before the hearing is finished, furnish information to show the assessed value of all these properties nearby at each of these crossings. We will send a list of the assessors and then put on the engineer later to show it is a very expensive item to change the streets.

30

Mr. Taylor. I merely want to say that sort of information is essential to any study of this thing and we can't make any progress until that study is made.

Commissioner Dongen. I think the first question is whether or not the crossings are so hazardous the crossings ought to be removed and then the question of how the elimination shall be made is a question to be taken up afterward. The first step is to determine—

40

Mr. Taylor. I think, Mr. Chairman, that this commission is confronted with practically the

John C. Verstra, cross.

same question which has been before the Court of Chancery in an action brought before that court to determine whether the crossings should be eliminated or not. The words of the statute under which the commission has to act, are similar to the statute under which the Court of Chancery formally acted. In any case of that sort, it seems to me the whole situation has to be considered before the commission can reach any determination as to what the danger requires.

10

Commissioner Dongra. You mean—

Mr. Taylor. The two things are all in one.

Commissioner Dongra. Whether the elimination should take place and how is a single question.

Mr. Taylor. I can imagine this illustration; a crossing in the country where there is very little travel over it which the board ought to eliminate if brought to its attention, although they have in mind these cases where the travel is much more extensive, it should not be eliminated on account of the cost or expense and the traffic, all those things. I think information regarding the whole situation should be before the commissioners before the determination of the basic question.

20

Commissioner Dongra. Perhaps that is true; the purpose of filing the map in the first instance is to apprise the parties and the commission of the cost and generally the situation at the crossings. As was said this morning, the detail in any of the maps necessary will be required to be applied as the hearing progresses. I think for the purposes of the hearing the maps filed will be held to be sufficient.

30

H. J. Harder, direct.

H. J. HARDER, sworn on behalf of petitioners.

Direct examination by Mr. Merrey.

Q Mr. Harder, are you the city engineer of the City of Paterson?

A Yes, sir.

Q How long have you been such engineer?

10 A Sixteen years.

Q In your office have you maps of the City of Paterson?

A Yes.

Q And was this map on the board here (indicating) marked P-1, and the various maps 1-A to 1-N showing the grade crossings of the Erie Railroad, prepared under your directions?

A Yes, sir.

Q By whom were they prepared?

20 A The last witness, Mr. Veenstra.

Q The last witness stated that some of the information was obtained from the assessment maps of the City of Paterson; that was done by your order?

A Yes, sir.

Q How were those assessment maps made up?

A Along the railroad from actual survey and copies of the right of way of the Erie Railroad Company furnished us by Mr. Von Moscazisker, when he was real estate agent.

30 Q That was how long ago?

A 1903 or 1904—1903.

Q Were the assessment maps of the City of Paterson destroyed by fire?

A They were.

Q What year?

A 1902.

Q What maps you have were made from surveys made since that time?

A Yes.

40

John F. Fitzgerald, direct.

Q And these assessment maps you spoke of were made up about what time?

A In 1903 and 1904; ran over until 1905; it was a pretty big job.

Q Under whom were they made?

A Under the supervision of myself; the actual drawing was done by different men employed in the office.

10

Mr. Taylor. No questions.

JOHN F. FITZGERALD, sworn on behalf of petitioners.

Direct examination by Mr. Merrey.

Q Mr. Fitzgerald, are you secretary of the Paterson Board of Trade?

A I am.

Q Has the Board of Trade of Paterson been interested in the question of the abolition of grade crossings in the City of Paterson?

20

A We have been since the summer of 1910 when the accident occurred at Broadway killing Andrew Frolich and his daughter.

Q How long has your board been organized?

A In 1908.

Q After that accident at Broadway did you do anything?

A At that time the Board of Trade called a mass meeting of citizens which was attended by a representative body of citizens of Paterson and the matter was, at the suggestion of that mass meeting, turned over to the Board of Trade who appointed a committee, which committee is in existence to-day.

30

Q Who were on the committee?

A The president of the Board of Trade, M. H. Ellenbogen, Mayor A. F. McBride, Genl. S. V. S. Muzzy, August A. Fisher, Albert B. Howe, E. A. Brown, W. G. Norwood, and a few others—

40

John F. Fitzgerald, direct.

Mr. Taylor. May I ask the purpose of this line of examination?

Mr. Merrey. I want to show this matter was agitated and taken up with the Erie Railroad and a plan submitted by this company of the abolition of these crossings and an estimate made.

10 *Mr. Taylor.* That it was agitated, I think, is irrelevant and immaterial.

Mr. Merrey. I think that is a mere reflection of the effect of that situation in Paterson.

Mr. Taylor. I think you must prove a situation and not a reflection. I must object to testimony of that sort as to agitation such as this as being irrelevant.

20 *Commissioner Donges.* I think the fact of there being agitation is not pertinent and material. The facts and circumstances that produce such a condition are things that have prohibitive force.

Mr. Merrey. The amount of interest taken in the subject of these crossings that must be eliminated.

Commissioner Donges. No, I think that is not evidential. It is a matter of judgment only.

30 *Mr. Merrey.* We will show what has been done heretofore and that the board did take it up with the railroad company.

Commissioner Donges. And then prove the physical condition?

Mr. Merrey. Yes.

Q Did that committee enter into any litigation with the railroad company?

A After our first meeting we did on Tuesday, October 6, with the Erie Railroad officials in New York.

40 *Commissioner Donges.* What year, 1908?

Witness. 1910. We were organized in 1908.

John F. Fitzgerald, direct.

Mr. Taylor. Were you on this committee?

Witness. As secretary.

Mr. Taylor. And attended the conference yourself?

Witness. Yes.

Q Was anything done by the committee or the railroad company?

A At that time of the meeting, J. C. Stuart and 10
Mr. Harrahan, who was vice-president; Mr. Stuart was general manager at the time; after a conference there Mr. Allen informed us that the Erie Railroad Company would send us an estimate of the cost of the elimination of the grade crossings in Paterson. That was finally sent to us after another conference on January 6, 1911.

Q Did it include any sketch or plan?

A It did.

Q Have you got the plan here? 20

A Yes.

Q Will you produce it. You may read the letter and then produce the plan.

Mr. Taylor. Let me see the letter.

Mr. Merrey. Is there any objection?

Mr. Taylor. I don't think any of this is material and relevant to the issue before the commission. If the commission is interested in it I don't see any particular harm in producing it. 30

Commissioner Donges. You may read the letter.

Witness. (Reads.) "Dear Sir: Referring to the conference which was held in my office with reference to the question of Grade Crossing Elimination at Paterson, N. J. Enclosed herewith I hand you plan and profile giving a tentative sketch showing what can be done in eliminating a number of crossings. You will note that there are two principal groups; the first consisting of 40

John F. Fitzgerald, direct.

10 what may be known as the Market street group, the second consisting of the River street group. To eliminate the crossings in these two groups would cost about \$1,200,000.00. To eliminate only those crossings in the Market street group would cost about \$750,000. For reasons which were explained to the committee, this company is not at this time in position to furnish the money for the carrying out of such a project. You will remember that at the conference referred to I called attention to the arrangements which we had made at certain other points in which the community furnished the money originally by selling its own bonds which the company afterwards repaid to them upon virtually an instalment plan. This matter was explained in considerable detail to the committee so that it is not necessary to recount it here. Subject, of course, to the approval of our board, we would be willing to consider such a proposition with the understanding that the original cost of the work would be divided as follows: 66 2/3% to be assumed by the railroad company and 33 1/3% to be assumed by the City of Paterson, which would mean that in one event this company would pay about \$800,000, while in the other event it would pay about \$500,000.00.

20
30 I shall be very much pleased to hear from you whenever you have determined whether or not you desire to pursue the subject any further.

Yours truly,

H. J. HARRAHAN,
Vice-President."

Mr. Taylor. When was that dated?

Witness. January 5, 1911.

Q (*By Mr. Merrey.*) Have you got here the tentative sketch referred to in that letter?
40

John F. Fitzgerald, direct.

A Here are the sketches (producing blue prints).

Mr. Merrey. I offer that in evidence.

Mr. Taylor. The commission understands that plan is merely preliminary and tentative sketch and was never worked out to any conclusion.

Witness. This smaller sketch. I understand, at the conference was prepared to show that crossings could be eliminated by groups. That is, the Market street group might be eliminated independent of any group and the River street group might be eliminated independent of any of the other groups. 10

Mr. Taylor. Of course, it speaks for itself. The map does sketch such a possibility, but I must object to Mr. Fitzgerald assuming any motive for Mr. Harrahan or any one else in making the map for this purpose. The map speaks for itself. 20

Commissioner Donges. These will be admitted and marked.

(Smaller blue print is marked Exhibit P-2.)

(Larger blue print is marked Exhibit P-3.)

Q What was the end of the conference?

A The letter was considered by the Board of Trade Committee and then we took the matter before the Finance Commission of the City. The City Counsel at that time said the city, under the State Constitution could not permit its funds to be used for any such purpose. At the time the then City Counsel, McCran, who was a member of the Legislature, informed the committee that a bill was to go before the Legislature at that time known as Senator Prince's Bill, and the matter then rested. 30

Mr. Taylor. I move the testimony be stricken out except what refers to the conference of the Board of Trade and the Erie Railroad Company.

Commissioner Donges. I think it is not pertinent; I think it does no hurt either way and 40

John F. Fitzgerald, direct.

we will let it stand. I don't think it is damaging at all.

10 *Witness.* I might say, at the conference we tried to learn from the officials of the Erie Railroad what the estimated cost of the elimination of each of the crossings and whether the estimate here of \$700,000 for the Market street group, which included Market street, Ellison, Broadway and Hamilton avenue, whether that included any property damage, and if my memory is not at fault at that time the estimate was tentatively given at about \$60,000 a crossing. That \$700,000 estimate included the change of the grade of the street.

Q Later, Mr. Fitzgerald, did you undertake to tabulate what the use was of some of the crossings?

A Yes, four crossings.

20 Q What crossings?

A Straight and Clay street crossings which run together, the Market street, Broadway and River street.

Q When was that done?

A October 4, 6 and 7.

Commissioner Donges. Of this year?

Witness. Yes.

Q And who had charge of that work?

A George J. Hattersley.

30 Q Under you?

A Under me.

Q How many men were employed?

A Thirteen, altogether.

Mr. Taylor. Have you those men here?

Mr. Merrey. Yes.

Mr. Taylor. Let us have them.

Mr. Merrey. We will.

Q Did they turn in a report to you?

40 A They did.

George J. Hattersley, direct.

Q Did they return the actual figures counted?

A They did, which were tabulated by the man in charge, Mr. George J. Hattersley.

Q They did keep the record marked on the paper turned in to you or Mr. Hattersley?

A Yes.

Mr. Taylor. The original tally?

Mr. Merrey. Yes.

10

Q Have you that here?

A Yes.

Q Will you produce it?

A Yes. I might say before Mr. Hattersley is on the stand that our figures included taking pedestrians, trolley cars, autos or automobiles, horse-drawn vehicles, bicycles, and anything else. We didn't attempt to take account of the persons in cars.

Q In trolley cars?

A In trolley cars, but we supposed from a cursory view— 20

Mr. Taylor. Never mind that.

Witness. I am talking of the Public Service Corporation.

Mr. Taylor. I object to that.

Commissioner Donges. Do you care to examine?

Mr. Taylor. No cross examination.

GEORGE J. HATTERSLEY, sworn on behalf of 30
petitioner.

Direct examination by Mr. Merrey.

Q I show you a number of papers fastened together and marked "Summary of October 4, 1913," and ask you if you know what this is?

A Yes, sir.

Q What is it?

A That is a summary of the figures taken by pedestrians, trolley cars, horse-drawn vehicles, bicy- 40

George J. Hutterling, direct.

cles, gates, showing the number of times the gates were down, movement of passenger trains passing by, freight trains drilling on the crossing.

Q Over what crossings?

A Clay street, Market street, River street, and Broadway.

Q When were they made?

10 A October 4, 6 and 7.

Q Under whose direction or charge?

A I am directed to take charge of it by Mr. Fitzgerald.

Q How many had you in your employ?

20 A Two at Clay street, one working from five in the morning until two in the afternoon, and one from two in the afternoon until eleven at night. Market street two men working from five o'clock in the morning until two in the afternoon and two others from two in the afternoon until eleven o'clock at night. Broadway two men from five o'clock in the morning until two in the afternoon—rather one I should say, one, and one from two o'clock until eleven o'clock at night. River street we had one man from five o'clock in the morning until two in the afternoon and another man from two until eleven at night.

Q What were these men doing?

A The men counted the pedestrians as they went over the crossings—

30 *Mr. Taylor.* This is what you instructed the men to do?

Witness. I instructed those men to get the number of pedestrians that went over the crossings, get the number of trolley cars and also note down the number of times the gates went down, the number of passenger trains that went by, the number of freight trains, the number of times drill engines went by, and also take the number of bicycles, and note any unusual happening that occurred at these different crossings.

40

George J. Hattersley, direct.

Q Did you assist in any way in doing this work?

A I visited the men at five o'clock and collected the data at eleven o'clock at night. I visited the crossings several times during the day. When the men wanted relief I offered my assistance; if they did want relief.

Q After the day was over did they return the report?

10

A They returned the report at the end of the day.

Q I show you another paper marked "Clay Street"; is that the report turned in from Clay street?

A It is.

Q And the name signed at the bottom, I notice, is John L. Radcliffe?

A John L. Radcliffe, that is the name of the man who was working from five to two o'clock, five in the morning until two in the afternoon shift.

Q Each of these men turned in a report of that kind?

20

A They did.

Q How many days was that kept up?

A Clay street two days, Broadway two days, Market street and River street three days.

Q Have you summarized that return?

A I have, yes, sir.

Mr. Merrey. If you don't object at this time I will offer this summary.

Mr. Taylor. I don't object to the summary if this is put in later on.

30

Q There are four; will you identify them and tell us what they are?

A This sheet is a report—

Commissioner Donga. Is that the same crossings?

Witness. That is Market street (indicating) and this is River street (indicating); and that is Broadway and Clay street (indicating).

40

George J. Hattersley, direct.

Q What day?

A October 4.

Commissioner Danges. Those four crossings for the same day?

Witness. The same day.

Q The fifth paper you have is a summary of the four crossings?

10 A Four crossings.

Commissioner Danges. That better be marked as an exhibit.

Q The first sheet shows the hour?

A Every two hours, except the last period, eight to eleven, that was three hours.

Q The fifth sheet shows the total?

A There is one from one to two and from eight to eleven; the others were in two-four shifts.

20 *Mr. Taylor.* That exhibit comprises five sheets?

Mr. Merrey. Yes.

Mr. Taylor. Four of them showing four individual crossings and the fifth a summary covering October 4?

Mr. Merrey. Yes.

(Same is marked Exhibit P-4.)

Q October 4 was Saturday?

30 A Yes.

Q Sunday did you take a tabulation?

A No, sir.

Q This would be Monday (indicating)?

A Yes.

Q Is that made the same day?

A Yes.

Q Have you the paper before you?

A I have, sir.

40 Q Is it kept in the same fashion as the last exhibit?

George J. Hattersley, direct.

A Identically the same.

Mr. Merrey. I offer this in evidence.

Mr. Taylor. It covers the same streets?

Mr. Merrey. Yes.

(Same is marked Exhibit P-5.)

Q You have a summary of October 7; what does that cover?

A Covers tallies kept of Market street and so forth.

Q In the same fashion as the last two?

A Yes.

Q What is the date?

A October 7.

(Same is marked Exhibit P-6.)

Q What have you in your hand there?

A I have a record here showing the comparison of the figures covering the entire work.

Q Three days?

A Summary of three days, Market street and River street and Clay street and Broadway.

Mr. Merrey. I offer that.

Witness. I have also records here showing the number of pedestrians crossing Clay street for two days, October 4 and 6 every hour; that report covers the crossing; I show the average length the gates were down.

Commissioner Donges. Taken from the memorandum subject matter made by the census takers?

Witness. Yes, sir.

Mr. Taylor. Nobody said anything about the length of time the gates were down.

Witness. I kept track of it myself.

Q I notice on this sheet the average length of time the gates were lowered was fifty-three seconds?

A Yes, sir.

Q Where was that taken?

George J. Hattersley, direct.

A Market street.

Q And taken for the other gates?

A An average for the other gates. I took it from a four hour average on Market street.

Q I notice here the record shows the average length of time the gates were lowered is fifty-three seconds?

10 A Yes, sir.

Q Tell us what crossings that applied to and how you obtained that average?

A On Market street from two in the afternoon until half-past six on Monday, October 6, I took a record of the length of time the gates were down from two in the afternoon until about half-past six and then averaged the length of time.

Commissioner Dinges. You used a stop watch?

20 Witness. I used a stop watch. I computed the length of time the gates were down by the number of times the gates were down and found the average was fifty-three seconds. There were times when the gates were down much longer than that.

Q What was the longest time?

A I think two minutes, forty-five seconds.

Q And the shortest?

30 A About thirty seconds, I should judge. The time the gates were down thirty seconds it appeared to me to cover a lowering of the gates for no purpose whatever because the gates went down and nothing went by. This was in the afternoon, daytime.

Q (By Mr. Taylor.) Do you know whether a train was approaching at those times?

40 A There were no trains approaching. The gates were also lowered when a train reaches Essex street. Sometimes the gates were lowered for some purpose, whatever it was I don't know, there was no train in sight; whatever the purpose was I can't state.

George J. Hatteraley, direct.

Q That was Market street?

A Market street.

Q (*By Mr. Merrig.*) Do you know whether it is a habit at Market street that the gates be lowered twice for each train that approaches from the east?

A From the east, New York.

Q One time in case the train should overrun the station and cross the street?

10

A I presume that is the reason for lowering the gates. If the train doesn't stop before it reaches the crossing it goes over the crossing and it is lowered when it reaches Essex street.

Q And it is lowered after it goes out of the station?

A Yes.

Q The gates at two places are lowered more frequently than the trains passing as shown on the table?

A Yes, sir.

20

Q It shows the trains delayed north of Market street approaching the crossing because there was a train in the station?

A Yes, sir.

Q In that case the gates are down without a train crossing?

A I don't quite understand.

Q The trains would be stopped north of Market street?

A Yes.

30

Q In order to prevent accident in any case of failure of the brakes the gates were lowered?

A Yes.

Q (*By Mr. Taylor.*) The trains stop north of Market street?

A They do.

Q When there is another train in the station?

Mr. Merrig. Yes.

(Same is marked Exhibit P-7.)

40

George J. Hattersley, cross.

Cross examination by Mr. Taylor.

Q Did each one of your men keep an actual account of the persons handing in an original tally sheet to you?

A Yes, sir.

10 Q Did you get it from one man who handed it to another and from that man's hands to you, or did it come direct?

A The last shift in the afternoon handed it to the man who relieved him and he handed it to me.

Q Did you visit each one of these crossings during the day?

A I did, sir.

Q Did you visit each one of the men on duty?

A I did.

Q Sometime during the day?

A Yes, sir.

20 Q Were they carrying out your instructions at the time you visited them?

A Yes, sir.

Q How many visits did you make each one of these men?

A About three times a day.

Q Visiting each one three times or three times a day?

A Three times, each man at each crossing.

Q That makes six times or nine times?

30 A Three times during the day at each crossing.

Q One time for each shift; you have three shifts or two shifts?

A Two shifts.

Q Visited one shift twice and the other two twice?

A No, each shift three times.

Q At each crossing six times?

A Six times.

Q How long did you stay each time?

40 A I didn't stay longer than five or ten minutes at a time.

George J. Hattersley, cross.

Q So your personal knowledge of what they did is limited to what happened while you were there?

A Of course.

Q In making these compilations you assumed they had done what you told them to do and what they were doing while you were there, is that the idea?

A That is the idea.

Q When you saw the gates at Market street go down and no train cross the crossing do you know whether or not there was a switch engine approaching the street in either direction? 10

A Yes, I didn't know that.

Q You didn't know it?

A I didn't know it.

Q There was nothing approaching?

A I did not see anything approaching.

Q You looked?

A I looked. 20

Q There was nothing approaching?

A As I stated a little while ago, several times when the gates went down there was actually nothing approaching.

Q Those times were included in the count?

A Yes, the gates were down thirty seconds.

Q Did that occur anywhere except Market street?

A I can't say.

Q Can you say it didn't occur at any place except Market street? 30

A No, I couldn't say; I was not at the crossings as long as at Market street and the same condition might have existed there.

Q How long were you at Market street?

A October 6, from two in the afternoon until half-past six at night.

Q You were there practically all afternoon?

A All afternoon.

Q During that time you saw the gates close when there was no train approaching? 40

George J. Hattersley, cross.

A No train at all.

Q You say the men watching at the crossing reported that circumstance to you; that the gates went down with no train approaching?

A Yes, they reported that. We didn't note that on the report, but kept a tally of the gates down.

10 Q It is included in the tally of the number of times the gates went down?

A Yes, the number of times the gates went down is included in the tally.

Q You understood then after the crossing gates went down no train approached or went over the crossing?

A That was their report.

Q You kept this tally of pedestrians, trolley cars, horse-drawn vehicles, automobiles, bicycles, delayed at Market street yourself, didn't you?

20 A No, sir.

Q That was made up and a report turned in by the men working at that crossing?

A Yes.

Q How did you expect them to keep that tally?

A I told them to count the number of pedestrians walking across there, also the number of horse-drawn vehicles, automobiles, trolley cars, bicycles, all such other traffic as might find it necessary to go over those crossings.

30 Q You mean all that went over were included in those delays. I am talking about the item of pedestrians delayed and so forth?

A That means this: That shows the number of pedestrians delayed every hour.

Q No, it says "all day." Pedestrians delayed by lowering gates all day.

A Could I look at that? (Examines paper.) Yes, that is right. That is what it means; delayed all day.

40 Q How is it made up; what instructions were given them as to how to make that up?

George J. Hattersley, cross.

A They didn't make that up at all. That is computed from the figures arrived at by the gates being down fifty-three seconds. That is the average struck. If the gates were down fifty-three seconds so many hundreds of times during the day, that means the gates were down so many hours. The lowering might be three hours and so many minutes the gates were down. If so many pedestrians can go over the crossing in an hour, it means so many were delayed the length of time the gates were down. 10

Q That is based on the assumption there was an absolutely steady stream—

Mr. Merrey. I don't object to leaving out that table.

Commissioner Donges. That is estimated by the average number of persons in an hour in an average length of time the gates were down. 20

Q It is based on the assumption that the pedestrians were going over there at a steady rate all day long?

A Yes, it is; but we can assume this, as taken actually by the busy hours of the day, there is no question but the number of pedestrians delayed is much larger than that.

Mr. Taylor. I object to that conclusion; there is no evidence as to that at all.

Mr. Merrey. It is wholly a matter of estimate. I didn't know that he had that. If you want it in all right. If you don't want it in all right. It is an estimate of what might have happened or not. 30

Mr. Taylor. The same thing applies to the trolley cars delayed, horse-drawn vehicles delayed, and bicycles delayed; it is all computed from the figures.

Witness. Computed from the figures.

Mr. Taylor. I think that should be stricken out. 40

Commissioner Donges. That will be excluded.

George J. Hattersley, cross.

Q The total length of time the gates were down; how was that arrived at; you kept it yourself or was it kept by them?

A Myself.

Q With a stop watch. That was from two to half-past six one afternoon you kept it yourself?

A Kept it myself.

10 Q How did you do it the rest of the time?

A It wasn't done at all the rest of the time, with the possible exception of each time I visited the crossing—I visited these men—I would use the stop watch and time the gates. Then when I wasn't visiting these men, when I was in actual contact with the men, such as the night time, the timing of the gates was done. The average is taken on the number of times the gates were down in Market street; I found the average was practically the same on each of the other crossings.

20 Q Did you direct your men to keep the actual number of times the gates were lowered all day?

A Yes.

Q The actual number of times the gates were lowered by count?

A Yes, by count.

Q You made an average of the time the gates were down while you were there?

A I did.

30 Q And you applied that average to the total number of times they counted all day?

A Yes.

Q That is the total number of times the gates were down multiplied by your average for the number of times, is that correct?

A Yes.

Mr. Taylor. I move that be stricken out.

Mr. Merrey. I don't care whether it is in or not.

Commissioner Donges. It will be excluded.

George N. Courtade, direct.

GEORGE N. COURTADE, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

Q Mr. Courtade, were you employed under Mr. Hattersley to keep tallies of certain things on the Market street crossing?

A Yes, sir.

10

Q I show you a number of sheets here marked Market street, some of which are signed by you?

A Yes.

Q Were those made by you?

A All that I have signed.

Q Tell us just what you did at the Market street crossing. When did you go there?

A I was supposed to report there at five o'clock in the morning.

Q What time did you report?

20

A About ten minutes of five.

Q Did you have these sheets with you?

A Positively, yes.

Q Who furnished them to you?

A Mr. Hattersley.

Q When you arrived was anybody with you?

A Mr. Keys.

Q Tell us what the two of you did?

A Well, my instructions were the same as his; to go there and get the pedestrians that crossed that crossing from five o'clock until two; five o'clock in the morning till two o'clock in the afternoon, no matter how many times they crossed as long as they crossed that track. The same was done with vehicles, bicycles, autos, we got the trains, passenger trains, freight trains, drill engines, and gates down.

30

Q Where did you place yourself?

A Why, at a point between—that is on a point—Market and Park avenue.

Q What is the point called the flatiron?

40

A Yes.

George N. Costade, direct.

Q (By Mr. Taylor.) The east side of the track?

A Yes.

Q (By Mr. Merrey.) Where did Keys place himself?

A Just opposite on the Market street side. I was on Park avenue and he on Market street.

Q Did you make any arrangement between yourselves as to how you would count?

10 A Yes.

Q What was it?

A It was to take anyone going up and down Park avenue; he was to take anyone up and down Market street. I was to take all eastbound trains going west and he was to take westbound trains going east or anything else.

Q So your work didn't duplicate?

A No, it couldn't.

20 Q In order to find the total it was necessary to add together the two figures?

A Yes.

Q Yours was the eastbound and his the westbound trains?

A Yes.

Q How did you keep a record of them?

A Why, every person that went by I tallied.

Q Marked on this (indicating)?

30 A I had an extra piece of paper tacked on here; when the crowd was small I tallied one. As the crowd got bigger I took groups of ten, marked ten, and grabbed another ten and marked ten or fifty on the tally.

Q Were you there three days?

A Three days.

Q From what time?

A Five to two in the afternoon.

Q Are all the reports of all the work there that you made?

40 A Yes, sir.

George N. Courtade, cross.

Q Are those the sheets as you made them?

A Yes.

Q Who did you deliver them to?

A Mr. Hattersley.

Q Who relieved you?

A My relief man was Mr. Coates.

Q Who relieved Keys?

A That I don't know; I didn't know the young man's name. We didn't have much time to get acquainted. 10

Q You left when he came there?

A Yes.

Cross examination by Mr. Taylor.

Q Who did you get your instructions from in regard to this?

A From Mr. Fitzgerald and also Mr. Hattersley.

Q At what time?

A We did, perhaps three days ahead, and Mr. Hattersley just before we went to work. 20

Q Was Mr. Keys there at the same time you got your instructions?

A We were all there.

Q What do you mean by all there?

A All the men employed on the crossings.

Q Who else was there, do you know?

A I don't know the name; Mr. Keys, Mr. Dunn, Mr. Radford, was there—several.

Q Anybody else you know? 30

A No, it was a regular school that day; a school of instruction.

Q You were all given instructions at the same time?

A We were told what our duties were, yes, sir.

Q Did you make any sheets while you were there at this crossing which you didn't sign?

A No, sir.

Q I thought you just said you had some supplemental sheets you took? 40

George N. Courtade, cross.

A Not signed. I had a little piece of paper where I tallied pedestrians, in order not to put one down on one sheet, I put a mark on the small sheet.

Q What did you do with that piece of paper?

A I didn't think it was necessary and tore it up.

Q What did you do with them?

A They were no record, just for my own use.

10 Q I asked you what you did with them?

A Tore them up.

Q Tore them up as you went along?

A No, I kept them a couple of days after. I didn't think they were any more use.

Q These are not the original records which you made at the time?

A Yes. They were the original records.

Q When did you fill in the figures on these sheets you signed?

20 A Perhaps one or two minutes after, two minutes, maybe three minutes.

Q Did you put on any after, or while you were on the crossing?

A No; I never got that far; while there was a little slack I counted off the sheets.

Q You took these sheets and put them down?

A On the tally.

Q You didn't destroy the sheets until a few days after?

30 A A couple of days after, because I made the tally on the big sheet.

Q Did you check them up with the sheets afterwards?

A Afterwards? No, I knew I was correct.

Q On one of these sheets I notice you have about ten or fifteen bunches of tens; how do you know you didn't have some of those down twice?

A I know I didn't.

40 Q How do you know you didn't skip any?

George N. Courtade, cross.

A I am pretty positive sure in answering the question; as positive as you are asking the question.

Q Did you have a system?

A I did, I made it in my mind.

Q What was the system?

A When the crowd was small I would tally on the small sheet one mark as a pedestrian passed and get to four; if five passed I marked a cross over indicating five.

10

Q There seems to be very little of that, because you have almost no individual checks on those sheets?

A You will find some there. When the crowd got so enormous going across, I took groups of ten, fifty sometimes, one hundred, sometimes two hundred; especially between the hours of eleven and two, or eleven and one.

Q In those cases what was your system?

A Grouping them as they go by, one, two, three, four, five, six, and seven, five, ten, fifteen and twenty-five counted up as the crowd was going by and then have the tally on the sheet.

20

Q You would have to take them as they came?

A I couldn't stop to mark down.

Q You just glanced over the crowd?

A Not glanced; looked at them.

Q Counting as near as you could as they went past you?

A Positively.

Q You think you got all of them?

30

A Pretty sure.

Q (*By Commissioner Donges.*) Did you estimate the number in groups?

A No; they almost always came in fives or tens.

Q (*By Mr. Taylor.*) There were accommodating not to come in sevens and eights?

A They were loose, then they would come in groups of ten or fifteen; I would get them the best I possibly could.

40

George N. Courtade, cross.

George N. Courtade, cross.

Q (By Mr. Hervey.) You only had one side of the street?

A One side of the street; it was very easy for me to get it.

Q (By Mr. Taylor.) One side of the crossing or of Park avenue?

A One side of the crossing.

10 Q The people who went directly across Park avenue?

A Yes, because more people were going up Park avenue.

Q You are more familiar with the situation than I am. I think it would be difficult for Mr. Keys to tell whether a person came from Park avenue or Market street; how could he tell?

20 A The man would have to pass him to the tracks. Anybody that had come on Park avenue on to Market street would have to pass me.

Q Which side of the street was Mr. Keys on?

A On Market street.

Q Which side of the tracks?

A Easterly side of the tracks.

Q The same side you were?

A We were both on the easterly; at a point we could see everybody coming.

Q He was on Market street and you on Park avenue?

30 A Right at the flatiron.

Q I thought you said Keys was on the other side of the track?

A No, we were both together, not two feet apart.

Q You didn't keep track separately of the number of people passing to the station or coming away from the passenger station?

A If they crossed the tracks we kept them.

Q You didn't keep separate count of them?

40 A Not as long as they crossed the tracks. The instructions were to take any one crossing the tracks no matter how many times they went over.

George N. Courtade, cross.

Q Do you know whether or not all the people you counted went over across the tracks?

A Positively.

Q Did you watch from one side of the track to the other?

A At my point.

Q I think you would lose one or two to watch them all across the track?

10

A No. It is hardly possible to get them in big rushes. I think I missed more than I put on.

Q It is a sort of estimate in a big crowd.

A I can't say as it was; not an estimate; it was a count.

Q Did you count everybody coming down Park avenue to the east?

A Going over the tracks.

Q You didn't count the ones who turned up Hamapo avenue?

20

A No, I couldn't count them because they didn't cross the tracks.

Q Where did you stand?

A That point indicated by Mr. Merrey on the Park avenue side.

Q Were you up against the building?

A Yes, sir.

Q Close to the building?

A In this position (indicating). I was just like that (illustrating). We had to see everybody coming either way. The same way with Mr. Keys.

30

Q About twenty-five feet from the track?

A About that. I couldn't say as it was twenty-five feet hardly.

Q You didn't count these people until after they had gone on the track?

A As soon as he put his foot on the track he is credited as going across; if he comes back he is credited with coming back.

Q You didn't count him when he passed you?

40

A Yes.

George N. Courtade, cross.

Q How did you know he wasn't going on Ramapo avenue?

A I could see that. Mr. Keys was to take that.

Q No, because the people come out of Park avenue.

10 A Yes, if they go to his point he takes them. If they come out of Market street to my point I take them, so we don't get mixed up.

Q Those people that turn down from Ramapo avenue to Park avenue neither took them?

A He says look out, don't check them. I tell him the same way when they come out of Crosby Place. The same with passenger trains east, I said John, train for you, or I said, Jack, a train for you; or coming west he would say George, here is a train for you.

Q Everybody who went up Ramapo avenue to the Susquehanna he would strike off his list.

20 A I would say, John, that is my man; he would say, all right. We had a pretty good system.

Q Coming the other way, coming down Park avenue, suppose a man passed you and turned down to Ramapo Place, I understood he would be Mr. Keys' man.

A Yes.

Q What did you do?

A We didn't mark him. We couldn't credit him with going across.

30 Q You didn't mark him because he was Mr. Keys' man or because he didn't go across?

A He didn't take it. I would say to John, that man is going on Ramapo avenue, or on Crosby Place he would tell me the same way.

Q Did you have many more conversations during the day?

A We didn't have any chance. There were times we couldn't look at one another.

Q You mean you were too busy?

40 A Yes.

George N. Courtade, re-direct.

Q You don't note any particular case of people turning on Ramapo avenue or Crosby street?

A Yes, I noted several. Sometimes people would come from Crosby Place right straight across. We couldn't credit them.

Q You paid no attention to them?

A Yes.

Q What did you do with them?

A We didn't put them down? We had to see they didn't go over the tracks. That is the attention I paid to them. 10

Re-direct examination by Mr. Merrey.

Q There wasn't any unusual crossing of the tracks and coming right back again on that day?

A No.

Q It was the ordinary traffic?

A Yes.

Q Is there much traffic from Park avenue coming down into Crosby Place? 20

A How do you mean?

Q Are there many people coming down Park avenue and turning into Crosby Place?

A Very seldom.

Q Where does Crosby Place lead?

A Into the Straight street station.

Q It would be much shorter for people to turn into Straight street and reach the Susquehanna station if they wish? 30

A Yes.

Q Are there many people going down Ramapo avenue?

A Not so many.

Q What is there along there?

A Saloons.

Joseph Coates, direct.

JOSEPH COATES, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

Q Mr. Coates, were you employed by Mr. Fitzgerald and Mr. Hattersley to take account of the pedestrians crossing the Erie Railroad?

A I was.

10 Q Whereabouts?

A Market street.

Q How many days were you there?

A Saturday, Monday—the 4, 6 and 7.

Q Tell us just what you did there.

A We had about the same system as Mr. Courtade.

Q Who was with you?

A A fellow called Coburn.

Q Where did you stand?

20 A Part of the time at the intersection of Park and Market streets and close to the track when the traffic got heavy. The Susquehanna trains discharged traffic; when the traffic was extraordinarily heavy on Market coming toward Park, we would get on the other side.

Q Right at the triangular building?

A Yes.

Q What did you do, mark on this paper?

A Yes.

Q Your records are there?

30 A Yes.

Q Did you sign each sheet when completed?

A Yes.

Q What did you do with them?

A Turned them in to Mr. Hattersley. I started at two o'clock and was off at eleven.

Q From two until eleven?

A Yes.

Q What did you mark down on the paper?

40 A I didn't use a scrap sheet; I bunched them in tens.

Joseph Coates, direct.

Q That is the pedestrians?

A The pedestrians.

Q You say you grouped the pedestrians you counted?

A Counted ten, perhaps fifteen, kept that other five in my mind, three or two, and matched up ten. Marked it on the original sheet.

Q Did you keep track of the trains that went by? 10

A Westbound trains.

Q Did you keep track of the vehicles?

A Yes.

Q You separated the automobiles?

A Yes, separated the automobiles, bicycles, and horse-drawn vehicles.

Q Did you notice trolley cars going by?

A Trolley cars up and down Park avenue?

Q How did those cars run as to whether they were full or empty? 20

A That I didn't notice; I wasn't instructed to notice at all; I tabulated the cars.

Q The passengers on the cars were not noticed?

A No, they were not included.

Q You made that report and signed your name to it as you find it there now?

A Yes.

Q For three days?

A Yes.

Q You say Coburn was with you? 30

A Yes.

Q Where did he stand?

A At the intersection of Market street; at the same point, you know—

Q Did you have an understanding with him?

A We handled everything practically the same system as was just previously stated. He would have the travel all the territory touching the railroad coming down or going up Market street that would be on a line with Market street. Anything touching the 40

Joseph Coates, cross.

railroad crossing, but in the line of Park avenue, I handled. Pedestrians coming down Market street on the east side of the track and swung on the north side of Market street he became mine and I tallied him. You might say the outer edge of the railroad track and the street away out to that intersection point, whatever pedestrians passed that I tabulated.

10 Q Did you talk about apportioning it in two?

A No, that was the instructions first; that was the agreement between both of ourselves.

Cross examination by Mr. Taylor.

Q Your system seems to be a little from the other. If a man came down Market street and crossed from the east to the west and got to the north side of the street you counted him?

20 A Yes. He would intersect Park avenue just about half way in the railroad track, in that way he became my property as it were.

Q Who was the man on with you?

A Coburn; I never met him before that time.

Q You said you did not talk with him as to the matter in which to count.

A Yes; we made that arrangement between ourselves how we would handle the traffic.

Q I thought you said you were instructed by Mr. Hattersley.

30 A No; we used practically the same plan. We devised our own plan.

Q You thought it out with the gentleman on the crossing with you and agreed to divide it that way?

A Exactly, now you have it.

Q All your sheets are there?

A Yes.

Q Did you make any sheets you didn't sign?

A No.

Q That is your signature? (Indicating.)

40

A Yes.

George N. Courtade, cross.

Q You made none that you didn't sign?

A No.

Q Do you know whether they are all in here or not?

A No, I just simply seen one, I ought to modify that, I see there isn't.

Q How many did you have?

A From two to four. We should have twelve sheets there. 10

Q You should have twelve sheets to cover it all?

A Twelve sheets to cover it all.

GEORGE N. COURTADE resumes the stand.

Cross examination by Mr. Taylor.

Q How did you and Mr. Keys count a man coming down or up Market street from the east across the tracks and swung to the north side, to the opposite side; did you consider it Market street or Park avenue? 20

A Park avenue.

Q You counted him?

A Yes.

Q I thought you said you limited your count to Park avenue?

A Yes; if a man passed Park avenue down here (indicating) he was Mr. Keys; when a man came on Market street and crossed in that direction (indicating) I took him. The other men were contrary to what we were. 30

Q Suppose a man was walking across the middle of the two streets you would both count him?

A Yes, sir, both count him.

John Radcliffe, direct.

JOHN RADCLIFFE, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

Commissioner Donges. Are you going to call all the men who took the count?

10 *Mr. Taylor.* I don't know as it is necessary to call them all; what ones have you got? Call one for Clay street and another for River street and the two Broadway men.

Mr. Merrey. I haven't the men that were on the other Market street crossing.

Mr. Taylor. As to the men that were on the other crossing you can swear them all and prove satisfactorily to me they attended this school class and afterward kept actual count of these crossings.

20 Q Mr. Radcliffe, did you keep account of the number of pedestrians and vehicles and number of times trains passed and gates went up and down at the Clay street crossing?

A Yes.

Q You did that?

A Yes.

Q Is that the sheet showing the count kept by you?

A Yes, sir.

Q They are signed by you, are they; five?

30 A They are signed by me.

Q And they were kept by you?

A Yes.

Q You noted the number of people passing and all the information set down there?

A I did.

Q You did that how many days?

A Two days.

Q What days?

A Saturday and Monday.

William J. Dunn, direct.

Q What hours?

A From five to two.

Q From five in the morning until two in the afternoon?

A Yes, sir.

Mr. Taylor. No cross examination.

WILLIAM J. DUNN, sworn on behalf of petitioner. 10

Direct examination by Mr. Merrey.

Q Did you keep a tabulation in River street?

A Yes, sir.

Q I show you some sheets here, several of them, signed William J. Dunn.

A Yes, they are mine.

Q Those were kept by you?

A Yes.

Q What did you note, the number of pedestrians passing River street, the number of trolley cars, horse-drawn vehicles, bicycles, and the number of times passenger trains and freight trains passed? 20

A Yes, I did.

Q Did you turn those over to Mr. Hattersley?

A Yes, with the exception of one sheet, and that I gave to the man who relieved me.

Q What hours were you on?

A Five in the morning until two in the afternoon.

Q These sheets were kept in two-four periods? 30

A Yes, with the exception of the last sheet. That was kept from one to two.

Q That is all indicated on those sheets?

A Yes.

Q That is a true count?

A That is a true count, the best we could keep.

Mr. Taylor. No cross examination.

James J. Troy—Walter C. Furlong, direct.

JAMES J. TROY, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

Q Mr. Troy, did you assist in this count of the pedestrians and vehicles crossing Broadway in the City of Paterson?

A Yes.

10 **Q** How many days were you there?

A Two.

Q What hours?

A From two in the afternoon until eleven at night.

Q I show you some sheets signed James J. Troy, is that a true record?

A Yes.

Q You signed that?

A Yes.

20 **Q** It is true, it is a true count of the people passing, as it purports to be?

A Yes.

Q The same with the second day?

A Yes.

Q That is your signature on those sheets, too?

A Yes.

Mr. Taylor. No questions.

30 **WALTER C. FURLONG**, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

Q Did you assist in the count at Broadway crossing?

A Yes, sir, I did.

Q At what hours were you there?

A Five in the morning until two in the afternoon.

Q What days?

40 **A** Saturday, October 4th, and Monday, October 6th.

Discussion.

Q I show you some sheets here signed Walter C. Furlong, a detail of that count; were those kept by you?

A Yes, sir.

Q Is that a true count of the matters it purports to show?

A Yes, sir, the best of my ability.

Mr. Taylor. No cross examination.

10

Mr. Merrey. This seems to be all the witnesses we have on this Paterson count at present. I have also present some employees of the street department who, in March and April last, kept a similar report of which I have the summary. It is probably too late to go on with that. Mr. Taylor, if you wish a copy of this, it is here. This report was on all the crossings and it seems to tally fairly well with this, except the Clay street crossing. At the time the original count was kept there was a strike and a large number of idle men; the number counted by the Board of Trade is double that counted by the City. The explanation is work was commencing and the number using the crossing was different.

20

Mr. Taylor. We will have to go into it at another time, as you say.

Mr. Merrey. This count was made in a similar way, except Market street.

Commissioner Donges. We will take it up at some further day. It appears in the course of taking the testimony that the Western Union Telegraph Company has some interest in telegraph lines. I understand it is agreed by all parties the Western Union Telegraph Company shall be made a party.

30

Mr. Merrey. Yes, sir.

Commissioner Donges. That being the case, Mr. Merrey will be required to serve them.

40

Discussion.

Mr. Taylor. I make the point, they are necessary. I am unfortunately in the position I don't want—this situation is so vital to the Erie Railroad I can't waive anything; they should have been a party heretofore; I simply raise the point they should be a party.

10 *Mr. Merrey.* I ask they be made a party. The service was made heretofore by the commission and not myself. If you wish I will add an amendment to my petition that we pray now the Western Union should be made a party, as they have wires along the right of way.

20 *Commissioner Donges.* Couldn't you furnish a copy to the Western Union. It didn't appear the Western Union had any interest in any property to be affected. Mr. Taylor doesn't concede to it, but suggests they are a necessary party. Nobody else seems to object to their being made a party at this time so the proceeding will be, you will be furnished a copy and serve them and give them notice of the continuance of the hearing.

Mr. Merrey. Yes, sir.

30 *Mr. Taylor.* I would like to say this; as far as taking testimony of the sort taken to-day, whatever men Mr. Merrey may want to offer, any time is as good as another. As far as getting into the question at the different crossings, the study of what might be done and what should be done, we won't be in a position to take that up for a considerable length of time. We want to make such a study; it is a matter of long work. There is a great deal of fundamental work in the way of surveys which will have to be done for the purpose of making the study. We will have to make a study of our roads for the Interstate Commerce Commission and we propose beginning that work in Paterson for the purpose of using

Discussion.

the data for that purpose. It will be some weeks before we will have the engineers available to do that kind of work.

Commissioner Donges. Well, we can go on with the testimony in the matters that the petitioner desires to submit.

Mr. Taylor. I suppose we can, as far as that is concerned. 10

Mr. Merrey. When will we have your answer?

Mr. Taylor. It is very difficult for me to fix an exact date. Mr. Hobart is in court to-day.

Commissioner Donges. Within two or three days you said.

Mr. Taylor. Within a few days. It rests with Mr. Hobart. We will get it in a short time—when do you propose having the next hearing, Mr. President? 20

Commissioner Donges. In two weeks.

Mr. Taylor. I think we can undertake to serve an answer before the next hearing.

Commissioner Donges. The Erie Railroad will file its answer and notice will be given the Public Service Railway Company and other respondents to answer.

Mr. Merrey. All right.

Adjourned until Friday, October 31, 1913, at 30
the Court House, Newark, N. J., 10.30 A. M.

Discussion.

SECOND HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Friday, October 31, 1913.

PATERSON GRADE CROSSING ELIMINATION, }
ERIE RAILROAD COMPANY. }

10 Before Commissioners Donges and Daniels. F. H. Sommer, Esq., Counsel.

For the City of Paterson appears R. B. Lewis, Esq.

For Erie Railroad Company appears H. A. Taylor, Esq.

For Public Service Railway Company, Public Service Gas Company, Public Service Electric Company appears L. D. H. Gilmour, Esq.

20 *Mr. Gilmour.* The secretary asked the Public Service Railway Company, the Public Service Gas Company and the Electric Company to file answers. I suppose all that the commission wants for the record is that the appearance should be entered for those companies.

Commissioner Donges. No.

Mr. Gilmour. We have no answer filed.

30 *Commissioner Donges.* We want an answer to the allegation of the petition, insofar as your company is able to answer them, in respect to its own property.

Mr. Gilmour. The allegation in respect to the railroad company is that they cross the tracks at one or two points. Of course that we can't submit.

Commissioner Donges. That is so, the record will show by formal pleading what is admitted and what denied.

Mr. Gilmour. I didn't understand that. I would be glad to do that as of the first hearing.

40 *Commissioner Donges.* All right. Answer so much as relates to your property.

Mr. Taylor. Mr. Chairman, I have handed to Mr. Sommer, with the request that he file with the secretary, a copy of our answer. I have also handed him a copy of the answer of Mr. Lewis representing the city. I have one or two additional copies here I would be glad to hand you.

Mr. Lewis. Before proceeding I would like to move that Exhibits P-4, P-5 and P-6 be extended and put into record. They were not put in at the last hearing. That is the summary. 10

Commissioner Donges. I think it was agreed at the last hearing that they should be put into the record subject to the right of cross examination if Mr. Taylor desired.

Mr. Lewis. They are marked as exhibits and were offered.

Mr. Taylor. Well, I think the understanding was that these were to go in at the convenience of the commission and counsel, but to be supported by the originals from which these computations were made. Those originals I think could properly be filed with the commission in a body as one exhibit. 20

Mr. Lewis. We will file all the exhibits if you wish.

Mr. Taylor. I think we should have the opportunity to check up the summaries from the original records that were made. 30

Commissioner Donges. I think the testimony disclosed in some cases that entries were made in the first instance on these sheets.

Mr. Taylor. Not on these sheets.

Commissioner Donges. What they called B sheets.

Mr. Taylor. It appeared in some cases the men at the crossings threw away the original scrap sheets. I am not asking for those, but I ask the records these summaries were made from, the 40

Exhibit P-4.

original records kept at the crossing—the others are records made by the men at the crossings, as I understand, from such original records as they had.

Mr. Lewis. I am going to offer them all.

Mr. Taylor. That is all right.

10 *Mr. Lewis.* Mr. Taylor wanted the opportunity to examine two men who were not here at the last time on the Market street crossing.

Commissioner Donges. These are marked. (Indicating.)

Mr. Lewis. They are offered, but according to the copy of the testimony, were not put in.

Commissioner Donges. They will be admitted and marked.

Mr. Taylor. It is understood they are merely summaries.

20 *Mr. Lewis.* Yes.

Mr. Taylor. And not evidence in and of themselves, but are summaries.

Commissioner Donges. Yes.

Mr. Lewis. We will offer all these reports.

Commissioner Donges. Were they not offered at the last hearing?

Mr. Lewis. They were offered; these are three summaries.

30 *Commissioner Donges.* It is your purpose to offer the others later?

Exhibit P-4. Summary October 4, 1913:

Clay Street: Pedestrians, 6,342; trolley cars, —; horse-drawn vehicles, 997; autos, 198; bicycles, 123; gates down, 181; passenger trains, 104; freight trains, 12; drill engines, 59. Market Street: Pedestrians, 34,547; trolley cars, 563; horse-drawn vehicles, 1,901; autos, 1,700; bicycles, 827; gates down, 297; passenger trains, 104; 40 freight trains, 13; drill engines, 47. Broadway:

Exhibits P-5—P-6.

Pedestrians, 9,410; trolley cars, 607; horse-drawn vehicles, 395; autos, 602; bicycles, 169; gates down, 150; passenger trains, 103; freight trains, 14; drill engines, 26. River Street: Pedestrians, 8,947; trolley cars, 252; horse-drawn vehicles, 1,015; autos, 427; bicycles, 351; gates down, 137; passenger trains, 104; freight trains, 13; drill engines, 31.

10

Exhibit P-5, Summary October 6, 1913:

Clay Street: Pedestrians, 5,040; trolley cars, —; horse-drawn vehicles, 835; autos, 238; bicycles, 120; gates down, 207; passenger trains, 103; freight trains, 11; drill engines, 96. Market Street: Pedestrians, 27,029; trolley cars, 592; horse-drawn vehicles, 1,750; autos, 1,555; bicycles, 798; gates down, 188; passenger trains, 103; freight trains, 19; drill engines, 39. Broadway: Pedestrians, 7,166; trolley cars, 597; horse-drawn vehicles, 364; autos, 433; bicycles, 119; gates down, 116; passenger trains, 104; freight trains, 9; drill engines, 9. River Street: Pedestrians, 6,857; trolley cars, 225; horse-drawn vehicles, 1,017; autos, 337; bicycles, 298; gates down, 129; passenger trains, 106; freight trains, 11; drill engines, 38.

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Exhibit P-6. Summary October 7, 1913.

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Market Street: Pedestrians, 24,220; trolley cars, 562; horse-drawn vehicles, 1,734; autos, 1,205; bicycles, 623; gates down, 196; passenger trains, 104; freight trains, 9; drill engines, 46. River Street: Pedestrians, 6,932; trolley cars, 212; horse-drawn vehicles, 906; autos, 291; bicycles, 269; gates down, 141; passenger trains, 104; freight trains, 11; drill engines, 36.

40

John Keyes, direct.

JOHN KEYES, sworn on behalf of petitioner.

Direct examination by Mr. Lewis.

Q Mr. Keyes, were you under the direction of Mr. Hattersley keeping a count of the traffic at Market street?

A Yes, sir.

10 Q When was that?

A It was October 4th, 5th and 6th, I think—the 4th, 6th and 7th.

Q I show you a number of sheets purporting to be a record of what you discovered at that crossing. Is that your signature attached thereto?

A Yes, it is my signature.

Q In what manner did you arrive at this tabulation?

20 A Mr. Courtade and I agreed to divide up. I was to take all persons using the crossing going or coming on Market street or Ramapo, and I was to take east-bound trains.

Q What were the dates you said you were there?

A 4th, 6th and 7th.

Mr. Lewis. I offer these in evidence.

Mr. Taylor. How many of them are there?

Mr. Lewis. Fourteen.

Commissioner Donges. As there is no objection they will be admitted and marked as exhibits.

30 (Same are marked Exhibits P-8 to Exs. P-22, both inclusive.)

Mr. Lewis. I believe Mr. Taylor wanted Mr. Keyes and Mr. Coburn for the purpose of questioning the veracity of the count. I believe at the time it was admitted they all acted under the direction of Mr. Hattersley who testified at the last hearing.

John Keyes, cross.

Cross examination by Mr. Taylor.

Q Mr. Keyes, you took the Market street and Ramapo avenue side of this double crossing, as I understand it?

A Yes, sir.

Q Where did you station yourself?

A I stood by the flatiron building.

Q That is right at the junction between Park avenue and Market street? 10

A Yes.

Q On which side of the railroad track?

A On the east side.

Q And where did Mr. Courtade stand?

A He stood the same place, only, like the Market street side.

Q Only on the Park avenue side?

A Right there by the crossing together; I was on the Market street side and he on Park avenue. I was 20 to count Market street and Ramapo avenue side.

Q When he came down Park avenue did you count that person?

A No, I didn't count Park avenue.

Q When he came down Market street from the east you counted that person?

A Yes, sir.

Q When did you count him?

A I counted him as he was going over the crossing, or if I thought they were going over the crossing. 30

Q As they came west on Market street when did you count them?

A As they came across the crossing.

Q You had to watch them from the time they came across the street?

A I had to watch them as they came across. If they came across I counted them.

Q How could you tell whether they turned on Market street or Park avenue?

A How could I tell?

John Keyes, cross.

Q Yes?

A I waited until they came along.

Q Waited until they came past you?

A Yes.

Q You had to watch them cross the tracks until they passed you?

10 A No, when I was sure they were going along Market street I counted them.

Q You didn't follow them to see definitely, but if they turned up Market street?

A They had to pass me.

Q You say you didn't watch them until they passed you?

A Not until they went up the street, no.

Q A person coming down Ramapo avenue from the south, when did you count them?

20 A As soon as I was sure they were going to cross the crossing.

Q What do you mean by when you were sure they were going to cross the crossing?

A When I saw them go over.

Q You didn't count them until they got on the crossing?

A No; when I was sure in my mind they were going to cross there I counted them.

30 Q Did you make any distinction between persons coming from the railroad station and those coming along the street?

A No, I did not.

Q You counted all those that came from the railroad station and crossed the street?

A Yes; they had to come through the gate there. I counted them as they came through the gate.

Q Do you know whether or not Mr. Courtade did the same thing?

A That I don't know. I am not positive.

Q You were on this crossing during what hours?

Isaac Coburn, direct.

A From five until two; from five in the morning until two in the afternoon.

Q Three days?

A Yes; Saturday, Monday and Tuesday.

Q October 4th, 6th, 7th?

A Yes.

ISAAC COBURN, sworn on behalf of petitioner. 10

Direct examination by Mr. Lewis.

Q Mr. Coburn, did you act under the instructions of Mr. Hattersley in taking a record of the traffic on the Market street crossing?

A Yes.

Q During what period?

A October 4th, 5th and 6th; of October.

Mr. Taylor. On what days?

Witness. Fourth, sixth and seventh, rather. 20

Q Of what month?

A October.

Q And you followed out the instructions of Mr. Hattersley as to the taking of the number of people who crossed?

A Yes, to the best of my ability.

Q I show you here some papers showing tabulation; is that your signature attached?

A Yes. 30

Mr. Lewis. I offer these, Mr. Taylor. There are ten.

Commissioner Donges. As there is no objection they will be admitted and marked as exhibits.

(Same are marked Ex. P-23 to Ex. P-32, both inclusive.)

Isaac Coburn, cross.

Cross examination by Mr. Taylor.

Q Who was your partner, Mr. Coburn?

A Mr. Coates.

Q When were you there?

A The fourth, sixth and seventh of October.

Q What were the arrangements between you and Mr. Coates as to keeping track?

10 A I kept as near as possible according to the arrangement Mr. Coates made with me.

Q What was the arrangement with Mr. Coates?

A I stood on the Market street side in the same position Mr. Keyes stood, and Mr. Coates, I believe, stood where Mr. Courtade was standing.

Q How did you keep track of the pedestrians coming from the east on Market street?

A Coming from the east?

Q Yes?

20 A As they passed the gate that was the time I took the count.

Q You counted as they passed the gate; how did you know they came from Market street or Park avenue?

A Coming from Market street or Park avenue?

Q The two streets cross at the same place?

A Yes. As they passed through the gate, that was the time I counted them.

30 Q How did you know whether they came down Market street or Park avenue?

A I didn't know whether they came down Market street or Park avenue. I was counting one crossing. If they came on Market street or Park avenue crossing Mr. Coates counted them.

Q I am talking of the people coming from the east. There is one crossing at this point where both streets cross?

A One crossing.

Q One set of gates?

40 A One set of gates.

Isaac Coburn, cross.

Q At this crossing?

A Yes.

Q You were counting these people coming from the east going towards the center of the city?

A Yes.

Q You counted them as they went under the gate?

A As they passed the gate.

Q How did you know they were coming down Market street from the east or down Park avenue from the east? 10

A I didn't know. As they passed the gate I counted them because they were crossing the railroad at that time.

Q How did you count those who came up Ramapo avenue from the south?

A Coming up Ramapo avenue?

Q Yes?

A As they went across the railroad I counted them. 20

Q How did you know they came from down Ramapo avenue?

A Well, I counted them as they crossed the crossing.

Q Did you know whether they came from Ramapo avenue or not or where they came from?

A No.

Q When the pedestrians were coming from the other direction, from the center of the city, passing easterly over the crossing where did you count them? 30

A As they passed the gate.

Q Passed the gate?

A Nearest to me on Market street.

Q How did you know when they passed the gate they were coming up Market street or up Park avenue or down Ramapo avenue?

A I couldn't tell that. I counted them as they passed the gate.

John Flynn, direct.

Q Did you make any distinction between persons simply going along the street and those going to and from the railroad station, the Paterson railroad station of the Erie Railroad?

A The people that were passing along the street?

Q Did you make any distinction between those passing along the street and those who were going
10 over the crossing to or from the railroad station?

A No, I counted them as they crossed the crossing. That was all I know.

JOHN FLYNN, sworn on behalf of petitioner.

Direct examination by Mr. Lewis.

Q Mr. Flynn, were you employed by the street commissioners of the City of Paterson in keeping a count of the traffic at certain crossings in the City of
20 Paterson?

A I was.

Q When was that?

A April 7th, 8th, 9th and 10th.

Q What crossings did you keep a count on?

A Franklin, Keen, Warren and Fifth avenue.

Q How did you keep a count of the people?

A Well, for the pedestrians I had a small register, a hand register, I registered the pedestrians on that.

Q One of these things you punch?

30 A Yes, a hand register. The figures I tallied on a sheet, a scrap sheet.

Q After you had finished your count did you make a memorandum of it?

A Yes, I made a memorandum.

Q Did you make a record of it, any typewritten record; anything of that sort?

A A typewritten record.

Q Made by yourself?

40 A Yes.

John Flynn, direct.

Q I show your signature on this, is that the record to which you refer?

A Yes.

Mr. Lewis. I offer this in evidence.

Mr. Taylor. That portion that relates to the Fifth avenue crossing is irrelevant, of course.

Mr. Lewis. Isn't Fifth avenue mentioned in the petition? 10

Mr. Taylor. No.

Mr. Lewis. It goes from Madison avenue.

Mr. Taylor. To River street.

Mr. Lewis. Well, the Fifth avenue crossing as you recollect, Mr. Taylor, crosses the Susquehanna this side.

Mr. Taylor. Fifth avenue has nothing to do with this case.

Mr. Lewis. All right. We will eliminate Fifth avenue. 20

Commissioner Donges. The statement or summary, except in so far as it relates to Fifth avenue, is admitted and will be marked as an exhibit.

(Same is marked Exhibit P-33.)

Mr. Lewis. It might save time at this point: We have three other men who kept tallies at this point. I have their statement here in typewriting.

Mr. Taylor. Are those men here? 30

Mr. Lewis. Yes, these men are here. I think I am right in saying they all used registers.

Witness. The man who relieved me used it, that is all I know.

Mr. Taylor. I think you better call them.

Q (*By Mr. Taylor.*) Your statement covers one day at each crossing?

A Yes, sir.

William Dunleavy, direct.

WILLIAM DUNLEAVY, sworn on behalf of petitioner.

Direct examination by Mr. Lewis.

Q Mr. Dunleavy, were you employed by the city street commissioners of Paterson to take count of the traffic of certain crossings in the City of Paterson?

10 **A** Yes, sir.

Q Do you recall what crossings you looked after?

A I do.

Q What were they?

A Madison avenue, Straight street, Clay street, Cedar street, Market street, Ellison street, Van Houten street, Broadway, Fair street, Lafayette street, River street.

Q Did you keep any count of Hamilton avenue?

A Yes, Hamilton avenue.

20 **Q** What date were you there?

A Started at Madison avenue the twenty-second of March and terminated the fifth of April.

Q For what period?

A Six in the morning until 12.30 at noon.

Q At the time was there any unusual condition in the City of Paterson which would affect traffic?

A A strike was on.

Q In what way would that affect traffic?

30 **A** There wasn't so many people coming and going from the mills.

Q Were the schools in session at that time?

A They had a vacation, Easter vacation was on about that time.

Q What effect did that have on the traffic?

A Affected it quite some, from Clay street down.

Q Lessened it?

A Oh, yes.

Mr. Taylor. Clay street and south.

Q What do you mean by down?

40 **A** Down town.

William Dunleavy, direct.

Commissioner Donges. Going in what direction?

Witness. North end of the city.

Q (By Mr. Taylor.) I don't know whether he means all the crossings from Clay street down or the crossings from Clay street north?

A I say going north, down towards the center of the city.

10

Q You mean to say affected the travel at Clay street going from the east to the west?

A Yes, that way (indicating); on all crossings down.

Commissioner Donges. All crossings toward the center of the city?

Witness. Yes, sir.

Commissioner Donges. All crossings between Clay street and the center of the city you said would be affected?

20

Witness. Yes, sir.

Commissioner Donges. Was there, in the past sixty days, any condition in Paterson at Market street or any of these crossings in the center of the city where a census was taken, different from the ordinary conditions that affected the travel at all?

Witness. In the last sixty days?

Commissioner Donges. Yes.

Witness. The factories are going now; they are coming and going.

30

Commissioner Donges. The streets are all open to travel?

Witness. Yes. Clay street crossing, for instance, the traffic is heavier now than at the time of the strike.

Commissioner Donges. What I want to know, is whether there was any unusual conditions prevailing at any of these crossings?

Witness. No.

40

Michael J. O'Rourke, direct.

Q (*By Mr. Lewis.*) What method did you use in keeping count of the people that passed?

A Well, pedestrians I had a hand register.

Q This is a typewritten report, not typewritten by you, but signed by you. How did you make this report?

A Turned them in. Took them on a pad and copied them in when I got home on that sheet there.

Q Could you say whether this report was taken from the report taken by you?

A Yes, sir.

Mr. Lewis. If there is any objection to that the only thing I can do is to hand in the scrap sheets.

Mr. Taylor. I haven't any objection if they compare accurately.

Witness. I compared the figures and they are correct.

Q (*By Mr. Taylor.*) Compared those figures with the original report and they are all in accordance with that report?

A Yes.

Mr. Taylor. I am entirely satisfied to have this summary substituted for the original report.

Mr. Lewis. All right, we offer that.

Commissioner Donges. There being no objection, it will be admitted and marked.

(Same is marked P-34.)

MICHAEL J. O'ROURKE, sworn on behalf of petitioner.

Direct examination by Mr. Lewis.

Commissioner Donges. In the answer in the first paragraph of the amended petition your answer says that no copy of the original petition was served upon your company.

Mr. Taylor. I understand that to be a fact.

Michael J. O'Rourke, direct.

Commissioner Donges. But you received a copy of the amended petition?

Mr. Taylor. A copy of the amended petition was served; that is, the one we are answering.

Commissioner Donges. You are now answering the petition as amended.

Mr. Taylor. As amended, yes.

Commissioner Donges. Which petition, as amended, was served upon you. 10

Mr. Taylor. We put that in the answer because the amended petition referred to the original petition. The original was never served on us, but the amended petition was served.

Commissioner Donges. I understand the fact to be, the petition as amended in its entirety is the petition now pending.

Mr. Taylor. That is my understanding.

Commissioner Donges. That is a substitute as a whole for the original petition. 20

Mr. Taylor. Well, I suppose that is the case. I don't know anything to the contrary.

Commissioner Donges. I wanted to be sure you had been served with the amended petition.

Q *Mr. O'Rourke,* were you employed by the city street commissioners to keep a count of the traffic at certain crossings in the City of Paterson?

A Yes, sir, I was.

Q When was that? 30

A March 27, I think, and 28.

Q Where were you March 27th and March 28th?

A Erie Depot, Market street, on the north side of the street.

Q Were you also at Franklin street?

A Yes, sir.

Q And Keen street?

A Yes, sir.

Q Warren street?

A Yes, sir. 40

Michael J. O'Rourke, direct.

Q And Fifth avenue, which is eliminated, Mr. Taylor?

A Yes, sir.

Mr. Taylor. Yes.

Q And what dates were you at those crossings?

A I think, April 7th, 8th, 9th and 10th, to the best of my knowledge.

10 Q And how did you keep count of the people and vehicles passing?

A The pedestrians I kept count by one of those indicators, and the vehicles I had a piece of paper on which I marked them down, and at night I tabulated them up.

Q There was at that time a strike in Paterson, and schools were closed?

A Yes.

20 Q In your opinion, would that have a tendency to lessen the traffic?

A It certainly would, a whole lot.

Q How did you keep count of the number of people who crossed?

A By an indicator.

Q How did you take it off the indicator?

A Took it off the face of the figures.

Q Was a typewritten copy made of your report?

A Was there?

Q You wrote out your report?

30 A Yes, I did.

Q Was that afterwards copied on a typewriter? Have you seen this? (Indicating.)

A No, sir.

Q You are not familiar with that?

A No, not to my knowledge.

Mr. Lewis. In this case I will have to put in the original figures.

Mr. Taylor. I am perfectly willing to have you compare it here.

John Kane, direct.

Q Is this report made by you, Mr. O'Hourke?

A That is my report.

Mr. Lewis. I offer that in evidence, and for the sake of convenience offer the typewritten copy; if there is any discrepancies the original will be consulted.

Commissioner Danges. It will be marked.
(Same is marked Exhibit P-35.)

10

JOHN KANE, sworn on behalf of petitioner.

Direct examination by Mr. Lewis.

Q Were you employed by the city street commission of the City of Paterson, Mr. Kane, to make a count of the traffic at crossings in Paterson?

A Yes, sir.

Q What crossings were you at?

A Madison avenue, Straight street, Clay street, 20
Cedar street, Market street, Ellison street, Van
Houten street, Broadway, Fair street, Hamilton avenue,
Lafayette street and River street.

Q Did you mention Van Houten?

A Yes, sir, Van Houten.

Q How did you keep a count of such?

A With a hand indicator and a pad.

Q There was a strike on in Paterson at that time and schools were closed?

A Yes.

30

Q In your opinion, would that affect traffic?

A Yes.

Q What affect would it have on it?

A People not going to work and crossing the tracks on this crossing.

Q You kept account of your tallies?

A Yes, sir.

Q Is that the count you made (handing witness paper)?

A Yes.

40

John Kane, cross.

Q Made by yourself?

A Myself.

Q And afterwards reduced to typewriting?

A Yes, sir.

Q Can you say whether that was a copy of it; have you compared it?

A No.

10

Mr. Lewis. I will offer these in the same way.
Mr. Taylor.

Commissioner Donges. They will be admitted and marked.

(Same are marked Exhibit P-36.)

Cross examination by Mr. Taylor.

Q The people in Paterson who were striking stayed in the house?

20

A Yes, sir; they wouldn't be going to work; and stayed home. There wouldn't be the crossing and re-crossing of the tracks.

Q Don't you think a good many people would be on the streets in working hours in the case of a strike who would be in the shops or mills if they were working?

30

A They would to a certain extent. They cross and re-cross the tracks from the mills. At the railroad crossings there are the mills. At noontimes they run in and out, and at night time they cross and re-cross.

Q Well, it is a matter of opinion as to the affect of a strike on the railroad crossings, is it not?

A Well, no, from my experience; I go to the shop myself I cross Clay street, I work there.

Q Did you ever make an actual count when a strike was on and when it was not, to see the difference?

40

A You can tell the difference at six o'clock at night; there is practically nobody crossing, while

John Kane, cross.

there are practically hundreds crossing when there is work.

Q At that particular time?

A At that particular time.

Q It is at particular times people go to and from work you have reference to, that is when it makes the difference?

A Yes; at night.

10

Q In between times, except people going to and from work, there is a little more people when there is a strike than when there is not?

A This particular crossing, Clay street, I had reference to. I have waited night after night for trains to pass—

Q Speak a little louder.

A Hundreds of people wait for trains to pass. Then trains would pass and nobody would be waiting.

Q What crossing are you speaking of?

20

A Clay street.

Mr. Lewis. I would like to offer in evidence all the tallies that have been marked as originals of the crossings. There is no objection.

Mr. Taylor. It is made by men who have testified?

Mr. Lewis. Yes.

Mr. Taylor. I haven't any objection to those who testified.

Commissioner Donges. There is no objection then to the exhibits.

30

Mr. Taylor. Assuming the men came and had been sworn, I have no objection.

Commissioner Donges. Very well, they will be admitted and marked as exhibits, and a record made in the minutes, each exhibit is composed of so many sheets.

(Eighteen sheets, Clay street, marked Exhibit P-36½.)

40

John C. Veenstra, direct.

(Twenty-nine sheets, Market street, marked Exhibit P-37.)

(Eighteen sheets, Broadway, marked Exhibit P-38.)

(Twenty-eight sheets, River street, marked Exhibit P-39.)

10 JOHN C. VEENSTRA, re-called on behalf of petitioner.

Direct examination by Mr. Lewis.

Q You are employed in the city engineer's office in the City of Paterson, Mr. Veenstra?

A Yes, sir.

Q At the last hearing you prepared a map showing the right of way of the Erie Railroad and surrounding territory and testified as to the crossings in Paterson?

20 A Yes, sir.

Q You make a supplement map to that; have you made a map showing any additional details?

A To the one I had at the last hearing was added the lots. Showing the numbers for the radius of 400 feet each side of the track.

Q Have you that map with you?

A Yes, sir.

Q I would like to offer the map. You made the map yourself?

30 A Yes, sir.

Q That is the Erie Railroad across there (indicating)?

A Yes.

Commissioner Donges. This map has been offered; is there any objection?

Mr. Taylor. No.

Commissioner Donges. Then it will be admitted and marked as an exhibit.

40 (Same is marked Exhibit P-40.)

John C. Veenstra, direct.

Mr. Taylor. It seems the standard distance. My saying there is no objection doesn't admit this map is complete.

Commissioner Donges. No.

Mr. Taylor. It isn't complete, particularly as to the railroad.

Mr. Lewis. It is intended to show the lots in the vicinity of the Erie Railroad.

Witness. About 400 feet each side of the railroad. The lots are numbered according to the assessor's map we have.

10

Q I show you another map; what does that purport to be?

A A map of the City of Paterson.

Q Is that a copy of the official map, used in the city engineer's office.

A Yes, a copy of the official map, the one we made ourselves in the office.

20

Q Is the Erie Railroad line shown on that?

A Yes.

Q What represents the Erie Railroad?

A (Indicates.)

Q That is shown about the center of the City of Paterson?

A Yes.

Mr. Lewis. I offer that map in evidence, merely to show how the road divides the city.

Commissioner Donges. It will be admitted and marked as an exhibit.

30

(Same is marked Exhibit P-41.)

Q (*By Mr. Taylor.*) These numbers in rings?

A Those correspond to the assessor's sheet.

Q And the other numbers represent the lot numbers?

A Represent the lot numbers.

40

Edward Acorn, direct.

EDWARD ACORN, sworn on behalf of petitioner.

Direct examination by Mr. Lewis.

Q What is your occupation?

A Chief clerk in tax office in the City of Paterson.

Q There is no deputy tax receiver in the City of Paterson?

A No, sir.

10 Q That is the position which you practically occupy?

A Yes, sir.

Q What is this (handing witness papers)?

A That is a copy of the land and building valuation from Crooks avenue to the Passaic river, an area of about 400 feet each side of the railroad.

Q Are those lots shown on this map (indicating)?

A The lots there?

Q Yes.

20 A I presume so.

Q They are within 400 to 500 feet of the right of way of the Erie Railroad?

A Yes, sir.

Q Were these copies, typewritten copies, made for the purpose of the tax receiver of the City of Paterson?

A Yes, sir.

Q Compared by you?

A By me personally.

Mr. Lewis. I offer these in evidence.

30 Commissioner Donges. They will be admitted and marked in evidence.

(Same are marked Exhibit P-42.)

Mr. Lewis. That is all we have.

Commissioner Donges. Does that conclude your case?

Mr. Lewis. No, we have other matters to put in at a later date, if you could continue this two weeks or whatever date suits your pleasure.

40 Adjourned until Friday, November 14, 1913, at the Court House, Newark, N. J., 10.30 A. M.

Petitioner.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Friday, November 14, 1913.

PATERSON GRADE ELIMINATION, }
 ERIE RAILROAD COMPANY, *et al.* }

Before Commissioners Donges, Hillery and Daniels. F. H. Sommer, Esq., Counsel.

10

For the petitioner appears Edward F. Merrey, Esq., and R. B. Lewis, Esq.

For the respondent appears G. S. Hobart, Esq., and D. E. Minard, Esq.

For Public Service Railway Company, *et al.*, appears L. D. H. Gilmour, Esq.

Mr. Sommer. In this case may I make this statement to the board: Mr. Merrey wrote me a letter in which he requested me that I have in attendance to-day, Mr. Maybury, for the purpose of examination. Mr. Maybury, however, had made all his arrangements to go on with his grade crossing investigation; therefore it was impossible to break those arrangements and produce him here to-day. I will produce him at any other time this is adjourned to. I simply want to make that statement because Mr. Merrey might want to close this case.

20

Mr. Merrey. My case will be finished to-day.

30

Mr. Hobart. I would like to file an amended answer to the one heretofore filed. I have submitted a copy to Mr. Merrey and I have a copy for Mr. Sommer. It is along the same lines as the one submitted yesterday in another case.

Mr. Gilmour. I suppose we are a party to this proceeding, but we can't do anything except to put in our actual cost of changes. I understand that the statute fixes on the street railway; they may be assessed 10% of the total cost if in the

40

Discussion.

10 judgment of the commission it thinks that amount is warranted. We can't tell what the cost will be—what our cost will be until the method of eliminating the crossing is determined on. If it is overhead it may be one thing, if it is underneath it may be one thing; if the railroad goes overhead, another thing. That is especially true of gas mains and electric light wires. We are in the same position in the Perth Amboy case until all the evidence is in and the commission decides it is feasible to separate the grades and do it in a certain way, then we have got to go in and show our cost, depending on the separation of the grade in the way decided by the commission. I would like to ask the commission to put in our cost after that point in the case is reached.

20 *Commissioner Donges.* That would seem reasonable. When you speak of the method of elimination do you refer to the general plan that might be advanced, or a special plan?

Mr. Gilmour. A general plan; whether it is to go under the railroad or the railroad under the street. That is the important thing to us. Then we can determine what our cost will be, as our part of the total cost; that must be considered before the percentage we are to pay is taken.

30 *Commissioner Hillery.* It all depends on the method, the cost.

Mr. Gilmour. Our cost, yes.

Mr. Merrey. While Mr. Gilmour is here I would like to call his attention to the amendment to the answer filed by the Erie Railroad Company and would like to know the position they take on one paragraph.

40 *Commissioner Donges.* I think that is the same question that arose in the other case; the understanding is this is exclusively the answer of the

Erie Railroad Company for itself, not acting as an agent or representative of any other party.

Mr. Merrey. The claim is made here; I presume it is the same in the other case.

Commissioner Donges. It is confiscation of these properties.

Mr. Merrey. Yes; taking property, railroad property.

10

Mr. Gilmour. I haven't seen that answer and it was made without any conference with me or any concurrence.

Commissioner Donges. It is the separate, supplemental answer of the Erie Railroad Company.

Mr. Hobart. That is the understanding of it; and not under the order of any other company.

Commissioner Donges. You may proceed.

Mr. Merrey. I would like to ask if any answer is filed on behalf of the Paterson & Hudson River Railroad or the Paterson & Ramapo Railroad Company?

20

Mr. Sommer. I think not.

Commissioner Donges. We have heard of no such answer. Mr. Barber can confirm that.

Mr. Merrey. Also the Western Union Telegraph Company.

Commissioner Donges. None, so far as we are advised.

Mr. Gilmour. Is it on the record that the request I made, about putting in the cost after the determination of the general scheme, is allowed by the commission?

30

Commissioner Donges. I think we may put that on the record, that the Public Service Company is allowed to put in their testimony as to the probable cost after the entire conclusion of the testimony in the case is submitted by the other parties.

40

Discussion.

Mr. Gilmore. And the commission has agreed on the general plan of eliminating the crossing, if elimination is decided upon.

Commissioner Donges. It seems reasonable, but we don't want to decide.

10 *Mr. Gilmore.* There is no occasion for my following these hearings until you are through. I can't do anything until you get to the point of telling me whether you are going over our tracks or under them.

Commissioner Donges. You wouldn't, until the close of the other testimony, be in a position to know and contemplate the contracted methods of separating the grade.

Mr. Gilmore. And give the cost of either one or both.

Commissioner Donges. Yes.

20 *Mr. Gilmore.* I suppose so.

Mr. Minard. Doesn't Mr. Gilmore overlook the possibility of changing the grade of the street as well as the railroad?

Mr. Gilmore. That is just exactly what is the question.

Mr. Minard. Your remarks were whether the railroad go under or over the street.

Mr. Gilmore. It makes a difference.

30 *Mr. Minard.* I had in mind the case where both would be changed.

Mr. Gilmore. Probably both will be changed going over or under, but the cost of the change will be different whether you go over or under.

Mr. Sommer. In view of Mr. Merrey's question, I want to file on behalf of the Paterson-Passaic & Suburban Telephone Company its answer in this petition.

Commissioner Donges. It will be received.

40 *Commissioner Hillery* suggests that perhaps the entry on the minutes should be made that

Discussion.

Mr. Gilmour, that the Public Service Corporation, be allowed to submit estimates of the cost to produce the changes, the understanding by that—

Mr. Gilmour. On notice from the commission.

Commissioner Hillery. On notice from the commission.

Mr. Gilmour. I suppose there will be the same rule in the Rutherford case. 10

Commissioner Donges. I think we may make the same entry by consent.

Mr. Sommer. Make the rule apply to all these cases practically.

Mr. Merrey. In paragraph 5, of the answer of the Erie Railroad Company, it speaks about certain leases that were made by the Paterson & Hudson River Railroad Company to the Union Railroad Company and so on until finally the property comes in by lease to the control of the Erie Railroad Company. I would like to ask now that the company be directed to produce its leases at some future time, of course, showing the entire situation. 20

Mr. Hobart. I suppose that Mr. Merrey means not only the leases, but the various conveyances.

Mr. Merrey. I want the various conveyances to show the chain of title and the exact situation.

Mr. Hobart. We are entirely willing to produce that, and I only make the suggestion, however, that it will lumber up the record to a most remarkable extent. It includes foreclosure proceedings and the recital takes ten pages, as we prepared it in another case. I would like to make the suggestion that we produce the abstract or chain of title, which I will submit, Mr. Merrey, and then produce the leases themselves. 30

Mr. Merrey. I think that is a good thing. We don't want them written out at length in the 40

Discussion.

record. We ought to have them in case there is any necessity of examining them.

Commissioner Donges. Suppose it rest in the understanding the abstract will be produced. If further detail is wanted it will be proper to make a motion at that time.

10 *Mr. Merrey.* I want to offer them and offer them as part of our case. They will be produced by the company and we can agree on the form.

Mr. Hobart. I am not sure the board ruled on the question of leave to file the amended answer.

Commissioner Donges. I think we will admit the amended answer.

20 *Mr. Merrey.* In section eight of the answer it is set up that the maps are not accurate and complete; that these maps we have furnished do not show all the railroad tracks, nor all the freight yards, nor all the sidings or switches or connections with the property of private individuals or corporations which would be affected by the change of grade. I think that is a matter which is peculiarly in the knowledge of the railroad company. I presume they have those maps and I ask now that they be directed to furnish us with such maps as will actually show the tracks and sidings and switches referred to in paragraph eight of their answer.

30 *Commissioner Hillery.* Does that section refer to the tracks and switches of the company or those that might be owned by abutting owners, which?

Mr. Merrey. Both.

40 *Mr. Hobart.* It seems to me, under the rules of the board, the petitioner in a matter of this kind is required to furnish those maps. The rules provide that the property affected, the map must show it. The petitioner must do that. I don't see how we can be called on to perform work the

Discussion.

city should perform under the orders of the board. We will help them by giving them access to our property. To say we have to go to the expense of hundreds of dollars for maps for their benefit is an injustice. Certainly the rules don't require it.

Commissioner Donges. The board will hold that under advisement for the time being, Mr. Merrey. 10

Mr. Merrey. There is another provision of the answer, and I can't seem just to get it. It is the one referring to the statement about the title of the two railroads, the Paterson and Ramapo.

Mr. Minard. That is paragraph twenty-four or twenty-three?

Mr. Merrey. No. It is the provision, in my bill of complaint that set up that those railroads met about Market street. You say that isn't right. You don't tell us what is right. 20

Mr. Minard. That is our business. You will find that the Erie's answer refers to the paragraph number in which your bill states the facts.

Commissioner Hillery. You are speaking of the amended supplemental answer or the original?

Mr. Merrey. No, it is the original.

Mr. Minard. Paragraph five of our answer, first page. 30

Mr. Merrey. Yes. That section provides that the junction between the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad is not clearly described and located in the petition. That is a matter which probably should be disclosed and it is impossible for us to get that. The railroad company knows it. They are operating under those leases. It may be under my first request that I made, that they furnish us this information; it may come in; I don't 40

Discussion.

10 know, but I think they should be directed to show particularly the location of the property showing what property is owned by the Paterson & Hudson River Railroad and what property owned by the Paterson & Ramapo Railroad, and what property owned by the Erie itself. I understand the thing to some extent, having experience with this company before. If that information will be given in the history they say they will give, all right. If they do not intend to do it, I ask now they be directed so to do it.

20 *Mr. Hobart.* I suppose that is a matter of record; the records are as accessible to the city as to the Erie Railroad Company. Some records go back for a number of years. I assert those things in the answer; we say they are incorrect. It seems to me the burden is on him to prove what he says.

30 *Mr. Merrey.* I know some of the things are not a matter of record. I have endeavored to find out before where the railroad bought property, and we can't locate it in our records. I know one railroad company has no deeds, but come in as a kind of squatter and got possession by twenty years adverse users. That may be the situation here; we don't know. It is a matter entirely in the hands of the railroad company and I don't think they will have any great difficulty in getting it. In the case concerning the paving of Market street they had maps which they offered in evidence which showed the conditions there.

Mr. Hobart. We have proof of those.

Mr. Merrey. We have just that much, but we haven't that nearby.

Mr. Hobart. I don't think we should be called on to do this searching and produce maps.

Discussion.

Mr. Merrey. We don't ask you to do searching, but tell us what you own and what the two other railroads own.

Commissioner Donges. It is referred to in page one specifically in their petition.

Mr. Merrey. Yes; it says we have not given the correct description of that location. We have given it the best we could. If that is not right and we are wrong, they certainly know what is right. 10

Commissioner Hillery. Wouldn't the description in the lease show?

Mr. Merrey. I don't know.

Mr. Minard. The records in the county clerk's office would show all that.

Mr. Merrey. They may and they may not, I don't know, but I think if we search in the engineer's office we will find maps already prepared. I am afraid it is a case of lots of work on the part of the city, but it could be easily done by the railroad. 20

Mr. Hobart. You want to cast your work on us.

Mr. Merrey. No.

Commissioner Donges. The board is of the opinion, inasmuch as the answer denies the allegation in the petition, it ought fully to set up how the title is acquired by setting out a description of the papers through which title is acquired, and if the matter is public record where they may be found, and if not a matter of public, by attaching copies to the answer. But we do not think the railroad company ought to be called upon to produce maps as requested by Mr. Merrey; but we think the answer ought to point out the process through which title is acquired, and if a matter of public record, where they may be found. 30

Discussion.

Mr. Hobart. Probably that can all be covered by the stipulation that was made before.

10 *Commissioner Donges.* If you will indicate through what process the title has been acquired and where they are recorded, if recorded, and produce the papers entirely within your possession and knowledge, that may save mistake and amendment to your answer.

Mr. Merrey. I fear the description in whatever records they are, is very difficult or impossible to understand without a sketch to illustrate them.

Commissioner Donges. We think the railroad ought not to be called on to furnish that to you at this time.

20 *Mr. Merrey.* In paragraph twenty-one of the answer the railroad company names many private individuals and corporations who have sidings and switches and tracks connecting with the railroad company and says they are entitled to notice and entitled to be heard. I would like to make a motion they be notified and given an opportunity to be heard. I have notified the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad and they haven't answered. If the commission will direct me to notify these people I will take that work upon myself. I feel
30 better results will be obtained and better records kept if they are notified as the railroad company was, or whatever is the rule.

Mr. Minard. Is it Mr. Merrey's idea they be sent copies of the petition like other defendants if brought in as parties?

Mr. Merrey. I don't think that is necessary. The serving of copies of the petition is handled by rules of the commission. If the board desires to have copies of the petition we will have to have
40 them printed, there are so many of them.

Discussion.

Mr. Minard. I refer to the commission's rule D of the rules prescribed.

Commissioner Donges. In this case the conclusion of the board is to waive the provision of rule D and provide that the petitioner give notice to the parties mentioned in paragraph 21.

Mr. Merrey. I would ask if the commission will make an order directing that they appear at a certain time to answer this petition. 10

Commissioner Donges. The statutes provide that a notice be given.

Mr. Merrey. The notice was given by the commission heretofore.

Commissioner Donges. A reading of the statutes, Mr. Merrey, leads to the conclusion that perhaps the duty of giving the notice is perhaps on this board. The statute reads: Whereupon said Board of Public Utility Commissioners shall fix a time and place for a hearing before it and shall give such notice thereof as it shall deem reasonable, so the board will give notice upon receipt from you of specific addresses of the individuals. 20

Mr. Merrey. I suppose I can give it.

Commissioner Donges. I think that is imposed upon you.

Mr. Merrey. I think the board should probably fix a time for the hearing of these individuals and corporations. 30

Commissioner Donges. I think they ought to have notice.

Mr. Merrey. I mean fix a time when they will be heard.

Commissioner Donges. If you will furnish the addresses a time will be fixed and those parties given notice of it. I assume at that time they will appear if they choose and participate to what extent they desire. 40

Discussion.

Mr. Merrey. I shall give the information and also include the two railroad companies I have served but which haven't answered, and also the Western Union.

Commissioner Donges. Include all parties.

Mr. Merrey. Who have not been served by the board.

10 *Commissioner Donges.* And who have been suggested as possible parties in interest, whether in this paragraph or any other.

Mr. Merrey. All right.

I would like to offer in evidence the specific act incorporating the President and Board of Directors of the Paterson & Hudson River Railroad, pamphlet laws 1830 and 1831, page 84, I haven't it at hand. I make that formal offer.

20 *Mr. Merrey.* I also offer the specific act incorporating the Paterson & Ramapo Railroad pamphlet laws of 1841, page 97.

Mr. Merrey. There is a provision there that refers to the duty of the company, about crossings and so on.

Mr. Minard. May I inquire whether the offer of those in evidence is simply to show the duty, or to connect up the plaintiff's case. If so the Union Railroad should come in too. They are as important a factor as any other.

30 *Mr. Merrey.* Are they a special incorporation?

Mr. Minard. Yes.

Mr. Merrey. They are offered to show the duties which were put upon these two railroad companies by that charter. We will claim that it is still upon them, or their lessees.

Commissioner Donges. They will be admitted.

40 *Mr. Merrey.* There is another provision in the answer which states that certain of these crossings have been put across the tracks after the railroad was laid out and it doesn't specify

Discussion.

which. I ask the commission to direct the amendment of that.

Commissioner Donges. Which paragraph is that. I presume it is paragraph twenty-four?

Mr. Hobart. Twenty-four, I guess.

Mr. Minard. Yes.

Mr. Merrey. I ask that the company state particularly what crossings they refer to. 10

Commissioner Donges. These are the paragraphs you have in mind (indicating).

Mr. Hobart. May I make a suggestion in that respect: I suppose the records of the city will show what is the fact; they may be in the records.

Mr. Merrey. The records prior to 1902 were destroyed by the fire.

Mr. Minard. So were ours. Our records were in Paterson.

Mr. Merrey. The railroad company didn't burn up. 20

Mr. Minard. No, but the records did.

Mr. Merrey. The Paterson & Ramapo Railroad?

Mr. Minard. The Paterson & Ramapo and Paterson & Hudson River; our records were there too.

Commissioner Donges. I think, in view of the allegation of Mr. Minard that there are certain crossings that this company ought not to be required to pay the cost of altering the grade, because they were subsequent to the construction of the railroad, puts an obligation on you to point out which crossings they are. You say in your answer; subsequent to the construction and commencement of operations of said railroad certain crossings were laid out, and that as to these crossings the said Board of Public Utility Commissioners is without jurisdiction to order respondent at its own expense to alter or change the 30 40

Discussion.

grade thereof, or to construct another crossing in the place or stead thereof not at grade; without pointing out which crossings they are.

10 *Mr. Minard.* The form of this answer was drawn for the purpose of conforming with this board's rules; that conforms and is a denial. It wasn't drawn with the idea of assuming the obligation of proving the plaintiff's case.

Commissioner Donges. No. As you deny and assert there is no obligation necessarily upon your company to do the things that the petitioner asks to have done, because of some circumstances within your knowledge, you ought to point out the fact you rely on to relieve you.

Mr. Minard. Should we point them out now, or should it be part of the proof to sustain the allegations of the answer?

20 *Commissioner Donges.* That allegation points it out and your proof sustains your answer.

Mr. Merrey. There should be positive direct denial of the matter. You are really putting up a new matter in one sense.

30 *Mr. Minard.* Our facilities for ascertaining the facts are perhaps as good and no better than Mr. Merrey's; while I haven't any hesitancy in saying in producing our case we naturally will attempt to prove our allegations there. In order to prove that we would probably have to make the necessary allegations or get the best evidence possible before the board.

Commissioner Donges. I think your answer should state which of the crossings come within this class according to your view.

Mr. Hobart. Whatever this board rules we will try to comply with.

Commissioner Donges. Your amendment should be amended to point out that specifically.

40 *Mr. Minard.* It will have to be a sort of deduction. We will do it as soon as we can.

Andrew F. McBride, direct.

Commissioner Donges. In ten days?

Mr. Minard. I don't know. We will try to do it in ten days, but I wouldn't give any assurance that we would.

Commissioner Donges. Suppose we say ten days; if you find you can't do it you may advise.

Mr. Merrey. Do you know the streets yourself?

10

Mr. Minard. I know as Mr. Merrey knows, without being able to sustain it with proof. I assume what you want to know is to know. I am only guessing at it. We are not setting forth any guesses in our answer, that is the difficulty.

ANDREW F. McBRIDE, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

20

Q You are Mayor of the City of Paterson?

A Yes, sir.

Q How long have you been mayor?

A Five years and ten months.

Q And you are a practicing physician?

A Yes, sir.

Q Did you hold any official position before that of mayor?

A Yes; county physician for eleven years.

Q That was just previous to your becoming mayor? 30

A I resigned the office to become mayor.

Q You became mayor in 1907?

A 1908.

Q Eleven years previous to that time you were county physician?

A Yes, sir.

Q What were your duties as county physician?

A Why, to investigate all sudden deaths, or deaths without medical attendance or deaths under suspicious circumstances. 40

Andrew F. McBride, direct.

Q How long have you been a practicing physician?

A Twenty-five years.

Q Where has your practice been?

A Paterson, N. J.

Q In the course of that practice do you go throughout the city frequently?

10 A Yes, sir; every day.

Q And what parts of the city do you cover?

A The entire city and most of the County of Passaic, with the exception of Passaic city. I frequently go through Passaic city.

Q What do you use now for getting about?

A A car.

Q An automobile?

A Yes.

Q How long have you been using that?

20 A Nine or ten years.

Q And before that how did you get around?

A A carriage.

Q Now, do you pass any of the crossings of the Erie Railroad?

A I do.

Q In your work?

A I do.

Q How often?

A Why, many times a day.

30 Q Tell us anything you have observed at the Market street crossing in the way of impeding travel?

A Why due to the passage of trains there, both passenger and freight trains and switch trains, I notice that the traffic is impeded there very much.

Q Can you give us any description as to just how it is impeded?

A The gates are lowered when the trains pass and that necessitates traffic being obstructed.

40 Q Have you passed it and noticed any number of vehicles held up?

A Yes.

Andrew F. McBride, direct.

Q And pedestrians?

A Yes.

Q How many about?

A I never counted the number; sometimes there are more than others. I have noticed as high as (this is a guess, of course) as many as twenty vehicles on both sides of the tracks and a great number of people; how many I don't know. It may be fifty or sixty. 10

Q And trolley cars delayed?

A Yes, sir.

Q Taking up the other crossings; you use Madison avenue?

A Yes, sir.

Q Do you find any delay there?

A Yes.

Q Have you been delayed?

A I have, frequently.

Q Clay and Straight streets? 20

A That is a bad crossing. Two streets come there, Straight and Clay meet at the crossing, practically; almost meet.

Q You say it is a bad crossing; what do you mean?

A Coming from the southwest, crossing Straight street, you find it obstructed by the rolling mill; on the left hand side by a coal yard and material yard.

Q Can you see any distance along there?

A Not on that side.

Q There is a curve in the railroad track? 30

A Yes, the other side is Lambert's mill.

Q Cedar street, do you use that?

A I do, frequently.

Q Have you found much delay there?

A Yes.

Q What is the character of the crossing, as to danger?

A Why, it is a very dangerous crossing. There are a number of tracks for freight cars, the Erie freight station is located at Cedar street and Rail- 40

Andrew F. McBride, direct.

road avenue on one side; then your view is obstructed by the great number of freight cars there are. There is a yard there that they load and unload. You can't see unless the track is cleared; these freight cars are on one side. On the south side your view is obstructed by the presence there of the freight station.

Q You find it dangerous in crossing at that point?

10 A I have always been very careful of the danger. On the other side is the Paterson Brewing Company and McNab & Harlin foundry on the other side to obstruct the view. The street is narrow there, too.

Q You use Ellison street?

A Yes, sir.

Q What is the condition there?

A That is a bad crossing; I mean bad as far as danger is concerned. Those buildings are close up to the track. The Laffray & Herman Company is on one side, a concrete building occupied by Kiley, a business firm there. That is the east side of the track. On 20 the west side of the track you have a lumber yard on one side and an express company.

Q These buildings are close to the track?

A Yes, sir.

Q The main track?

A Yes, sir.

Q Van Houten street?

A That is dangerous on account of the buildings 30 close to the track on one side and dwelling houses with a long high wall on the other side; and Robin's mill on the other side; a flat on the other side.

Q Broadway?

A Broadway is, likewise, dangerous. You have a brewery on one side close to the track and the old Gilsey on the other side, this side of the track; and the east side is also close up.

Q Have you seen traffic delayed at that point?

A Yes.

Andrew F. McBride, direct.

Q What is the great bulk of the traffic at that street?

A Vehicles, trolley cars, pedestrians.

Q The Fair street crossing?

A That is likewise a bad crossing. There is a grade coming up Fair street crossing from the west. It is built up closely at the two sides.

Q Hamilton avenue?

A Hamilton avenue is a street likewise with quite a steep grade crossing from the west. That is built up by dwellings and a coal yard.

Q Lafayette street?

A Lafayette street is also a dangerous crossing. There is Smith's coal yard on one side and some buildings on the other side.

Q Franklin street.

A Likewise a dangerous crossing. There is a grade coming up from the west there.

Q Keen street?

A It is quite a dangerous crossing also. There is a feed store on one corner and a machinery shop on the other, and a mill on the other.

Q Warren street?

A Warren street is built up close to the track.

Q River and Putnam street crossing?

A That is a bad crossing. It is one of the main avenues in our city. It is a double crossing.

Q It is a crossing at a diagonal?

A At a diagonal.

Q It makes a very long crossing?

A A very long crossing.

Q Is it your opinion traffic is impeded on all the crossings?

A It is.

Q And they are all dangerous?

A Yes, sir.

10

20

30

40

Samuel V. S. Muzzy, direct.

Cross examination by Mr. Hobart.

Q Doctor, these various observations you have referred to at the different crossings are all shown on the map prepared by the city?

A I haven't examined them.

Q You haven't examined the maps?

A I have seen them; I haven't examined them at
10 all.

Q Maps have been prepared by the engineering department which purport to show the different obstructions?

A I imagine so.

Q These several crossings which Mr. Merrey called to your attention, which are the most dangerous?

A Why, I believe at "straight and Clay streets is the most dangerous and the one at River street and
20 Putnam street.

SAMUEL V. S. MUZZY, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

Q How long have you lived in Paterson?

A Sixty-one years.

Q You have been in business there and are now?

A Since 1867.

Q You are now President of the Board of Trade of the City of Paterson?
30

A I am.

Q And for some time back on the Grade Crossing Committee?

A Yes.

Q Did you take up the question with some of the officials of the Erie Railroad Company?

A I did.

Q With whom?

A With the vice-president, Mr. Stuart, was one,
40 and the engineer, I have forgotten his name.

Samuel V. S. Muzzey, direct.

Mr. Hobart. I object to his stating evidence of taking up grade crossings with officers of the Erie Railroad. It is immaterial and has nothing to do with this petition.

Commissioner Donges. Is that along the same lines pursued at the last hearing?

Mr. Muzzey. Yes, by Mr. Fitzgerald.

Commissioner Donges. What is the objection? 10

Mr. Hobart. It is immaterial. What possible bearing will it have, taking it up with officials of the Erie Railroad whose names he has forgotten, the grade crossings at Paterson. It has nothing to do with the question before the board.

Commissioner Daniels. May not it be the witness is acquainted with and confirms those who spoke on the subject?

Mr. Hobart. If that is the purpose, that, perhaps, is an entirely different purpose. 20

Mr. Muzzey. I suppose it will go further; that is one of the purposes.

Mr. Hobart. I object now.

Commissioner Donges. The board will take the testimony.

Q Was a plan presented for the elimination of the crossings in Paterson?

A There was.

Q And did you discuss with the railroad officials whom you have named the advisability or necessity of eliminating those crossings? 30

A I did.

Mr. Hobart. I object to that on the same ground mentioned, and on the further ground there is nothing to show the gentlemen he discussed the matter with had any authority whatever to bind the company.

Commissioner Donges. Does it appear with whom it was discussed? 40

Samuel V. S. Muzzy, direct.

Mr. Merrey. I understood him to say the vice-president.

Witness. Mr. Stuart, vice-president, I don't remember the name of the engineer. It was informally three years ago, November, 1910, I think it was.

10 *Mr. Hobart.* This company is run by a board of directors.

Witness. The vice-president at that time, if you will pardon me —

Commissioner Donges. We will take the testimony.

20 *Mr. Minard.* I think this board knows very well the department in charge of the construction is not the vice-president's department; vice-president Stuart is an operating vice-president and has nothing to do with the construction department.

Commissioner Donges. We will take the testimony for what it is worth.

Q Did they express an opinion upon it?

A They did.

Q What was it?

Mr. Hobart. I object as immaterial and not binding on the company.

Commissioner Donges. It will be admitted.

30 A The vice-president of the road, taking the initiative in the answer, stated he was well aware Pater-son needed elimination of grade crossings. The road, the board of directors had requested the engineer and his corps of engineers to prepare maps covering the same; which were displayed to our committee. I was then acting chairman; one of the committee of the Board of Trade. We discussed this thing in a friendly-way. There didn't seem to be any objection to the necessity of eliminating the grade crossings. In fact,
40 they thought it would be a good thing for the city and a very good thing for themselves.

Samuel V. S. Muzzy, direct.

Commissioner Donges. Who expressed that view?

Witness. Mr. Stuart and the engineer both. I can't recall the name of the engineer.

Q Was it Allen?

A It was the gentleman who prepared the map for us. You were there at the time. It was the engineer at that time; he was the engineer; the first engineer. He was very glad we came there in this open way to discuss the thing. He finally said the only trouble in the way was we are unable to do it on account of lack of funds. He asked if we could provide money or the City of Paterson issue bonds of some sort, issue their bonds to provide money and we would be reimbursed in a number of years after. That was the proposition Mr. Stuart put up. It was simply tentative, of course, but it was so tentative, it was taken up considerably in the discussion. We couldn't do that. The city couldn't do that legally, so we dropped that. I merely mention that to show the disposition of the railroad. I think we have one or two people that will confirm what I have said. There was no objection; no discussion in regard to the necessity of it. Paterson was recognized as a city where the traffic was increasing every year and it is a manufacturing town where parts of our mills are located on one side of the track and part on the other, and the operatives have to travel back and forth frequently, six times back and forth to their mills; and the service is growing all the time. If you will notice the crossing at Broadway the east side of the track there is a hill; and there has been one or two serious accidents; I don't know whether anybody was killed; cars were smashed and gates smashed by the trolley coming down the hill and not under control. And that same condition exists at Market street where we have a larger number of people crossing the track and a

Samuel V. S. Muzzy, direct.

larger number of vehicles than we do at Broadway; but Broadway is equally dangerous; one of our principal streets. As the mayor said, River street is one of the most dangerous streets on account of the diagonal crossing, long crossing at River street; it intersects with a street, but a smaller street. All these conditions were set forth at the interview; which was most
10 cordial. There wasn't an objection put forth; there wasn't a stand taken by the Erie Railroad or the representatives that indicated they didn't think it was necessary, entirely necessary.

Q General, can you tell us which part of the City of Paterson has developed the most rapidly at the present time and some time back?

A Market street.

Q I am not meaning the business, but the residential section?

20 A Well, I should say Market street, residences too. Well, I don't know; out on the east side, of course, Broadway is growing—in fact, the three streets—River street crossing.

Q Not referring to the crossings, but the section of town that is growing, increasing in population?

A That is pretty hard to tell. It is the east side of the city, but that covers three streets.

Q The business center is on which side of the railroad?

30 A On the west side.

Q Did you notice whether the traffic is increasing or not over these crossings you use?

A Yes, sir.

Q Which crossings do you use most frequently?

A I am living in Passaic for the last few months. I did use Broadway for thirty or forty years, but I still see the crossing over Market street. I usually come in on the Erie and get there at 9.30. I see them every day; but I cross them quite frequently.

Samuel V. S. Muzzy, cross.

Q You say there is an increase in the use of Market street?

A Yes, decidedly.

Q Is that caused by the growth of the population on the east side?

A Yes.

Q And they have to cross the tracks to come to the business center?

A Yes.

10

Cross examination by Mr. Hobart.

Q When was this interview you had with Mr. Stuart and this unknown engineer?

A I am under the impression it was in 1910, November, our secretary, who is here, can furnish that date.

Q About three years ago?

A About three years ago, yes.

Q At that time I understand the matter was suggested by the Board of Trade, or by you as representative of them that the city might be willing to contribute to the expense of eliminating this grade crossing?

20

A Yes.

Q Did you get to the point of any amount of money the city would contribute?

A I think our mayor said, we were so earnest in the matter, that we considered 15%.

Q Is that all?

30

A No, we wouldn't go 25%. Personally I said I would favor as high as 25%, but the mayor said no, he wouldn't stand for that.

Q You say 25% even now?

A I think life is dearer to the community than money; yes. Personally, yes, but as long as—

Q As long as the company must pay it all, you would rather have them do that?

A They are big enough to pay it all. They ought to be big enough to pay it all.

40

Samuel V. S. Muzzey, cross.

Q Have you in mind what cost your committee suggested to the president, the figures discussed?

A At that time Mr. Stuart had these plans and the engineer said it would cost \$1,200,000.

Q Covering what streets?

A I think it included River street, I think that was the last street.

10 Q River street to the north?

A River street to the north. I don't know whether it was Madison avenue or Straight; I think Straight street, and concluded at River. The plans are here.

Q Those will show?

A Those will show; those ones I refer to.

Q Do you recollect, General, if there was discussion at that time relative to two sections or series of grade crossing to be eliminated?

20 A I think they were; two plans submitted. I think they were alternative plans.

Q Which one of those figured this \$1,200,000 referred to?

A The one I stated. I am not sure about that. The plans will show. The figures were on the plans, I think.

30 Q You have referred to a number of manufacturing plants which are on both sides of the railroad tracks, and which you say operatives go back and forth over the tracks. Do you recollect the names of some of them?

A Yes. On the east side of the track—well, I don't know exactly the operatives, I will mention the names of the concerns.

Q Maybe we can save time by showing you the list that was given in paragraph twenty-one in the answer filed of the Erie Railroad Company. Just look at that and see if that shows the plans as far as you recollect?

40

Samuel V. S. Muzzy, re-direct.

A Leslie Elliott Company, east side of the track; Cook Locomotive Works, west side of the track of Madison avenue; Passaic Steel Company, west side of the track at Straight street. I don't remember where McDonald or Zabriskie are, Commercial Lumber & Mill Work Company, I don't know them. C. Kelly, west side of the track. Standard Oil Company, west side of the track. I don't know whether it is necessary to go on with each one.

10

Q No, don't go in detail. After looking over the list you can state generally that all the various industries are located on either side of the track.

A Yes, they vary; John Agnew, west side; Samuel Smith & Sons, west side—

Q Nearly all of them have connections with the railroad tracks?

A No; I don't think all of them do.

Q Most of them do?

20

A I couldn't tell you that.

Q Some of them do?

A Yes.

Re-direct examination by Mr. Merrey.

Q There are many industries besides these of large size in the City of Paterson, are there not?

A Yes.

Q I believe you had a bill prepared for the elimination of the grade crossings, your grade crossing committee?

30

A Yes.

Q It was introduced, wasn't it?

A Yes.

Q What year was that?

A I think it was the session in 1911; it just followed after this interview in New York.

Q At the time what is known as the Pierce Bill was introduced?

A 1912.

40

Samuel V. S. Muzzy, re-cross.

Q Your committee attended a hearing, didn't they?

A Yes.

Q Did that say the city was willing to take a portion of the cost?

A Yes.

Q What was that portion?

10 A 15%. That didn't apply to the provisions of the Pierce Bill; I think it was 25%.

Q 15%.

A Was it 15%? Where was the 25% mentioned?

Mr. Minard. I think the General refers to the bill of 1910; 35% and 65%.

The Witness. No, that was before. I remember that bill.

20 Q The position of the city was it was willing to pay 15% in order to have the thing done properly?

A Yes.

Q That was the position of the Pierce Bill?

A Yes.

Q Which allowed the city to make an agreement with the railroad company?

A Yes.

Re-cross examination by Mr. Hobart.

30 Q Is that the bill, general, which was set aside by the courts, on account of some blunders of the Governor or the people at Trenton?

A I think it was the Pierce Bill that was sent to the House; the one you refer to that was set aside.

Q You referred to some accidents, having in mind particularly some trolley accidents?

A Yes. I don't think they were attended with loss of life; but the cars were smashed and the gates were smashed. I merely mentioned that to show it was dangerous down hill.

40 Q Because the cars were smashed going through the gates after the gates were down?

Samuel V. S. Muzzy, re-cross.

A Yes. If the grade aspect had been eliminated there wouldn't be any possibility of the accidents if an imbecile went on there.

Q If the motorman had controlled his car there wouldn't have been any accident?

A All human nature, you have to guard against that.

Q (*By Mr. Gilmour.*) I want to know what you know about those accidents; whether you saw the accidents or saw the cars? 10

A I read the papers. It was authentic.

Q (*By Mr. Merrey.*) What prompted the Board of Trade to take up the grade crossing matter?

A The accident at Broadway crossing, Mr. Fronick; two were killed at that time. I don't think in a trolley car.

Q (*By Mr. Gilmour.*) Wasn't it in an automobile? 20

A Yes.

Q Isn't there a derail at that crossing?

A Yes. I don't care what crossing you take; how many gates you put there; two were put at my suggestion at the Broadway crossing; still it is dangerous there and it is only the elimination of the grade crossing—

Q I am not speaking of the crossing itself, the crossing danger. I am objecting to the statement that the operation of our railway is careless. 30

A No; I don't say that. I think you are careful; but beyond that, you can't be careful enough. It isn't in the power of human to guard against that, because there is a hill and sometimes it gets beyond the control of the railway.

Q (*By Mr. Merrey.*) You said there was an accident and that Mr. Gilmour's railroad was careless, you didn't mean the trolley?

A Yes. 40

Samuel V. S. Muzzy, re-cross.

Q (*By Mr. Hobart.*) Do you think the railroad is careless?

A I think the railroad exercises due care under the circumstances. In exercising due care it becomes a great nuisance to the community.

Commissioner Donges. How?

10 **Witness.** Six miles an hour going through the town. The last year or two since the accidents have occurred they have been reducing the speed materially.

Q You think an order of this board operates as a nuisance to Paterson?

A Not because they obey the board, but the results obtained by obeying the board.

Commissioner Donges. In what manner is the nuisance created?

20 **Witness.** It takes that longer to get to New York and the gates are down now. I think, when a train is at Broadway or Fair street, the gates are put down on Market street and people wait and wait and wait two or three minutes before they can cross when a train isn't in sight. That is a necessary precaution. Notwithstanding that, **when the gates are down, some people run under the gates.** They are not stopped by the flagman; I presume they have instructions they rely on
30 the notice that no person should not go there. They do go there. If the grade crossing is eliminated they couldn't go there; it would be impossible. We want to make it so safe that a man who is an imbecile going on the street couldn't be run over.

William Wieda, direct.

WILLIAM WIEDA, sworn on behalf of the petitioner.

Direct examination by Mr. Merrey.

Q Mr. Wieda, how long have you lived in the City of Paterson?

A Nineteen years.

Q What business are you engaged in?

10

A Retail and manufacturing confectioner.

Q Where is your place located?

A 210 Market street for the last three years; before, 212 Market street.

Q Near the Erie Railroad?

A About 500 feet from the crossing.

Q Are you connected with some board or association there?

A The Market street Business Men's Association.

Q Are you president of that organization?

20

A Yes, for the last four years.

Q Have you given any attention to the question of the elimination of the grade crossings in the City of Paterson?

A Yes; from time to time and almost every day on account of the danger and also for business purposes.

Q Do you use any of these crossings?

A I use the Market street crossing sometimes four or five times a day. Then again four or five times a week only. Years ago I crossed it at least three times a day, because I used to live on the other side of the railroad.

30

Q Is the railroad crossing in sight from your place of business?

A Yes, sir.

Q Can you tell us whether the traffic has increased at Market street or not?

40

William Wieda, direct.

A The traffic at Market street is increasing constantly. To find out the number of people passing a given place I employed a man about four years ago and had him count the people.

Mr. Hobart. I object to what the witness heard a man say.

10 *Commissioner Douglas.* He ought to confine it to his own knowledge.

Q You have nothing but your impression from daily observations of the street?

A That is all.

Q What is your impression as to whether it is increasing or not?

20 A It is constantly increasing on account of the growth east of the Erie Railroad. The population is growing constantly, building up, the whole section is building rapidly in the last eighteen years; building every day.

Q You have noticed that growth yourself, have you?

A Yes, business has increased on Market street; the merchants have increased on Market street and the rent has tripled in the last ten years.

Q The section on Park avenue just opposite the railroad, has there been much increase in houses?

A Yes, sir.

30 Q What is the character of those houses?

A Tenement houses and apartment houses.

Q Many of them?

A Yes, three blocks I believe, both sides of Park avenue; where there used to be small one-family houses before the fire.

Q Do the people from those houses use the crossing?

A They have to; it is the only way to cross them.

Mr. Hobart. No questions.

James E. Taylor, direct.

JAMES E. TAYLOR, sworn on behalf of the petitioner.

Direct examination by Mr. Merrey.

Q Are you a street commissioner in the City of Paterson?

A Yes, sir.

Q How long have you been employed there?

A Two years, five months.

10

Q Have you had any occasion to observe the railroad crossings running from Madison avenue to River street?

A Yes, sir.

Q The count of persons going over the crossing was made under your direction?

A Yes, sir.

Q From your own experience—do you use the crossing?

A Yes, sir.

20

Q Which one?

A I use them all.

Q Do you find any delay or impeding of traffic at these crossings?

A Yes, sir.

Q Much?

A Well, a great deal.

Q Can you tell us which crossing there is a great deal of traffic impeded?

A Straight street and Market street I noticed it most.

30

Q Broadway?

A I haven't noticed Broadway so much.

Q River street?

A River street.

Q How are these crossings paved for the traffic across them?

A Part isn't paved at all; only just alongside the railroad.

40

James E. Taylor, direct.

Q You have a great deal of trouble about that?

A Yes, I have noticed them.

Q How is the traffic taken across, on planking?

A Yes.

Q Are any of the crossings not planked?

A Yes.

Q I mean that have something else besides plank-
10 ing?

A Straight street.

Q Is this planking changed frequently?

A Yes, I think they have changed it on the course
of two years.

Q Which one?

A Most all of them; I went over them. They have
replaced the old planking.

Q That caused delay while they were doing that?

A Yes; they had a permit to block the street.

20 *Commissioner Dungen. Do what?*

Witness. Block the street; shut off the street.

Q Can you tell us how often that is done, plank-
ing?

A It has been done once this year. That is when
they were changing rails, putting in heavy rails.

Q Can you tell us which is the most dangerous of
these crossings in your observation?

A I think Straight, the intersection of Straight
30 and Clay.

Q Why, what makes you feel that is the most dan-
gerous?

A The most accidents happen there and they hold
them off longer. People going to the mills from the
west side run in under and between freight cars when
they are doing their switching there. There is times
when they hold them up ten minutes at the Straight
street crossing. Generally it is around noon time
or morning when people are going to and from work.

James E. Taylor, cross.

Cross examination by Mr. Hobart.

Q Mr. Taylor, how long have you been a street commissioner?

A Two years, five months.

Q Referring to the new planking on Straight street; when was that put down, do you remember?

A No; I think it was along this spring at the Straight street crossing. 10

Q When was the last time before that any new planking was put there?

A I don't remember; about one year. That was done twice since I have been in there; most of the paving in between the tracks on Straight street crossing.

Q They were changing the rails at that time, putting in different rails, heavier rails?

A They changed the rails this year.

Q That was the time they changed the planking? 20

A Yes, sir.

Q You spoke of the crossing at Straight and Clay streets.

A They are two crossings, Straight and Clay streets.

Q Really it is only one crossing?

A No, two crossings. We say that is the most dangerous, Straight and Clay street crossing, on account of the switching engines switching in there.

Q You spoke of accidents happening there? 30

A Yes.

Q Did you ever see any?

A Yes, sir.

Q How many?

A One. I stood right there and seen it.

Q When was that?

A Along this summer some time.

Q Do you remember the name?

A No, I don't know.

Q Was it a man or a woman; tell us about it. 40

James E. Taylor, cross.

A No; I ain't sure whether it was a man or a woman. I come in there after the accident occurred. I didn't stop to look at it at all; I went right along.

Q What did you see of it?

A Just seen there was an accident there.

Q Do you know whether the injured person dodged under the gates?

10 A I think he dodged in between cars on account of the switching.

Q While the cars were moving?

A I don't know; switching there all the time. The cars must have been moving or he wouldn't have got caught.

Q You spoke of some count made under your direction; a count of the number of people?

A Yes.

Q What streets?

20 A All the streets.

Q Referred to in this proceeding?

A From Madison avenue to Fifth avenue.

Q When was it made?

A The first part of the summer.

Q Who was the man that made it?

A Dunleavy, Kane, Flynn, O'Rourke, Crooks and Owrey.

Q Are they here to-day?

A No.

30 Q (*By Mr. Merrey.*) They testified last week?

A Part of them were here.

Q (*By Mr. Hobart.*) Part, not all?

A I think there was four last week.

Q You spoke of being held up ten minutes one time?

A Yes. I wouldn't say positively; I have been held up ten minutes at Straight street.

Q On what day?

A I couldn't tell you the date or time; frequently.

40 Q Once?

William Wieda, direct.

A Most every noon time I am held up at Market street three or four minutes.

Q Let us stick to Straight and Clay streets; when was you held up there ten minutes?

A I couldn't say just when it was.

Q Were you ever held up ten minutes?

A I think I was.

Q Can you give me an idea when it was?

10

A No, I go over there so often.

Q You didn't hold a stop-watch to see how long you were held up?

A No. After I had been there three or four minutes I pulled out my watch, and after that it was, say, five minutes.

Q That isn't ten minutes.

A I say five minutes, but it had been four or five minutes before that.

Q One particular occasion do you remember doing that? 20

A Yes.

Q Is that the only one you remember?

A I never pulled out my watch before.

WILLIAM WIEDA, re-called on behalf of petitioner.

Direct examination by Mr. Merrey.

Q Did you ever time the delay at the Market street crossing?

30

A Yes, I did.

Q How long were you delayed?

A The longest time was four minutes.

Q And when was that?

A About four weeks ago, one noon. The condition was that the train was coming in from New York that brings some express along. That train came in; another switch engine went up on the other track and then the next switch engine came in to get the car from the train further west, and when that switch

40

Discussion.

engine pulled in front of Market street the train went west by Broadway and the freight was sighted and the passenger train, and then four minutes' time elapsed and the gates were down.

Mr. Hobart. No question.

Mr. Merrey. That is all I intend to offer outside of Mr. Maybury's testimony.

10 *Mr. Hobart.* I don't care to go ahead with our case until the city is finished.

Mr. Merrey. The matter Mr. Maybury will give is merely that which he is required to give as part of the commission.

Commissioner Donges. Mr. Maybury is really not a witness of the municipality.

Mr. Hobart. I understand he is going to call him as a witness.

20 *Commissioner Donges.* The board always prefers that its engineers and inspectors shall be, if called to testify, put on the stand as employees of the board and at the board's direction; so Mr. Maybury, if called, he will be called at the instance of the board and you may proceed then, if you choose, on the assumption that the municipality's case is closed.

Mr. Hobart. Of course, the board knows the testimony Mr. Maybury will give, and I would like to know what that is before we proceed.

30 *Commissioner Donges.* I don't know. Mr. Maybury may or may not be called. I would say that it wouldn't be prejudicial to your rights.

Mr. Hobart. May I make another suggestion. Of course, I don't represent any of the gentlemen or companies that are named in the answer to whom the board is going to send notice of the hearing. It occurs to me those gentlemen should be present when the testimony is given. Their interests are seriously affected.

40 *Mr. Merrey.* The principal thing that I shall ask from Mr. Maybury is to produce before the

Discussion.

board its records which, I believe, he is in charge of, of accidents at these crossings.

Commissioner Donges. The reports?

Mr. Merrey. Yes.

Mr. Hobart. That is very important. We want to know what they are.

Mr. Sommer. You know. They are the ones you made to the board.

10

Mr. Hobart. I don't know which Mr. Maybury will put in.

Mr. Merrey. All the crossings called for. I may say it is impossible for us to get a complete list of the accidents at these crossings except as to those the board has. We have a record of the number of deaths at those crossings, but we can't get you the information concerning them.

Commissioner Donges. Your case is closed with the exception of producing the report of the railroad company made to this board.

20

Mr. Merrey. Yes.

Commissioner Donges. Of accidents at these crossings.

Mr. Merrey. Yes, sir.

Mr. Minard. May I suggest this to the commission: This commission has powers to issue subpoenas *duces tecum*, and the complainant can have those at any time they want it. So his case is never closed. They never asked us.

30

Commissioner Donges. Those records are in the control of this board, but the board of course would request them to be produced; no subpoenas would be necessary.

Mr. Minard. I wouldn't say definitely, but I think our people would produce them if they asked for them.

Commissioner Donges. Of course, the records of this board are open to any one. Are you ready to proceed?

40

Discussion.

10 *Mr. Hobart.* No, sir, I am not, especially in view of the fact that these other parties will be brought in. Of course, that is only a suggestion. I don't appear for them in any way. If I may make the further suggestion; it would facilitate the entire matter if Mr. Merrey undertook to close as far as he is concerned, and knowing, exactly that the purpose is of putting it in, we can be prepared with that feature, and other lines.

Commissioner Donges. Mr. Merrey has closed. The board will, of course, order the production of the reports made to it. As far as the testimony, I understand Mr. Merrey to say, on the part of the municipalities, that is closed.

Mr. Merrey. Yes.

20 *Commissioner Donges.* Couldn't you meet the specific contents of the reports?

Mr. Hobart. No, sir.

Commissioner Donges. There seems to be no reason, if you are ready, why you shouldn't go on.

Mr. Merrey. All I desire is to get into this particular record the records the board had as to the conditions of the crossings, the classification, and so on, so we may have them.

Mr. Hobart. We are not prepared to go on to-day.

30 *Commissioner Donges.* Adjourned until Thursday, December 4th, at the Chancery Chambers, Jersey City, at 10.30 o'clock A. M., with the understanding that if the case is not closed we will on Friday devote as much time as possible to it.

Discussion.

FOURTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Jersey City, N. J., Thursday, December 4, 1913.

PATERSON GRADE CROSSING
ELIMINATION, ERIE RAILROAD. }

Before Commissioners Donges, Hillery and Daniels. F. H. Sommer, Esq., Counsel. 10

For City of Paterson appears E. F. Merrey, Esq., and R. B. Lewis, Esq.

For Erie Railroad Company appears G. S. Hobart, Esq., and D. E. Minard, Esq.

For Passaic Water Company appears Humphreys & Sumner.

For adjoining property owners appears W. B. Gourley, Esq. 20

For Paterson & Ramapo Railroad and president and directors of Paterson & Hudson River Railroad appears W. I. Lewis, Esq.

For D. Fullerton & Co., and Swift & Co., appears W. R. Hudson, Esq.

Mr. Humphreys. I represent the Passaic Water Company, which has water pipes underneath every crossing mentioned in the petition, except one crossing. This company thought it was not necessary to file an answer; but on consideration thought it better to do so, in order that their rights shall be protected and that they should be permitted to testify if occasion required. It doesn't want to spend money under any law that is unconstitutional. I ask leave to file answer of the Passaic Water Company. 30

Commissioner Donges. Is there any objection?

Mr. Minard. No. 40

Discussion.

Mr. Merrey. No objection.

Commissioner Donges. Mr. Sommer?

Mr. Sommer. I would like to see the answer.

10 *Mr. Gourley.* If the commission please, I represent D. S. VanKirk, Paterson Brewing & Malting Company, John Agnew Company, Hermann Company, Jacob Meyer and DeVogel, McNab & Harlin, and James Wilson & Sons, Samuel Smith & Sons and Leslie Elliott Company, partners, Henry M. Post. I ask permission to file an answer for each of these in this case.

Commissioner Donges. Is there any objection?

Mr. Merrey. I want to ask whether there are a number of switch owners in a like position that you represent.

20 *Mr. Gourley.* There are some others. I represent Fuller's Express Company and Mills Company—

Mr. Merrey. Nelson Mills?

Mr. Gourley. Formerly Nelson Mills. I ask permission later to file an answer in this case. I would also like to file an answer for the National Silk Dyeing Company later. I have a formal answer here; I have some facts I want to verify.

30 *Mr. Lewis.* In behalf of the Paterson & Ramapo Railroad Company and of the president and directors of the Paterson & Hudson River Railroad Company I would ask leave to file an answer within ten days. Leave was granted to me in the Rutherford case last week. Now, in the Paterson case, I would like similar leave. I have given a great deal of time to the investigation of matters involved and of interest to the two companies and the relation to each other, and I have covered a period from 1831 down to the present. It required an examination of the various acts of the Legislatures that were passed from time to time and the proceedings in court and a multi-

40

Discussion.

tude of things, and I really haven't been able to intelligently consider and adjust it. I would like to have ten days in order to file my answer. I don't think it will occasion any taking of evidence. I think all the evidence will be put in that is necessary to be put in in this hearing without my answer. It is simply matters that involve the constitutionality of the law.

10

Commissioner Donges. Is there any objection? (No response.)

Mr. Humphreys. In regard to the Passaic Water Company, Mr. Sommer makes no objection to our filing the answer.

Commissioner Donges. I understood that you may want to offer proof?

Mr. Humphreys. It is very doubtful; I think we will have no testimony; it is just possible.

Mr. Gourley. We will, of course.

20

Commissioner Donges. Your clients are all—

Mr. Gourley. Property owners, yes. I should say one or two of these—

Commissioner Donges. Your rights are subject to the testimony already taken.

Mr. Gourley. Yes. I haven't had a chance to read that. I want to say one or two are outside the immediate district affected, but the possible effect may be embraced within it.

Mr. Minard. I don't know as it is hardly fair to say that those people are bound by the testimony offered. They had no notice of these proceedings until the last hearing when it was decided to have notice sent them, and they are now here.

30

Commissioner Donges. I understand they were parties to it.

Mr. Minard. They were never parties until notice was sent out by the board at the last hearing. We gave the names in our answer.

40

Discussion.

Commissioner Donges. If they come now they must come in the proceedings at this time and be subject to the testimony already taken, Mr. Minard.

Mr. Minard. That may be true; it is a question whether they can be compelled to do that or not.

10 *Commissioner Donges.* Mr. Gourley said he was willing.

Mr. Gourley. I haven't seen the testimony. There may be something I wish to cross examine on.

Mr. Merrey. I don't see as that concerns him, the Erie Railroad Company, if somebody else doesn't have a hearing. I think it is up to the other people to make an objection; he is not called on to do so.

20 *Commissioner Donges.* That is true.

Mr. Minard. That isn't true. If these people come in as defendants to contest the constitutionality of this law and they subsequently contest it, we are interested in the result. That would result in a benefit for us as well as for them. We cannot say they are separate defendants and our rights are not co-related.

30 *Commissioner Donges.* You are not in a position to assert the other defendants may not come in and bind themselves by the proceedings already taken.

Mr. Minard. You are not in a position to say these people are separate defendants. They are people who should have been made parties in the beginning under the language of the act. If the petitioner failed to do it, they cannot possibly by any order of the commission, be foreclosed of the opportunity of putting in their case from the beginning even to hearing it all over again.

Discussion.

Mr. Sommer. We offer any witness that has been sworn for cross examination by these parties now coming in if they desire it.

Commissioner Donges. The commission would say, any person coming in now and being made a party, have that opportunity.

Mr. Minard. That is the only point I desire to make. 10

Mr. Hudson. I desire to file an answer for D. Fullerton & Company and later for Swift & Company.

Mr. Minard. I would like to see it.

Mr. Gourley. Some of my clients are abutting and some are not abutting switch owners.

Mr. Sommer. I should say there was objection to the answer of D. Fullerton & Company unless the board specifically passes on it. The last paragraph says: "D. Fullerton & Company reserve the right to more fully answer the petition filed herein." 20

Commissioner Donges. Do you desire to answer more fully?

Mr. Hudson. I do.

Commissioner Donges. Inasmuch as Mr. Lewis was given ten days to answer, if there is no objection, the board will entertain your motion at that time.

Mr. Hudson. I want, at that time, to file an answer for Swift & Company. 30

Mr. Sommer. Suppose you withdraw this and make an application for both parties, filing the answer in ten days?

Mr. Hudson. I have leave, in ten days, to file an answer of D. Fullerton & Company and Swift & Company.

Mr. Sommer. Yes.

I have no objection to filing the answers of Mr. Gourley if the city has not. 40

Discussion.

Mr. Merry. I haven't any.

Commissioner Donges. What is your position, Mr. Gourley, in filing your answer in respect to the question raised as to whether your clients are injuriously affected by the failure to make them parties, I understand some of them were not when the proceedings were begun.

10 *Mr. Gourley.* Of course, we don't want to assent to anything done against us. At the same time we don't want to inconvenience the commission's activity. I haven't read this book (indicating). Permit me to reserve my reply until I read this book.

20 *Commissioner Donges.* The thought in the mind of the commission, if there is any question to be raised as to the effect of bringing in interested persons now as parties and objection is made later that the failure to bring those parties in works a hardship or injustice and was fatal to the continuance of this proceeding and the determination by this board, we want to meet that question as early as possible. If that question should be raised the board should meet it and pass upon it and do whatever is necessary to get the record in shape to go on.

30 *Mr. Gourley.* Notice was given to me to appear last night at eleven o'clock. We will be glad to help the commission and raise no technical objections at all.

Commissioner Donges. Judge Lewis, I think your client was given notice originally, that is to say, of the first hearing when notice was served on the other respondents.

Mr. Lewis. I believe not; I believe we were not distinctly informed.

40 *Mr. Merry.* The companies were made parties to the city's petition by notice served upon the Erie Railroad, and they came in and disclaimed any connection with the other company.

Discussion.

Commissioner Donges. No notice was given to the president and directors, if that is the title, of the Ramapo Railroad?

Mr. Lewis. There is no alliance between the railroads.

Commissioner Donges. Do you contemplate raising the question in your answer of failure to give notice to your client? 10

Mr. Lewis. I can't answer that question now.

Commissioner Donges. What is the position of the Passaic Water Company?

Mr. Humphreys. The Passaic Water Company was made a party originally.

Commissioner Donges. And given notice?

Mr. Humphreys. Yes.

Mr. Herreg. I want to say this, the title of one company Judge Lewis represents was incorrectly stated. I think we called it the Paterson & Hudson River Railroad and the title is the President and Directors of the Paterson & Hudson River Railroad. I suppose there is no objection to the misnaming of it and we may correct it in the record. 20

Commissioner Donges. Judge Lewis says his client was not served with notice.

Mr. Herreg. There may be some question whether they were served or not. The secretary of the commission, in giving notice, didn't serve the secretary of the company. 30

Mr. Lewis. At 50 Church street.

Mr. Herreg. It was served on the office of the Erie Railroad Company and probably the service is not correct service. It was assumed the companies were allied and would not disclaim the alliance.

Commissioner Donges. The commission desires to have the record show just what the posi- 40

Discussion.

tion of the parties now answering is on the question, so as to know how to deal with it now.

Mr. Lewis. We wouldn't put the commission or counsel to any inconvenience in the introduction of evidence, subject to our rights if necessary to cross examine if it should develop later it is necessary.

10 *Commissioner Donga.* That opportunity will be afforded any person answering now and coming in. The question is whether it is necessary, in order that the proceeding go on, and examination be made that these parties should have had notice or waive it now.

Mr. Lewis. I think we can safely waive that.

Commissioner Donga. Mr. Gourley, will you give us an answer?

Mr. Gourley. I haven't read the testimony.

20 *Mr. Lewis.* I am in the same position as to that, but I think I can waive it.

Commissioner Donga. I would like the attitude of your client in respect to that question, Mr. Hudson?

Mr. Hudson. I feel I would like to go over that testimony first before being bound by that. I haven't any objection at this time.

30 *Commissioner Donga.* You say, being bound by it. You are not bound by any testimony; the only question is whether or not you now submit yourself to the determination based on the testimony heretofore taken. It is not sought to make that testimony binding on you, but simply whether you would claim it was fatal to the determination of this proceeding as your interests are affected by reason of the failure to have been made a party earlier in the proceeding.

Mr. Hudson. I do not have any intention of making it.

Commissioner Donges. Do I understand, Mr. Minard, the Erie Railroad does take that position, that the failure to give notice to these other parties—

Mr. Minard. No; the Erie Railroad takes this position; it hasn't any objection itself to this case going on, except that it wants to exercise its rights to see that the parties who come in later, because their contentions, if successful, would be a benefit to us and may save us damages which we, under the act, would otherwise be required to pay, that they ought to have at least the right to cross examine witnesses heretofore produced.

10

Commissioner Donges. Yes; but do you assert the failure to bring them in is fatal?

Mr. Minard. No.

Commissioner Donges. You agree the proceedings may go on?

20

Mr. Minard. Yes, certainly.

Commissioner Donges. As if they had been parties originally?

Mr. Minard. Yes; I assume they have the same privileges as we.

Commissioner Donges. Yes. The board gives any person brought in an opportunity to cross examine fully.

Mr. Merreg. The pleading was the service of the petition by the city and the answer; is that the end of the pleadings?

30

Commissioner Donges. Yes. I understand the petitions and answers are all that you are required to file by way of pleading.

Mr. Merreg. It is met usually.

Commissioner Donges. You mean as to whether there are amendments?

Mr. Merreg. Our amendment; may we reply to the answer?

Commissioner Donges. On application for a reply, you can. The commission will pass on any application.

40

Discussion.

Mr. Merrey. If the commission desire we should reply, we will do it. There is no set rule about pleading and whether we are entitled to the last say or not.

Commissioner Donges. Any matter raised in any answer that seems to call for a reply, the commission will give an opportunity for such reply.

10

Mr. Minard. I would like to offer the amendments which we were asked to produce.

Mr. Merrey. You were to give some information, Mr. Minard.

Mr. Minard. About what?

Mr. Merrey. Give us a history of the leases.

Mr. Minard. That will come along. Mr. Palmer will give you that.

20

Mr. Sommer. I think there was an understanding last time that we were to obtain from the files of the board the reports of accidents at these crossings and produce them. I have them here.

Mr. Merrey. Not only the accidents, but also produce the report of your inspector of conditions at crossings.

Mr. Minard. I don't remember any testimony of conditions at crossings. Only the reports, those reports where there were accidents at crossings.

Commissioner Donges. Reports filed by the railroad company with the board?

30

Mr. Minard. Yes.

Commissioner Donges. Whether or not all the reports of the company connected with these crossings were to be introduced, I am not clear.

Mr. Sommer. We were to produce them and they are here. If the board desires any testimony of preliminary investigation or classification, of course, Mr. Maybury is here. I can't take the position of offering it.

40

Mr. Merrey. The position of the board was Mr. Maybury would be called, it was preferred

Discussion.

he would be called at the instance of the board. We may proceed on the assumption the municipality's case is closed.

Mr. Minard. That was only for the production of those accident reports.

Mr. Merrey. No.

Mr. Sommer. That was as to a question of procedure; whether a subpoena shall issue for one employee of the board, or whether the board would voluntarily produce it. 10

Commissioner Donges. The board has no objection to Mr. Maybury testifying and will produce him at this time. Mr. Maybury will be called.

Mr. Minard. The commission will note our objection to any testimony at this time, except that provided at the last hearing, which were the accident reports. We object to any offer in their case now to produce material that was left out before. 20

Commissioner Donges. On the part of the municipality?

Mr. Minard. On the part of the petitioner. I don't know whether the petitioner is entirely the municipality or the commission.

Commissioner Donges. This proceeding is on the petition of the City of Paterson, not upon the initiative of the board. 30

Mr. Minard. I have considered the board a party.

Mr. Merrey. That is all we ask, the accident reports be produced.

Mr. Minard. We have no objection to that.

Mr. Merrey. I would like to say in cases of this kind where reports and schedules are produced, where they are short, they should be in the record, and the stenographer should put them in. I think our last summary, showing the use of the crossing was not put in the record. 40

Discussion.

Commissioner Donges. It was not read into the record?

Mr. Merrey. I think not. We put in the summary of the record made by the Board of Trade at four crossings and then afterwards we showed the count made by the City Street Commission. I think the summary was not in the record.

10 *Commissioner Donges.* There is no objection. It may be read into the record.

Mr. Hobart. That proof is already in. I think it was received as an exhibit.

Commissioner Donges. It is agreed it be read in and made part of the record.

Mr. Merrey. It was a summary of P-33, P-34, and P-35, and P-36, the result of that was one table, it was all consolidated in one table, so if we have a copy of that, it is sufficient.

20 *Commissioner Donges.* It is agreed now that letter be made an exhibit and copied in the record.

(Same is marked Exhibit P-43, as follows):

"The following is a report of the inspectors taking the record at the various crossings of the Erie Railroad:

	Date	Crossing	Trains		Autos	Wagons	Pedes- trians.
			E.	W.			
30	March						
	22	Madison Avenue	38	35	236	481	2,148
	24	Straight Street	75	78	90	222	2,488
	25	Clay Street	83	76	51	314	3,244
	26	Cedar Street	33	35	16	251	3,151
	28	Market Street	38	35	1,051	1,847	27,136
	29	Ellison Street	65	50	22	524	3,822
	31	Van Houten Street	51	46	273	450	3,608
	April						
	1	Broadway	51	46	288	345	10,484
	2	Fair Street	47	41	47	161	1,366
	3	Hamilton Avenue	45	45	108	433	3,258
	4	River Street	55	53	279	756	10,913
	5	Lafayette Street	51	35	35	327	4,611
	7	Franklin Street	64	56	7	91	1,188
40	8	Keen Street	60	53	28	131	1,367
	9	Warren Street	57	53	48	115	1,520

Discussion.

Mr. Hobart. Mr. Maybury will state reference to the date, name of party and name of the street crossing?

Mr. Sommer. Yes.

Mr. Maybury produces from the files of the board telegraphic and written reports of accidents made by the Erie Railroad Company to the board in accordance with the rules of the board and will identify the telegraphic and other reports. 10

Mr. Hobart. I ask we have given the date, name of party and place, as shown by the report.

Mr. Maybury. December 11, 1911, Fifth avenue crossing, Paterson; employee of J. W. Ferguson & Company. April 18, 1908, Market street crossing; unknown man attempting to board train, killed. August 26, 1910, Broadway crossing, two killed, three injured; automobile accident. July 15, 1912— 20

Commissioner Donges. Just a moment. This accident of August 26, 1910. The report of the railroad company to this board showed there were two persons killed and three others injured?

Mr. Maybury. Yes. July 15, 1912, Clay street crossing, trespasser killed. The trespasser went under the gates when they were lowered, John Rooney.

Mr. Sommer. The statement which you have just made and the statements that you shall hereafter make are simply taken from the reports? 30

Mr. Maybury. Yes, sir.

Mr. Sommer. Of the company?

Mr. Maybury. Of the company, yes, sir. September 7, 1912, Keen street crossing; wagon damaged, Siboris Sinson and wife injured.

Mr. Minard. Can I make a suggestion as to that. The name is Libero Sansorie.

Discussion.

10 *Mr. Maybury.* September 18, 1912, wagon struck, Clay street crossing, Mendel Senanseeck, driver, killed. November 6, 1912, Madison avenue, wagon damaged, John Hamilton injured, one other occupant injured. March 24, 1913, Keen street crossing, James Eakins, pedestrian, killed. I presumed in the accidents in this case it covered simply between Madison avenue and River street and no other point on the main line of the Erie in Paterson.

Commissioner Donges. I don't know whether it would be limited.

Mr. Minard. This would be confined to the crossings involved, the reports should be.

Mr. Maybury. They are.

Mr. Minard. Fifth avenue is in there.

20 *Mr. Maybury.* That is the first street west of River street. I have others; I won't read them.

Commissioner Donges. These reports are to be marked as exhibits.

(Accident report, December 11, 1911, marked Exhibit P-44.)

(Accident report, April 18, 1909, marked Exhibit P-45.)

(Accident report, August 26, 1910, marked Exhibit P-46.)

30 (Accident report, July 15, 1912, marked Exhibit P-47.)

(Accident report, July 15, 1912, marked Exhibit P-48.)

(Accident report, September 7, 1912, marked Exhibit P-49.)

(Accident report, November 6, 1912, marked Exhibit P-50.)

(Accident report, March 24, 1913, marked Exhibit P-51.)

40 *Mr. Merrey.* These reports are the ones made by the company itself, and what period of time do they cover?

Discussion.

Mr. Maybury. A number of years.

Mr. Merrey. When do they begin? At the beginning of the original railroad commission?

Mr. Maybury. 1909. The original railroad commission started in 1907.

Mr. Merrey. Do you know whether they are confined to any particular kind of accidents?

Mr. Maybury. Yes, grade crossing accidents. 10
And grade crossings only.

Mr. Merrey. Do they include those accidents where only property was damaged and life or limb not injured?

Mr. Maybury. No.

Mr. Merrey. They do not include those?

Mr. Maybury. There may have been several accidents along that line. We haven't asked for those reports unless the property damage was over one hundred dollars and happened on a 20
grade crossing.

Mr. Merrey. Do you ask for reports or does the company make them in the first instance?

Mr. Maybury. They make them in the first instance.

Mr. Merrey. Do you investigate to find or do they make a report of all accidents?

Mr. Maybury. All accidents are supposed to be reported immediately by the railroad companies. If an accident should happen and not 30
be reported by the railroad company, the probabilities are it wouldn't be investigated because that would be the only means of communicating accidents to the board.

Mr. Merrey. Are you certain now you have here all accidents that have been reported by the company since the beginning of the commission?

Mr. Maybury. No, I wouldn't say that.

Mr. Merrey. I would ask permission to have Mr. Maybury make a further search in this matter, 40
because I believe there are many more acci-

Discussion.

dents that have happened, and with the privilege of suggesting dates so he may investigate his record to find if there are any further.

Mr. Maybury. May I ask a question: Mr. Merrey, just what kind of a report do you want? Suggest some you have the names of.

10 *Mr. Merrey.* For instance, I believe on June 6, 1909, a trolley car was struck at Broadway crossing by an approaching train.

Commissioner Donges. Mr. Maybury, have you thoroughly examined the records of the board to find all the reports made by the company?

Mr. Maybury. No, there may be several others that I didn't think were necessary.

20 *Mr. Merrey.* I have a list here which we believe is very incomplete, but it contains a report to the police department of a great number of accidents at these crossings in addition to the ones Mr. Maybury has stated.

Commissioner Donges. You now suggest that Mr. Maybury make a further examination?

Mr. Merrey. Further search, and I will give him whatever assistance I have in this report, to assist the commission in these reports.

Mr. Maybury. What I would like to know is whether these accidents are of a nature the board requires reports on?

30 *Mr. Merrey.* Some of them are—

Mr. Hobart. Before testimony is given on such a list I presume we will have an opportunity to examine it.

40 *Commissioner Donges.* I understand Mr. Maybury suggests, that is the assumption, that the record ought to disclose reports made by the railroad company of other accidents than those the records of which Mr. Maybury finds in the records of the board, so all he is now asked to do is to produce further records of the board.

Discussion.

Mr. Hobart. That have been reported?

Commissioner Donges. Yes.

Mr. Merrey. I think some may have escaped.

Mr. Hobart. I wanted to be sure his examination was confined to the records of the board.

Commissioner Donges. Yes, his examination is to be confined to the records of the board.

Mr. Hobart. I am informed by Judge Lewis 10
this morning that two or three witnesses we expected to have here to-day are not able to testify to what we anticipated in regard to the operation of the Paterson & Hudson River and Paterson & Ramapo Railroad. It is a matter that concerns his client and also the Erie Railroad Company. But he does inform me that two or three are rather elderly gentlemen from Paterson, eighty years old and upwards, who will testify to the facts as to when the road began. I consider that an important matter from the standpoint of the Erie Railroad Company, at least. In view of the suggestion of Judge Lewis that these witnesses are aged and infirm, I make the suggestion that possibly Mr. Merrey, with the board's consent, will take their testimony with Mr. Brainard. 20

Commissioner Donges. I think a member of the commission had better be there.

Mr. Hobart. We can go to Paterson at some convenient time in the next few days. 30

Commissioner Donges. The board will make an effort to accommodate the infirmities of these witnesses.

Mr. Hobart. Would it be possible to mention any date now?

Commissioner Donges. Would Thursday be convenient for you to take the testimony of these witnesses at Paterson?

Mr. Merrey. Yes. 40

A. L. Sorensen, direct.

Mr. Gourley. Yes.

Commissioner Donges. Very well. At 11 o'clock, Thursday, December 11, at Paterson, City Hall, Paterson. If the other members are unable to be present, Commissioner Hillery will sit for the commission.

10 *Mr. Minard.* I am going to take the liberty of changing the order of our defense some on account of the necessity of releasing Mr. Sorensen; he is required in New York to-day.

Commissioner Donges. Very well.

A. L. SORENSEN, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q What is your occupation?

20 A Statistician of the Erie Railroad.

Q Are you chief clerk to the comptroller?

A Yes, sir.

Q Are you familiar with the records, figures, reports, and so on of that department?

A Yes, sir.

Q They pass through your hands, all of them?

A They do.

Q In fact, most of them are made up either by you or under your supervision?

30 A Yes, sir.

Q I show you a paper and ask you what that is.

A This is a statement of the Erie Railroad system, showing the percentage of return on the investment and property devoted to railroad purposes.

Q Begin on the top line and explain what that statement shows?

A The first line?

Q The dates up there.

A The dates show the fiscal year of the company
40 from June 30, 1903, to 1913, inclusive.

A. L. Sorensen, direct.

Q The second line shows what?

A The second line shows the total operating revenue including outside or auxiliary operation, as it is sometimes called.

Q In other words, the total gross income of the road from operating properties?

A Total gross operating revenue; of course, we have other income. 10

Q That covers the various years you have mentioned?

A From 1903 to 1913, the year ending June 30th.

Q The next item?

A The next item shows the total operating expenses including expenses for auxiliary or outside operation.

Q The next item?

A Shows the net operating revenue left deducting the operating expenses from the operating revenue, which, of course, also includes outside operation. 20

Q The next item?

A The next item, taxes that are accrued for the various years shown.

Q The next item?

A The next item is the result after deducting the taxes from the net operating revenue.

Q And then you have the operating income?

A The operating income, yes, sir.

Q What did you do next? 30

A The next item we have the net of the debit and credit, net-hire of equipment, joint facilities, miscellaneous rent, and added and deducted, whatever the balance happens to be, with the operating income, which is the net operating income figure.

Q Wherever Dr. is marked that means you paid that out?

A We paid that much out in excess of the amount we collected.

Q For those purposes? 40

A Yes, sir.

A. L. Survasca, direct.

Q From the net operating income with the net operation what was done?

A We took out the amount paid for lease of roads, not included above, and interest charges or obligations issued for railroad purposes only.

Q You get a result which is what?

A Get a result which represents the net income
10 from railroad operating investment, which, divided by the total amount that is invested in the property, is a percentage of return on the investment in property.

Q 1913, the fiscal year, shows a net return of what?

A 1.3%.

Q 1912?

A .64%.

Q 1911?

20 A 1.37%.

Q And so on up the marks are all shown?

A Yes.

Q 1908 shows a deficit?

A .33%.

Q .33% deficit?

A Yes.

Q What else is in there? This is property investment (indicating), this line underneath net income from railroad operating investment is property
30 investment?

A Yes, sir.

Q What is the last line?

A The last line shows taxes paid to the State of New Jersey for the years ending June 30, 1910, to 1913, both inclusive.

Q It shows an increase in those four years from \$539,713 to \$894,368?

A Yes, sir.

A. L. Sorensen, direct.

Commissioner Hillery. Why are they omitted for the previous years?

Mr. Minard. We didn't compile them.

I offer that statement in evidence.

Mr. Merry. I object to it.

Mr. Minard. What is your objection?

Mr. Merry. It is merely a summary of something we can't possibly investigate the truth of 10
by cross examination. It is made up from a great many accumulations of figures that we don't know the truth of and have no means of finding out the truth of. It refers to property outside of the State of New Jersey and not connected in any way with the question before the commission. For instance, the property investment. Nobody knows what they mean by property investment. Nothing of this kind is explained. It is merely a summary which throws no light on this ques- 20
tion; it is not a pertinent matter in here.

Mr. Minard. The Erie Railroad Company operates outside the State of New Jersey. Its treasury covers the entire system; we are simply laying our cards on the table before the commission to show whether we should be bled for \$5,000,000 or \$6,000,000 for crossing elimination or could, whether it is physically impossible to do the thing. We have a right to show that. There is nothing in that statement that Mr. Mer- 30
rey cannot examine on cross examination. If he wants a trainload of statistics with the original data, it can be done.

Commissioner Douglas. It will be marked for identification.

Mr. Minard. This is part of our defense.

Commissioner Douglas. I understand. I think there are not sufficient facts to justify this being admitted.

Mr. Minard. Does the commission want all 40
the details that is made from?

A. L. Sorensen, direct.

Commissioner Donges. To submit this it is necessary to submit proof to support this summary if it is called for.

Q Mr. Sorensen, are these figures taken from the records of the company?

A They are.

Q Are they all accurate?

10 A To the best of my knowledge and belief they are.

Q What is the basis of the figures?

A The figures are based on the report made to the Interstate Commerce Commission, Public Service Commissions of the various States, or the general records of the company itself.

Q Then, in other words, they are figures based on public reports?

A Yes, sir.

20 Q Which are available in the files of the commission's office or reports made from time to time by the railroad?

A They are all taken from public reports.

Commissioner Donges. You have examined the records and testify this is a correct summary of the record books and accounts?

Witness. To the best of my knowledge and belief it is.

30 Q (*By Mr. Hecceg.*) Is this your work?

A This is my work.

Commissioner Donges. Did you make such examination and investigation as enables you to say this is accurate?

Witness. A man may make a mistake; that is why I say, to the best of my knowledge and belief it is accurate.

40 Q (*By Mr. Minard.*) Barring natural mistakes in addition or subtraction and based on the fact that

A. L. Sorensen, direct.

you are the chief statistician and have the responsibility for this work, can you or can you not say you rely on the accuracy of these statements?

A I rely on its accuracy.

Q (*By Mr. Mervyn.*) What do you know of the property investment of the Erie Railroad?

A The property investment is taken from the general ledger of the Erie Railroad Company. 10

Q You don't know what the property of the Erie Railroad Company is, other than the figures which you have set forth here?

A We have no physical valuation, no, sir.

Q You don't know what the net return on the valuation of the property is?

A I can only say, from the records of the company, the property according to the books, that is a statement of fact. From the physical valuation I can't answer; we never had one made. 20

Q From your knowledge, was the sum of \$364,000,000 ever invested in the Erie Railroad Company?

A The Erie Railroad is a re-organization. It is almost impossible to tell whether the re-organization, from the record, from the evidence, \$364,000,000 is absolutely correct.

Q It takes that amount assumed as a valuation?

A No, I wouldn't say that.

Q You don't know whether those figures were ever based on any actual valuation? 30

A It is based on the re-organization of the Erie Railroad from the New York, Lake Erie and Western, account of additions and betterment, and betterments made since.

Q (*By Mr. Minard.*) That represents the amount the Erie Railroad was legally obligated to pay for taxes or interest?

A The property back of it is property assessed for taxation purposes. 40

A. L. Sorensen, direct.

Q (*By Mr. Merrey.*) As I get your answer to Mr. Minard the three hundred and sixty-four million, some odd thousand dollars, was the amount the Erie Railroad was bound to pay in interest charges, is that true?

10 A I believe you misunderstood the question. I believe Mr. Minard's question was that the amount we were obliged to pay in taxes. My answer was the property back of it was the amount on which we paid taxes, the assessed valuation of the property back of it and earnings and stock.

Q Do you know whether the property of the company is assessed at any such sum of \$364,000,000 for taxation?

A I have no knowledge of the taxation value of the property.

20 Q Have you any knowledge as to what proportion represents stock?

A This is invested in the property.

Q Do you know which portion represents bonds and which stock?

A You mean which portion has been invested from receipts of sale of stocks and bonds?

Q Yes.

A No, I couldn't say that.

Q Some of it represents stock?

A Undoubtedly.

30 Q And some of it represents bonds?

A Some of it represents bonds, yes, sir, or received by capital invested.

Commissioner Donges. Does any of it represent property—what we term property—other than tangibles?

40 *Witness.* No, sir. Not to my knowledge, it does not. However, of course, there is the amount which we have in there, property investment for real estate which we get a real estate revenue from. I don't know whether that is pertinent to your question or not.

A. L. Sorensen, direct.

Commissioner Donges. What I want to know is whether this three hundred and sixty-four million odd thousand dollars is an estimate of the investment represented by the physical property, or whether it includes franchises or expenditures?

Witness. Intangibles?

Commissioner Donges. Yes.

10

Witness. No, sir, it only includes tangible property; not franchises.

Q (By Mr. Sommer.) Isn't it based in part, upon what was done in the re-organization?

A These figures are worked up from the re-organization. Of course, the valuation was placed on the road in re-organization and is included in this \$364,000,000.

Q This basing figure you take as cost of re-organization was represented by what; securities issued? 20

A Securities issued.

Q Can you say whether the securities measure the valuation of the tangible property taken in re-organization or whether it measures the actual property and allowance for intangible element; can you?

A All I can say, the re-organization—we acquired through re-organization tangible property for which we presumably paid and did not pay for tangibles we did not receive.

Q But after all you started with the re-organization and you take the sum then expended, don't you, whether it represents bonds issued or stock. 30

A The cost.

Q And then, I take it, you have added from time to time, as the items of cost, something representing tangible property acquired. In other words, there doesn't enter into this, since the re-organization, any intangibles. Is that what you mean?

A That is correct.

40

A. L. Sorensen, direct.

Q Doesn't this sum represent the outstanding capitalization of the company with the exception of that property not devoted to railroad purposes?

A The total capital obligation and capital investment. I don't believe we have any—they are assumed to have respect for one another and it doesn't necessarily mean they have respect for one another.

10 Q That isn't answering my question.

Commissioner Daniels. Put it this way; what your aggregate capital obligation is, excluding duplication.

Witness. What the capital obligation is?

Commissioner Daniels. This aggregate of \$453,000,000 is simply the summary of your property account?

Witness. Exactly, yes, sir.

20 *Commissioner Daniels.* And represents the aggregate of the property used in railroad operation?

Witness. According to our books.

Commissioner Daniels. Now then, as the return on that comprises the interest paid upon the bonds as well as what you figure your per cent. on property investment, would not that increase the percentage from 1.13% to something between three and four per cent.?

30 *Witness.* I beg pardon, I missed your question.

Commissioner Daniels. I will repeat. The rate earns enough to pay over \$10,800,000 in interest?

Witness. Yes, sir.

Commissioner Daniels. And in addition to paying interest and operating expenses there is here figured a net income of over \$5,000,000?

Witness. Yes, sir.

40 *Commissioner Daniels.* So that \$10,862,000 and \$5,112,000 are both net earnings from this

A. L. Sorensen, direct.

railroad property. You earn the interest to pay as well as what you have over the interest.

Witness. Here is the figure.

Commissioner Daniels. That would be \$15,000,000.

Witness. That is what we earn from operation.

Commissioner Daniels. From net operating income. 10

Witness. We have to pay the leased roads; we have to pay interest charges on the property; then we get down to the figure which leaves us \$5,000,000.

Commissioner Daniels. I understand your residue is \$5,000,000. My point is the net earning is \$15,000,000.

Witness. Operating income.

Commissioner Daniels. And the net property investment \$453,000,000. 20

Witness. Yes, sir.

Commissioner Daniels. There the per cent. would be between three and four per cent. upon the value of your property account.

Witness. To pay interest charges, lease of roads, dividends, permanent improvements, out of income.

Commissioner Daniels. Which are not calculated in that? 30

Witness. Yes.

Commissioner Daniels. If you pay the stipulated interest you have one and a fraction per cent.?

Witness. To improve your property and pay dividends.

Commissioner Daniels. Whatever you do with it. Isn't this fair: Both the interest you earn and pay as well as the residue left over, both jointly represent the earnings you derive from 40

A. L. Sorensen, direct.

your property; not the earnings to you, but the earnings to the security holders as a whole.

Witness. This amount is left to pay the other roads for lease of their roads, to pay security holders, and improvements on your property, which are not repairs, and such items as that.

10 *Mr. Merrey.* The board and we look at railroad property irrespective of who owns it; whereas the witness is looking at it as an individual corporation. He wants to disassociate it from the Erie Railroad.

Commissioner Daniels. Forget for the moment the bondholders as creditors. Regarding them as security holders of this system and shareholders, although they don't get any dividend, they are security holders.

20 *Mr. Minard.* We can't do that; it is physically impossible. We are legally bound to pay and haven't any money left to deal with the matter. When we are through we have one and a fraction left.

Mr. Merrey. We don't regard the security holders or stockholders. We are looking at the property as bondholders. It makes no difference where it hits or whom.

30 *Mr. Minard.* We are looking at it from the standpoint of the one who pays the bills. Not the one who is bleeding us.

Commissioner Daniels. The bondholder is the security holder technically and legally. I assume the bondholders and stockholders are both security holders, for the purpose of that classification (perhaps not legally), you show here earnings to pay three and four per cent. to the aggregate security holders.

40 *Mr. Minard.* This statement shows on the legal obligations paid we earn one and something per cent.

A. L. Sorensen, direct.

Commissioner Donges. In a part of your \$364,000,000, part is represented by securities outstanding on which you have paid interest.

Mr. Minard. Certainly.

Commissioner Donges. So if the amount of outstanding securities taken is \$364,000,000, which you say is the value of your property upon the different roads, it would show a greater rate of earning than 1.13%. 10

Mr. Minard. That may be, if there is anything left after deducting the bonds; I don't say there is.

Commissioner Donges. From this statement it clearly appears there would be.

Mr. Minard. Then this statement is right.

Commissioner Donges. After paying interest charges of \$10,000,000, which interest is paid upon securities included in your amount of \$453,000,000, it appears there is left sufficient to pay 1.13%. 20

Mr. Minard. That is what the statement is intended to show on its face.

Commissioner Donges. If you should add the amount paid as interest charges, \$10,810,000, to the five million odd thousand dollars, the net income, after paying all charges, you would have a greater return upon all the property than 1.13%.

Mr. Minard. Yes; that 1.13% represents the amount we have got left after we paid obligations, the amount we have got left to improve our property with. That is free capital for improvement and matters of betterment. 30

Commissioner Donges. In a sense the \$364,000,000 represents duplication of capitalization as between earnings and valuation. You have paid \$10,810,000 interest charges presumably upon your outstanding bonds.

Mr. Minard. Yes. 40

A. L. Sorensen, direct.

Commissioner Donges. You don't claim upon that amount you ought to be entitled to earn dividends, too?

Mr. Minard. No.

Commissioner Donges. What is the amount of those outstanding bonds upon which you paid ten millions of interest?

10 *Mr. Minard.* I have got it somewhere. There is the amount.

Commissioner Donges. Two hundred some odd millions. If you deduct two hundred some odd millions represented by the bonded indebtedness from the \$453,000,000, you have left two hundred and some million upon which five million of net income might be used to pay dividends, so the earning on the residue is more than 1.13%; do I make that clear?

20 *Mr. Minard.* I understand that point. That to my mind is just a purely technical distinction which the comptroller's department can't work out in practical figures.

Commissioner Donges. In ascertaining the earnings on four hundred and fifty-three million of property isn't it necessary then to add the amount which has been paid for interest charges?

Mr. Minard. Why no; that doesn't change this statement.

30 *Commissioner Donges.* To ascertain how much the \$453,000,000 of property has earned after paying all expenses?

Mr. Minard. This statement is intended to show on its face all that investment earns for improvement and betterments after we paid all these things. Of course, you can figure this out forty ways, maybe one thousand different ways, all of which are accurate conclusions. Now if you should say \$200,000 or \$2,000,000 allows us so much, we find from computing from the state-

A. L. Sorensen, direct.

ment of what the rest earn. We find the whole thing—you deduct what you want, one thing or another—the whole—amount on the property investment earned that much surplus—not surplus but in the treasury, being surplus over operation, for the maintaining of the road and improvements.

Commissioner Donges. But the \$453,000,000 10
has allowed a return in the interest paid.

Mr. Minard. If you take the amount you mentioned and then divide into this your \$5,000,000 you may increase the percentage; you don't increase the amount of money in the treasury for that purpose.

Commissioner Donges. The amount of free capital is greater, the percentage; the earning of free capital is greater; that is what I understand this statement was designed to show. 20

Mr. Minard. The summary intended to show what was done.

Commissioner Donges. It doesn't show the per cent. of free capital.

Mr. Minard. It can be shown; it is technical; no matter how you figure it out it don't increase the amount of money in the treasury you have to do the work.

Commissioner Donges. Can the witness tell us about the Bergen shortcut, whether it was charged to capital account or income? 30

Witness. The new open cut?

Commissioner Daniels. Yes.

Witness. That is not charged into the accounts of the Erie Railroad, except that the Erie Railroad Company advanced the money to build it.

Q (*By Mr. Minard.*) Is it included in here?

A It is.

A. L. Sorensen, direct.

Commissioner Daniels. So the cost of building that tunnel was put in as one of the operating expenses?

Witness. No; it is in this figure here (indicating).

Q Property investment?

A Yes.

10 *Commissioner Daniels.* How was it built; it wasn't built from sale of capital issued?

Witness. It was built by the Erie Railroad advancing the money to the company that organized to build it.

Commissioner Daniels. Penhorn Creek Railroad?

Witness. The Penhorn Creek Railroad.

Commissioner Daniels. That advances the figure in there (indicating)?

20 *Witness.* Nothing in there. Nothing in there as far as the Penhorn Creek is concerned, in the operating expenses. It is in the property investment account.

Q (*By Mr. Sommer.*) Before it went into property investment from what source was it taken; before it was taken from property investment the money must have been taken from some source.

A The Erie Railroad advanced the Penhorn Creek Railroad to build the road.

30 Q They got it from somewhere. As a matter of fact the account where it was taken was income?

A The money was taken from its treasury. I presume it was earned.

Q Wasn't it taken from the current income of the Erie?

A I couldn't answer that without knowing just exactly the amounts that had been advanced and trace them back. I have never done it. All I can say is the Erie Railroad advanced the money.

40 Q Did you attend in the preparation of the petition to the Board of Public Utility Commissioners,

A. L. Sorensen, direct.

which petition requested the approval by the board of certain proposed issues of securities to be made by the Penhorn Creek Railroad to the Erie Railroad?

A No, sir, I did not.

Q That wouldn't come through your department?

A Yes, sir, it would.

Q And if appended to that application was a statement that the money advanced was taken by earnings 10
from time to time out of current income, you wouldn't assume responsibility for that statement?

A That statement was not prepared by me personally.

Q It was prepared by your department?

A I assume it was. Naturally, it being an accounting question, I assume it was prepared in our department.

Q Do you know anything about it?

A I know nothing about it. 20

Q You know the Erie has outstanding, as from time to time approved by the board, car trust certificates?

A Yes, sir.

Q How do you handle payment on car trust certificates?

A The payments are made in accordance with the trust agreement every six months and paid out of current funds.

Q In accordance with the maturity date for that 30
note?

A Yes, sir.

Q At maturity how is it met; out of what funds?

A Out of the current funds of the company.

Q And then carried into what account?

A When first set up on the books the certificates are charged to the person to whom the sale is credited, the obligation account, funded debt. Finally they are charged, when the trust is cleaned up, to the individual itself, and transferred to capital account. 40

A. L. Sorensen, direct.

Q So it is included in investment?

A In investment, yes, sir.

Q The moneys means of by which payments are made are moneys coming from current income?

A The payments on car trust certificates after maturity are paid from current funds.

10 Q Do you include the payments that you make under car trust certificates in your operating expenses?

A No, sir.

Q Do you include them in any of the items shown on this sheet?

A No, sir.

Commissioner Douglas. Anything further?

20 The statement will be admitted as the summary of what this witness would testify to, or his statement of what the books and records of the company show and subject to the production by the company of any books or records for examination on cross examination.

Mr. Mizard. That is agreeable.

(Same is marked Exhibit B-1.)

30 Q (*By Mr. Mizard.*) Mr. Sorensen, I show you a statement entitled "Eric Railroad System, capital expenditures made July 1, 1910, to June 30, 1913, for betterment of conditions and safety as follows." Was that statement made up by you?

A It was made up under my supervision, yes, sir.

Q Are you familiar with the figures set forth there?

A Yes, sir.

Q Have you reason to believe they are accurate?

A I have.

Q What does that statement show?

A The statement shows, for the year ending June 30, 1911, the total expenditures were—

40 Q Explain the statement, the three columns there; the first of the three columns, beginning in the center

A. L. Swenson, direct.

of the statement, represents the expenditures as above mentioned, June 30, 1911, and the next column for the same period, 1912, and the third column for 1913?

A Yes, sir.

Q And the fourth column represents the total of the three, on each item?

A Yes.

Q The statement covers what?

10

A Necessary expenditures for equipment.

Q That means new equipment?

A Yes, sir.

Q Construction?

A That is new construction.

Q On right of way?

A Yes, sir.

Q The next item is the total of construction and equipment?

A Yes, sir.

20

Q The next line is what?

A It shows included in the above totals there are certain amounts for eliminating grade crossings mentioned, station facilities, automatic signals, interlocking appliances, increased weight of rail, bridges, trestles and culverts; replacing wooden passenger equipment with steel—

Q Wooden passenger equipment with steel?

A There is nothing there.

Q You don't mean to tell—don't you mean the statement doesn't show anything?

30

A Yes.

Mr. Minard. I have another statement which will show that.

Q The next item?

A Applying steel underframe to postal cars.

Q There was expenditure there?

A Yes.

Q Is or not that expenditure required by federal statutes?

40

A. L. Kurensen, direct.

A It is required by federal statutes.

Q The next one?

A Safety appliances to equipment.

Q That is the Federal Law?

A Yes.

Q The next one?

A Ash pans.

10 Q That is required by law?

A The Legislature.

Q The headlight isn't there?

A No, sir, applications under boiler inspection law, another legislative enactment.

Q They are legislative requirements. Do you know whether that boiler inspection law is more of a continuous permanent change?

A Yes, sir, I understand it will be.

Q That is permanent, annual charge?

20 A Yes.

Mr. Minard. I offer that statement in evidence.

Commissioner Dungen. Is there any objection?

Mr. Merrig. I make practically the same objection. I suppose it will be received.

Mr. Minard. This is actual expenditures.

Commissioner Dungen. This will be received and marked as an exhibit subject to the right to call for the books, documents, papers and witnesses to support and verify it, and for examination.
30

Mr. Merrig. Can I cross examine on this statement?

Commissioner Dungen. If there is no objection it will be marked now, have it marked as an exhibit now.

(Same is marked Exhibit B 2.)

A. L. NORRIS, cross.

Cross examination by Mr. Merrey.

Q Do you know where the money was obtained by the company for these expenditures for equipment and construction?

A Some were paid out of income and the rest capitalized.

Q Do you know how much was paid out of income and how much out of capital? 10

A I couldn't say off-hand, no, sir.

Q That obtained out of capital was from the sale of securities?

A Yes.

Q Not by the issue of new capital stock?

A No, sir. Well, I assume when you say securities you mean capital stock and bonded debt?

Q Not in the sense that amounts to bonds?

A There has been no stock issued on the Erie Railroad. 20

Q Whatever come from capital account was from the sale of bonds?

A The sale of funded debt, yes, sir.

Q You have items for the eliminating of grade crossings?

A Yes, sir.

Q How much of that was done in New Jersey?

A I couldn't say.

Q Was any done in New Jersey?

A I couldn't say. 30

Q Was not most of it done in States which have laws compelling the removal of grade crossings?

A From my knowledge of it I believe that possibly the greater portion of it was in the State of New York.

Q You have an item for increased weight of rail?

A Yes, sir.

Q I think, in answer to Mr. Minard, you said these changes were for greater safety?

A Sir? 40

A. L. Sorensen, direct.

Q Would you say the expenditures for increased weight of rail is an expenditure to insure greater safety and in order to use heavier or greater equipment?

A For the betterment of conditions or safety.

Q Isn't it principally to allow you to use heavier equipment?

10 A It is really an operating matter, but I believe a great deal of the heavy rail is also for safety purposes.

Q That is in the view it would be unsafe to use the old steel rail with the new kind of equipment?

A And the heavier traffic.

Mr. Minard. In other words, we wouldn't comply with the Federal Steel Postal Car law and still have light rails. It wouldn't be safe to do that.

20 *Witness.* No, sir.

Q (*By Mr. Minard.*) You say you believe most of the money was spent for the elimination of grade crossings in New York State. Do you know anything about how much?

A No, I say that—

Q Do you know the New York State law requires us to pay only 50% of the cost of elimination. Do you know that?

30 A I understand so.

Mr. Minard. We will offer that a little later.

Q I show you now a statement entitled, "Erie Railroad Company (including Chicago & Erie Railroad) Station Improvements as ordered by Commissions to October 31, 1913."

Commissioner Donges. From what date?

Q Do you know from what date that is?

A No, I couldn't say.

A. L. Sorensen, direct.

Q Well, it shows certain improvements ordered by Commissions, anyway?

A Yes, sir.

Q What is the top line, explain it?

A The top lines shows the amount that has been authorized as expenditures.

Q Under order requiring improvements?

A Yes, sir.

10

Q And the amount authorized and the amount expended?

A Expended.

Q Does that mean that the actual expenses either did not amount to or exceeded, perhaps, the cost of the estimate of the amount authorized?

A Exactly, yes, sir.

Q Over to the end there is a provision here for the amount to be expended. In other words, the amount expended plus the amount to be expended may in some cases represent the authorized amount?

20

A Yes, sir.

Q Under each one of these headings of the amount authorized, amount expended, and amount to be expended, are sub-columns, called improvements; what does that mean?

A That amount charged to improvements in capital account.

Q Under the expense amount that is the cost charged to expense?

30

A No, of replacing in kind.

Q Just explain to the commission what that means. For instance, wherever there is an improvement that has to be done either on a large scale or with different material, I understand an estimate is made of the cost of replacing in kind that amount is charged to expenses and different improvements?

A Charged to capital account.

Q The columns marked individuals and companies; what does that mean?

40

A. L. Sorensen, direct.

A The amount charged to individuals and companies, where somebody had a portion of the station or interest paying property, on account of abutting property.

Q On joint agreement using the station?

A Yes.

10 Q That includes the necessity of changing the sidings to meet the improved conditions?

A Yes, abutting property owners.

Mr. Merrey. I object to all this testimony. I can't for the life of me see why an expenditure made in Painted Post, New York, is pertinent before this commission, is pertinent in the elimination of these grade crossings.

Commissioner Donges. The commission will take it for whatever it is worth.

20 Q I ask you what appears to be letters and numbers are?

A Appropriation numbers.

Q The numbers in your record?

A Yes, sir.

Q I see an asterisk in some places in regard to these figures?

A The note to which that refers is on the left-hand side.

Q It means over-expended?

30 A Yes, sir. In other words, the cost exceeded the anticipated amount?

Mr. Minard. I offer this in evidence.

Commissioner Donges. It will be received and marked as an exhibit, subject to the right to call for further proof.

(Same is marked Exhibit R-3.)

A. L. Sorensen, cross—re-direct.

Cross examination by Mr. Sommer.

Q This allotment as between improvements and expenses is made by whom? Is it made in your department?

A As between improvements and expenses?

Q Yes.

A It is passed upon by the Board of Directors.

Q And the figures simply come to you? 10

A On our appropriation; come to us, yes.

Re-direct examination by Mr. Minard.

Q You have a statement before you, Mr. Sorensen, entitled "Erie Railroad Company; statement showing extra expense on account of the 'Full Crew Law' in the State of New York and New Jersey for the month of September, 1913." Subdivided under division, freight travel, passenger travel, and total. Where were those figures obtained? 20

A Those figures were obtained from the time slips of the various divisions.

Q By your traveling auditor?

A Yes.

Q On the ground?

A Yes.

Q From actual examination of pay rolls and time slips?

A Actual examination.

Q They show a total for the month of September in New York and New Jersey alone, of what? 30

A \$17,905.79.

Q At the bottom you have what is entitled, "Statement showing approximate annual expense account of 'Full Crew' laws in States of New Jersey and New York, based on expenses for the month of September, 1913."

A That statement shows the total expense on the basis of the month of September, 1913, of \$214,869.48 per annum for "Full Crew" laws. 40

A. L. Sorensen, re-direct.

Q I understand that is taking the figures above as an average figure and multiplying by twelve?

A Yes, sir.

Q What do you say as to September, 1913, being an average?

A Being a thirty-day month, it is a minimum. This figure is an annual figure, minimum figure.

10 Q It will be increased in every month with thirty-one days?

A Yes, sir.

Q And decreased only in February?

A Only in February.

Mr. Minard. I offer that in evidence.

Mr. Merrey. I object as not pertinent.

Commissioner Donges. It will be received and marked as an exhibit, subject to the right to call for the presentation of further proof.

20 *Commissioner Daniels.* Do you have in your statistical department any method of determining the cost per ton mile moved per month?

Witness. Yes.

Commissioner Daniels. How does that compare at present with years ago?

Witness. I can't say off-hand.

Mr. Merrey. Speak louder.

30 *Witness.* I couldn't answer that off-hand as I haven't looked at the figures comparing one year with another for some little time back.

Commissioner Daniels. You are not prepared to say whether the cost per ton mile is now greater than years ago?

Witness. In my understanding from some figures I have looked up from other matters it was greater in 1913 than it was in 1912; due to increased expenses and increased cost of material.

40 *Commissioner Daniels.* From your recollection of these figures, do you remember about what percentage greater it was?

A. L. Sorensen, cross—re-direct.

Witness. No, sir.

Commissioner Donges. That will be marked as an exhibit, subject to the same right of verification, production of books and records, and so forth.

(Same is marked Exhibit R-4.)

Cross examination by Mr. Merrey.

Q Have you made any allowance for anything saved in accident claims under the operation of the "Full Crew" law?

10

Mr. Minard. Of course he hasn't. It is a perfectly foolish question.

Commissioner Donges. Let the witness answer if he knows.

Q Have you made any such allowance?

A No, sir.

20

Mr. Minard. I can say for the commission's information in the ten days of the hearing on the subject in Pennsylvania and seven days in New Jersey before this commission—perhaps not the same personnel—when the proponents of this bill were not able to show a single case of accidents to have ever happened because a train was insufficiently manned.

Mr. Merrey. You might add to that statement that Mr. Hobart was a defendant in a case in which that claim was made and we got a verdict from a jury.

30

Re-direct examination by Mr. Minard.

Q You have a statement there, "Erie Railroad, cost for compliance with full train crew laws."

Commissioner Donges. Including the C. & E.?

Mr. Minard. They have a habit of charging the C. & E. that is a road from Marion, Ohio, to

40

A. L. Sorensen, re-direct.

Chicago, it hasn't a separate identity, but we have a general manager for lines east and a general manager for lines west.

Q I notice this statement covers Indiana, Ohio, Pennsylvania, New Jersey and New York "Full Crew" laws; can you say how this statement was made?

10 A This statement was prepared in the office of the vice-president and general manager by reports from the division superintendents, which were taken from their time records.

Q And it covers the disbursements under "Full Crew" laws in these several States to date; from the date the law was effective until the date shown in the statement?

A Yes, sir.

20 Q Those totals show Indiana, \$57,272.49; Ohio, \$22,841.64; Pennsylvania, \$157,731.27; New Jersey, \$14,355.60; New York, \$28,848.68; total to October; that includes October, doesn't it?

A Yes.

Q Up to the first of November. It includes expenditures of \$281,049.68 for "Full Crew" laws?

A Yes.

Mr. Minard. I offer that in evidence.

30 *Commissioner Donges.* It will be received and marked as an exhibit, subject to the same rights as the others.

(Same is marked Exhibit R-5.)

Q I show you a statement, "Erie Railroad System, Principal Capital Expenditures made in the State of New Jersey for years ending June 30, 1911, 1912 and 1913." How was that statement prepared?

A That statement was prepared from actual expenditures made according to the record in New Jersey.

40 Q And followed out in New Jersey?

A Only the principal items.

A. L. SOMMER, F.C.T.D.R.

Q That gives a list of the purpose of the investment?

A Yes, sir.

Q And shows an aggregate for three years of \$5,919,461; is that right?

A Yes, sir.

Mr. Minard. I offer that in evidence.

Commissioner Donges. It will be admitted and marked as an exhibit, subject to the same understanding as the others. 10

(Same is marked Exhibit R-6.)

Re-cross examination by Mr. Sommer.

Q This is simply prepared with a view to the place to which the improvement was made, is it not?

A Yes, sir.

Q It wasn't your purpose to indicate by this statement that these expenditures were made solely for the purpose of facilitating business within the State of New Jersey? 20

A No, sir.

Q This item, "Open Cut, Expenditures to June 30, 1913," \$4,269,300.62; what does that represent?

A It represents the cost of open cut to June 30, 1913.

Q Does it not represent in greater part the loan by the Erie Railroad Company to the Penhorn Creek Railroad? 30

A It does.

Q So the improvement was not an improvement made by the Erie Railroad, but made by the Penhorn Creek Railroad?

A The Penhorn Creek Railroad is a separately organized company, yes.

Q (*By Mr. Minard.*) It is there until we get it back?

A Yes.

Q It is our money? 40

A. L. Sorensen, re-direct.

A It is our money.

Mr. Sommer. It is a loan.

Q I show you another statement, Mr. Sorensen; this statement is entitled, "Erie Railroad Company, Accounting Department, Statement of Additions and Betterments authorized to October 31, 1913, and Expended Balances to September 30, 1913."

10 *Commissioner Donges.* Does this cover the history of the company?

Mr. Minard. No.

Q It simply refers to those improvements which were authorized and uncompleted and are now in the course of completion?

A That is my understanding of it.

Q Is this a regular report?

A Yes, this is a regular report.

Q Made how often?

20 A Each month.

Q This is taken from the last monthly report?

A Yes, sir.

Q That shows the divisions on which the improvement is made, the amount authorized, whether these amounts are charged to additions or betterments or expenses or individuals and companies; is that right?

A Yes, sir.

30 Q And also shows unexpended balances, which means that the work progressed to the point where only part is paid and the balance will be paid when further work is done?

A Yes.

Q In unexpended balances we have sub-divisions, additions and betterments—the same classification as under the first portion?

A Yes, sir.

Q The last column indicates what?

40 A That indicates where the appropriations have exceeded the authorization, that amount is set forth in the last column.

A. L. Sorensen, re-direct.

Mr. Minard. I offer that statement.

Commissioner Donges. What period does this statement cover, Mr. Sorensen?

Witness. This statement covers the additions and betterments authorized to October 31, which have not yet been completed.

Commissioner Donges. But covers what period of time?

Commissioner Daniels. Beginning when the company was reorganized?

10

Witness. No, sir. Well—some of them may be authorized three and four years ago, I can't say that. I would have to get each authority to find the authorization of that. That has not been done.

Commissioner Donges. The statement covers then a period of years?

Witness. Undoubtedly, yes.

20

Commissioner Donges. How many years you are unable to say?

Witness. No, sir. I doubt if it would go over two years, two or three years, for the fact that our authority, when authorization is made it is generally completed as promptly as possible.

Commissioner Donges. That will be received and marked as an exhibit, subject to the same understanding.

(Same is marked Exhibit R-7.)

30

Mr. Minard. Here I have a detailed report that is simply the detail of the last paper. I didn't want to lumber up the record with that. In this statement there is a column with the date authorized. This is the detailed statement of which that summary was worked up; you can see from that the oldest authorization.

Commissioner Donges. Of any of the items that appear on the exhibit last offered?

Mr. Minard. Yes; I don't suppose you want the month?

40

A. L. Suranen, re-direct.

Commissioner Donges. Let him give the date.

Witness. The oldest one I find here is March 1, 1911. However, that is for re-enforcing sixty postal, mail and compartment cars, which is being carried over a period of time. Possibly that would not be a good example of what you require. I have found one in here, June, 1911.

10 Q (*By Mr. Minard.*) What is the oldest date?

A March 1, 1911.

Commissioner Donges. On Exhibit R-7 all the amounts authorized expenditures are since that date of March 1, 1911?

Witness. Represent appropriations authorized since March 1, 1911, yes, sir.

Commissioner Daniels. What are the general items there that seem to bulk so large?

20 *Witness.* They represent almost entirely equipment expenditures, amount authorized in equipment expenditures, which includes \$1,000,000 for equipment of box cars with economy draft arms and friction draft gears and equipping all locomotives and cars with safety devices.

Q (*By Mr. Minard.*) That is required by law?

A And this item of \$324,000, equipping 100 coaches and combined cars with electric lights and ninety of the same with steel underframes.

30 *Mr. Minard.* We offer that in evidence so the commission may have it in detail.

Commissioner Donges. Very well.

Mr. Minard. Unfortunately the commission will have to distinguish that from the New York, Susquehanna & Western, and the New Jersey & New York, which are separately operated; we excluded that from the summary because it was not pertinent to this case. If the commission will take that into consideration—

40 *Commissioner Donges.* Very well.

J. L. Sorenson, re-direct.

Mr. Minard. I offer the part in reference to what this railroad owns.

(Name is marked Exhibit R-8.)

Re-direct examination by Mr. Minard.

Q I show you a paper, Mr. Sorensen, marked, "Erie Railroad Company, All lines, month of October," a statement; what does that represent?

A That statement represents first, for the month of October, gross revenue, operating expenses and taxes, and operating income for 1913 as compared with 1912, showing the increase and decrease. 10

Q On the gross revenue for the month of October as compared with the same month last year, what was the result?

A A decrease in gross revenue of \$47,460.56; in operating expenses and taxes there is an increase of \$387,663.62.

Q Showing an operating decrease of what? 20

A \$435,124.18.

Q What does the statement further show?

A It further shows that included in the expenses is one-twelfth of the entire taxes of the year, also one-twelfth of the annual depreciation of equipment.

Q The last statement?

A Shows that for four months, ending October 31, 1913, as compared with 1912, gross revenue had increased \$36,875.44. Operating expenses and taxes had increased \$1,461,921.22; a decrease in operating income of \$1,424,145.78. 30

Q That refers to the first four months of the current fiscal year?

A The year ending 1914.

Q Is that an official statement?

A An official statement that is sent out for publication in the newspapers and to the directors.

Q A similar statement is made every month?

A Each month.

Mr. Minard. I offer this in evidence. 40

A. L. BURNHAM, re-cross.

Commissioner Dongen. It will be admitted with the same understanding as to verification.

(Same is marked Exhibit B-9.)

Re-cross examination by Mr. Merrey.

Q I think there ought to be given by the witness what he means or what the company means by operating expenses and taxes; whether it is cutting a road
10 through a hill.

Mr. Minard. That has nothing to do with operating expenses; that is property investment.

Q What do you charge under the head of operating expenses?

A What particular things; we have five general heads.

Q What are they?

A Maintenance of way and structures; maintenance of equipment, traffic expenses, transportation
20 expenses, and general expenses.

Q Are any betterments put in that item of operating?

A No, sir; they go to capital account. Cost of replacing something in kind goes to operating expenses.

Q I suppose you put down every rail, do you, and charge the proportion of that to operating expenses?

A Yes, sir.

Q What proportion?

A The proportion of replacing; taking out the
30 rail in kind. In other words, if we put in a ninety pound rail and took out a sixty pound, the thirty pound would go to capital account.

Q No betterments of any kind are in this charge?

A No, sir.

Commissioner Dongen. Additions to equipment?

Witness. No, sir. All the additions to the
40 equipment go to capital account under the commission's order.

A. L. Sorenson, re-cross.

Q All new equipment is charged to capital account?

A Capital account.

Q What becomes of the old equipment?

A When destroyed it is credited to capital account, the cost of the wrecking value.

Q (*By Mr. Minard.*) Do you know, Mr. Sorenson, whether that decrease in income, what the chief items? Does it or does it not include the increase in wages and expenditures made necessary by increasing the number of men and other features?

10

A In 1910 they do include them. Those expenditures in the year 1912, we have not got them all in.

Q This increased operating expenses required by law, in the "Full Crew" law and higher wages in arbitration, would explain very largely, if not quite entirely, the increase?

A It does to increase the cost, and fuel and ties are elements in the last increase.

20

Q I show you a paper marked "Erie Railroad System; Statement showing increase in operating cost, due to increased price of fuel and ties, 1913 over 1910"; did you make that comparison of 1913 over 1910?

A Yes.

Q Just explain what it shows, just the increase?

A It shows, due to increase in cost of price of fuel, the increase was \$473,597.00 in 1913 as compared with 1910, and ties, \$71,991.00.

30

Q The total of those two items alone in 1913 cost \$545,588 more than in 1910?

A Yes, sir.

Commissioner Dongen. In operating the same number of trains?

Witness. This has nothing to do with the increase in cars.

Commissioner Dongen. The same amount of material?

40

Francis M. Graff, direct.

Witness. Yes, sir, supplied in 1913 or 1910; material used. The bulk of the material is the same.

Mr. Minard. I offer that statement in evidence.

Commissioner Donges. It will be admitted, subject to future verification if required.

10 (Same is marked Exhibit R-10.)

Recess from one to two o'clock P. M.

AFTER RECESS.

FRANCIS M. GRAFF, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q What is your occupation?

A Special agent, mechanical department, Erie
20 Railroad.

Q What are your functions in that capacity?

A Well, diversified. I am particularly interested in the rolling stock of the railroad.

Q Is or is not your position in the nature of assistant to the general mechanical superintendent?

A Yes, sir, it is.

Q You have heard the testimony this morning on the amount of expenditures to date or up to the dates mentioned in the statements for equipment and facilities of that sort. Did you prepare a statement of
30 the estimated cost of additions to equipment to comply with certain laws and build equipment to certain standard required by law?

A I did. That is the statement (handing counsel paper).

Q That statement is entitled what?

A Statement showing approximate increase in mechanical department expenses, due to various laws, both State and Federal which effect railroad operation
40 tion to an extensive degree. Also items of an un-

Francis M. Graff, direct.

usual nature which have been undertaken voluntarily to conform to the best operating practice.

Q There are two columns, one appropriate total expense—

A Approximate.

Q This copy is a little dull. Another column approximate amount yet to be expended?

A Yes.

10

Q On those items in this statement for which you have no figures in the approximate amount yet to be expended; what does that mean, the entire amount expended or no part of that item?

A No part. For instance several items there are problematical, there is further work on them.

Q In all cases it means you were going to spend the money on them?

A Yes, sir.

Q How are these items made up, from records in your possession?

20

A Partly from records; some of them are taken from the regular reports of the company, and in several instances we simply estimate.

Q How long have you been in the mechanical department?

A About twenty years.

Q For twenty years you have been handling this kind of business?

A Not all. Of course, my duties have changed. The last eight or nine years, anyway.

30

Q As far as any of these items are estimates, they are based on your experience in the department?

A Yes, sir. Take these first items, replacing of wooden passenger cars. That was worked out in collaboration with the engineer.

Q Made from the actual number of wooden cars in use?

A Yes, and what we know the cost of all steel cars. We figured the cost about \$14,000 apiece.

40

Francis M. Graff, direct.

Q That figure is based either on estimate or price list, is it?

A Yes. The items of seven postal cars, we have got tenders on the seven cars of \$103,000.

Q What do you mean by tenders?

A From the manufacturers.

Q That is, the manufacturers' price?

A Yes.

10

Q There are items here which will show for themselves, especially where there is a figure shown in the column "Approximate Amount yet to be Expended," where there are expended portions of these amounts under the first column, if they were made up at the time the statement we previously offered, they might be included. This might include some of the figures already in evidence?

20

A Yes, they do. For instance, that item right there (indicating); that appears on that statement "additions and betterments."

Q \$1,177,000?

A Yes.

Q The object of this statement is not only to show new information but also to separate all expenses relating to the mechanical department?

A That is the idea.

Q Taking these items; the first item is what?

30

A Replacing all wooden passenger train cars with steel cars. There are several bills now pending in Congress, and the late unpleasantness in the East I guess will bring it about all right.

Q I show you bills which appear on their face to be Congressional bills offered in the first session of the sixty-third Congress.

Mr. Merrey. I object to all this. I can't see it is at all pertinent to this hearing, pending legislation.

40

Commissioner Donges. I can't see the materiality.

Francis M. Graff, direct.

Mr. Minard. I don't think there is any doubt in the minds of the members of this commission with the present temper of Congress and all this sensational newspaper talk about legislative regulations and things like that, where they allege steel cars would save life—whether they would or not is a question—we will almost surely, personally I haven't any doubt but what Congress will put through a steel car law. 10

Commissioner Donges. We must deal with the situation as it now exists.

Mr. Minard. If it hasn't and does next week, where are we at?

Commissioner Donges. If such legislation is enacted and proof of it before this commission in the matter would be material, before there would be a determination of the case you would have a right to come in and ask the commission to put in the facts that have arisen since the closing of your testimony which are material. 20

Mr. Minard. That would do very well, but we operate in six States—of course, there is no Legislature now in session in the six States—in Congress hardly a day passes except there is some legislation detrimental to the railroad's affairs. I am not offering this as evidence of intrinsic value. The statement can go in the record that we know it is not a law, but it is one of the things we are confronted with. 30

Commissioner Donges. The feeling of the board is we have allowed you wide latitude in presenting your case; not limiting you to anything that seems necessary in presenting anything material and helpful to the board. As to this the board is of the opinion it ought not to be permitted.

Mr. Minard. Then I will confine my examination of Mr. Graff to those laws which, in fact, are 40

Francis M. Graff, direct.

passed and which are laws. If I get into anything—

Mr. Merrey. My objection goes to all that.

Commissioner Donges. You may make your objections as the proof is offered and then let us deal with it as the tender is made.

Q What is the next item?

10

Commissioner Daniels. Suppose you did prove that large expenditures had been made and large expenditures were likely to be made, just where do you proceed from that to show that it is financially and physically impossible to spend the amount that might be required on the elimination of grade crossings?

20

Mr. Minard. I might say that the tendency of legislation in this day of popular politics had fallen to a point where there is no economic rule covering enactment. It is just a case of *quid pro quo*, one man votes for a bill perhaps for the support of some bill he is interested in. The time is coming soon when this commission will have to take into consideration the physical impossibility of complying with the law which is not *malum in se*, and those which are *malum prohibitum*. Someone somewhere has got to draw the line between things we do not do or things we do which are wrong in themselves and things we do or do not do which are not wrong in themselves but from politics or other things, are prohibited. We hope some commission in this land of ours will protect us in doing the things we ought to do in justice and the things we are required to do in injustice to placate some special class of people or some special person.

30

40

Commissioner Donges. Is it your thought that unjust imposition of legislative bodies in other States or the National Congress ought to tie the hands of this board in doing for the citizens of

Francis M. Graff, direct.

New Jersey what the Legislature put upon this board as a duty to protect the lives of the citizens of New Jersey.

Mr. Minard. No, I won't go that far. We stand before the bar of justice just as much in one State as the other, and if a State requires us to do something which ties our hands behind our backs and the law of another State says you must shake hands with me, and my hands are tied behind my back by another State, how is it physically possible for me to comply with your laws, or another State?

10

Mr. Merrey. The whole thing is this. I think if all the States of the Union would wake up, and instead of being imposed upon, start imposing on these railroads a little, that is a matter that ought to be presented to the Interstate Commerce Commission and ask them to allow a change in rates which will give them an adequate return. No matter what they are required to do, if they do it, then the logical thing is to go to the commission in charge of the rate fixing and say, here, we are compelled to do these things, let us have an adequate return on them. They are really proving here what ought to go in a rate-making case. It is a question whether the grade crossing elimination should be done considering life and safety and all that, not what it is going to cost. If the State wants this thing to be done, and it ought to be done, the question of cost shouldn't concern this commission; that is for another commission. If the public wants this, the public will have to pay for it in the end. The necessity of increasing the rate and on the fact of expenditures made, and that will have to be made in the future, is for a rate-making case. It isn't of concern in a grade crossing case. That is why I made the objection.

20

30

40

Francis M. Graff, direct.

10 *Mr. Minard.* If the commission has nothing to do with the question of cost, where in the name of heaven do we get off, if we comply with everything and do not defend ourselves from that which some municipality or some individual asks us to do. I assume the board would want to know the cost of everything we do; sometimes it is a defense; the only defense. We are now, under the laws of this land, taken from our right to the courts, which we formerly had, and placed before a commission to decide these things, whom Mr. Merrey says had nothing to do with the cost. If that is true, we haven't any justice anywhere. I don't think that is true. I think this commission will consider the cost. If that argument were good then we haven't any rights anywhere. The commission makes an order which ties our hands and then the public goes through our pockets. On the present increase in rates we respectfully invite the commission to participate in the action for the increased rates; if we can get the rate to spend the money we would just as leave spend the money.

20 *Commissioner Donges.* Your difficulty is not in the financial increased expenditures?

Mr. Minard. It is now.

30 *Commissioner Donges.* Your answer is the rate don't warrant it.

Mr. Minard. Rates are the only medium we have of getting money. If we get increase in rates enough to do it.

Mr. Gourley. I suppose the Interstate Commerce Commission fixes the rates for the country.

40 *Mr. Minard.* If this commission participated in the matter as the Interstate Commerce Commission, with a uniform rule, we wouldn't object to that. New Jersey is the only State we pay all the cost. In New York we pay 50%. The

Francis M. Graff, direct.

law compels us to do things now that take money and prevent us from getting an increase in rates unless we go to another body. The Legislature increases the disbursements—the power of increasing the cost of operation and the power of creating revenue is not in the same body. It ought to be in the same body so that they can handle both things. The board increases our expenses and has absolutely no responsibility with the question of increasing the revenue. It is an economic injustice, though of course, it ought not to be fatal here. It is the explanation why these things should go in. 10

Mr. Hobart has made a suggestion which I will submit to the commission; that is, if we put in the estimate of steel cars and put the bills in subject to be disregarded if not passed or if one is not passed, then the commission can strike it out. Mr. Graff is mayor of Midvale. I can't bring him here every time for the purposes of this case. 20

Commissioner Donges. I think the commission will adhere to the ruling.

Q The second item is what? This is a law on the books?

A Yes.

Q What is that?

A Applying steel underframes to postal cars and re-enforcing the ends. 30

Mr. Minard. In that connection I offer Public Act 336, which was introduced as H. R. 21279, pages 7 to 10, which embraces the requirements covered by this estimate.

Commissioner Donges. This is a copy of the law enacted?

Mr. Minard. Yes, this is a copy as stated in the back, by the proper authorities. It is a copy 40

Francis M. Graff, direct.

by the government printing office of the act as passed.

Commissioner Donges. Is there any objection?

Mr. Herryg. A copy of the law introduced?

Mr. Minard. Passed.

Mr. Herryg. I suppose the commission knows the law.

10 *Commissioner Donges.* It will be admitted.
(Same is marked Exhibit R-11.)

Q This statement shows the expenses of that as—

A \$15,310.

Q How much is yet to be expended?

A \$9,000.

Q The next item?

A Eventual retirement of all wooden or composite postal cars by purchase of seven steel cars which are now under construction.

20 Q Why do you separate the second from the third item on this list?

A It is just that much more expense. This work here of strengthening those cars and applying steel underframes is necessary right now.

Q In other words, the act requires this improvement be made gradually?

A Yes.

30 Q The second item is the part required for the immediate necessity of the law and the third item the eventual complete equipment to conform?

A Yes, meet the ultimate requirements of the statute.

Q That will cost—

A \$103,180.

Commissioner Donges. Within what time is that required?

Q The act says 25% per year?

A Yes, but we are paying the whole business right out.

Francis M. Graff, direct.

Q Doing it sooner?

A Yes.

Q That is the figure given by the manufacturer?

A Yes, that is the authorized appropriation; we have bids on the work.

Q The next item?

A Equipping all cars and locomotives with safety appliances, as required by the act of April 14, 1910, and the order of the Interstate Commerce Commission made pursuant of the act. 10

Q Those acts are enforced and orders of the Interstate Commerce Commission enforced? This item is included in one of the other statements, is it?

A Yes, additions and betterments.

Q The whole amount?

A The whole amount.

Q The next item?

Commissioner Donges. Do I understand you have expended this item \$1,777,175, or but \$225,000? 20

Witness. No, that is a mistake. It is \$225,000 has been expended approximately.

Commissioner Donges. These entries should be reversed?

Witness. Yes. I didn't notice that heading.

Q You mean by that, under the column "Approximate amount yet to be expended," that is a mistake and should be— 30

A This item of \$9,000 is all right. This is wrong here (indicating).

Q \$225,000 for locomotives; that is the amount expended and the balance is yet to be expended?

A Yes.

Q The next item?

A Approximate annual—

Francis M. Graff, direct.

Commissioner Douglas. What is the time to do the work?

Witness. The work must all be cleaned up by the first of July, 1916. The Interstate Commerce Commission modified the order and gave us five years.

10 *Commissioner Douglas.* Is there any percentage to be done in any year?

Witness. No.

Commissioner Douglas. This gives you five years in which to complete?

Witness. From the first day of July 1, 1911, five years.

Q The next item?

A Approximate annual cost of inspecting boilers, due to State and Federal laws.

20 Q That is included in one other statement, is it not?

A I don't recall.

Q I think it is. That is a continuing expense; that much annually?

A Yes; about \$6,800 more than we would expend if it wasn't for the laws. The company always made boiler inspection. Taking into consideration the stationery—we have got to file copies of those reports—the States have been fairly lenient about it, New Jersey and Pennsylvania and Ohio, except the Federal
30 certificate, a copy of it; but there is a lot of stationery and then besides that the actual inspection takes men.

Q Is it or is it not true in fact that every State through which we operate, the six States, have boiler inspection laws?

A Well, New York, Pennsylvania and Ohio have, and New Jersey.

Q That is four out of the six?

A Indiana hasn't. I don't think Illinois has. We
40 don't obey the Illinois; we consider it a bother.

Francis M. Graff, direct.

Q There is a Federal Inspection Law?

A Yes.

Q Is any State law like each other or like the Federal law?

A They are practical identical in this particular.

Q Then it is sufficient if you file an inspection of the Federal law in those States?

A All States except New York; I am not sure—perhaps we would prevail on them to accept the Federal certificate, all the rest have accepted it. I think, as a matter of law, they would have to accept it.

10

Q This item of \$6,800 represents the expense of continuing the inspection merely required by the Federal law over and above the expenses of the inspection which the company makes for its own purposes?

A Yes.

Q The next item?

A Approximate annual cost of inspection and repairs to safety appliances to meet the requirements of the Federal law. That is a continuing expense of about \$75,000 a year.

20

Q That is inspection of safety appliances alone?

A Safety appliances alone.

Commissioner Donges. Required for how long?

Witness. The Safety Appliance Law was originally enacted in 1893, but the railroads didn't get very active about creating a lot of expense complying with it until eight or ten years ago.

30

Commissioner Donges. From that time this item has been included in your operating expenses?

Witness. Yes.

Commissioner Donges. And so with the item of \$6,800.

Witness. Yes.

Q The item of \$6,800 is not as old as that?

A No. We have just met a cost of pretty nearly \$50,000 a year in inspection force in the last sixty

40

Francis M. Graff, direct.

days. We have thirty-one cases pending against us in the United States Court for violations now.

Q That \$50,000 a year is necessary to enlarge your inspection force?

A That is it.

Q The next item?

10 A Approximate cost of equipping 1092 road engines with improved headlights. There isn't any law requiring that just now.

Q There is in some States?

A Yes.

Q Indiana?

A Yes.

Q Pennsylvania?

A It isn't passed there. They didn't pass that.

Q That law is filed. You operate through six States?

20 A Yes.

Q In order to comply with the laws of one State it is substantially necessary to equip the entire line?

A Yes.

Q On account of the trains moving through?

A Yes.

Q What can you say as to this amount being over and above an improved system of headlights?

A It is my opinion that is a pretty good thing.

30 Q I mean the amount of expense over and above the headlights.

A I thought you meant—

Q Just this \$30,000 represents increased cost in order to comply with those laws?

A That \$30,000 would represent the amount required to buy new headlights. We have to throw our headlights away; they are no good anyway—I didn't mean to say that.

Q You mean under the new law—is that—is that what you mean to say.

40 A I mean they are a better headlight than the ones in use.

Francis M. Graff, direct.

Q The ones in use serve the purpose?

A Yes.

Q They are sufficient to guard against accidents and insure safe operation?

Mr. Merrey. The law says otherwise.

Q The next item?

A Replacement of 350 caboose cars to comply with the law of the State of New York.

10

Q What does that law require?

A Well, I guess after they passed the full crew bill they had to get a larger caboose to hold the brakemen.

Q They wouldn't be required on the train so they stay in the caboose?

A Yes.

Q Didn't that provide for berths?

A Yes.

Q So the crew could lay down while performing their duties. 20

A Yes, very spacious on all sides.

Q How many berths?

A Four berths.

Q So four men of the crew can go lie down?

A Yes, frequently.

Q The act requires an ice box?

A Yes.

Q And a toilet?

Commissioner Donges. What State? 30

Mr. Minard. New York.

Commissioner Donges. Within what time?

Witness. We got to have that all cleaned up by 1920. That really means the company is obliged to replace all caboose equipment; so it is hardly fair to charge this all up to New York.

Q There is a caboose law in other States, in Indiana?

A It doesn't amount to much. Any eight-wheel cars meet the requirements of Indiana. 40

Francis M. Graff, direct.

Commissioner Donges. You said with your reasons, general replacement of equipment.

Witness. On account—the New York State caboose law is a good law, nobody can take any objection to it. It will simply mean the other States make the same requirements, and indirectly we will have to replace all caboose cars, about 600 cars.

10 *Commissioner Donges.* With no requirement as to any replacement, as to the number or percentage in any given year?

Witness. No, not in New York.

Commissioner Daniels. What is the life of a caboose car anyway; such as you have at present—do they last more than fifteen years?

20 *Witness.* We have caboose cars that have been on the road for forty, I guess. It is pretty hard to say what the life of a car is. You rebuild them and change them over and still it is the same old car, you know. A caboose car should be structurally pretty strong, especially there—

Q What is the next item?

A Application of steel draft arms to 6,657 thirty-ton box cars.

Q That is required by law?

A No.

Q That is being done?

30 A The expense has been authorized and the material is being put on the ground now.

Q What is the purpose of that improvement?

A These cars are equipped with short draft timber that only goes to the body bolster; in every train in modern service condition it is utterly impossible to keep the draft rigging secure. It pulls out and results in accidents. I included that simply to show that once in a while the railroads do something voluntarily for their own good and also for the protection of the public.

40

Francis M. Graff, direct.

Q That is an element of safety as well as an improvement in structure?

A Yes.

Q And amounts to how much?

A \$948,223.

Q Did we get in the amount of the 350 caboose cars, \$350,000, and equipping road engines with improved headlights, \$30,000?

A No.

10

Q The next item?

A Application of permanent push poles to 330 switch engines. The purpose of that is the same as the other case, to show the voluntary action on the part of the company.

Q That relates to safe operation?

A Yes. It wasn't required by law.

Q And amounts to \$44,480?

A Yes.

20

Q The next item?

A Application of steel underframes and electric lights to 100 passenger train cars, \$324,367.

Q That work is under course of construction?

A The material is assembled on the ground; the work hasn't been done.

Q It will be done when the material is assembled?

A Yes.

Q The purpose of that is what?

A The purpose of that is anticipated what is going to happen in Federal legislation.

30

Q Steel cars?

A Yes.

Q The purpose of that—is it or is it not the safety of the traveling public as well as the convenience of electricity?

A Yes. It is a question now when the work is done whether it will meet the requirements of any of the statutes that will be passed, on all steel cars.

40

Charles Pfitzner, direct.

Commissioner Donges. You have some steel equipment now?

Witness. Very little. We have four mail cars.

Mr. Herrey. No questions.

CHARLES PFITZNER, sworn on behalf of Erie Railroad Company.

10

Direct examination by Mr. Minard.

Q What is your business?

A I have charge of the crossing men.

Q You are supervisor of the crossing men, including Paterson?

A Yes, sir.

Q I show you a statement and ask you if that is a complete list of the crossing protection provided at each in Paterson and the time during which the protection is afforded?

20

A Well, all except Fifth avenue.

Q Fifth avenue is not in this case—that is, all the crossings except Fifth avenue?

A Yes.

Q That actually represents the number of men and whether there are gates or men on the ground?

A Yes, sir.

Q And indicates the hours during which protection is afforded?

30

A Yes, sir.

Mr. Minard. I might say for the information of the Commission, that statement up to that point is the exact number filed with our answer.

Q Can you say the amount paid per man are the figures that represent the amount paid these men in wages?

A Yes, sir. And the total of the protection is \$14,736.87 and the cost of maintenance of the crossings is \$2,101.59.

40

Charles Pfitzner, direct.

Q As to the maintenance, I don't know.

Mr. Minard. I will leave that out.

Q There is a statement down in the bottom of other streets, undergrade crossings, is that right?

A Yes, sir.

Mr. Minard. I will offer this in evidence except the last column showing maintenance. I haven't any maintenance man here to-day.

10

Commissioner Hillery. Where were the figures taken from?

Mr. Minard. They were prepared by the operating vice-president's office. Mr. Pfitzner's statement is he represents that department; another man has charge of the maintenance.

Mr. Merrey. We will accept this statement without bringing anybody here.

Commissioner Donges. That this is an accurate statement?

20

Mr. Merrey. No, that this is a statement they would swear to.

Commissioner Donges. It may go in as part of the exhibit.

Mr. Merrey. Yes.

Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-12.)

Commissioner Daniels. Do you feel for this wage that you get really competent men to protect your gates?

30

Witness. Yes, to a certain extent. The men I have, I doubt that I could better them. Of course, there is, once in a while, a man slips in that is no good. We get rid of him as soon as we find that out.

Commissioner Daniels. Couldn't you get, at two dollars, a very much more efficient man to guard your gates?

40

Charles Pfitzner, cross.

Witness. That is a question. I would consider old men on the gates better than younger men, especially nights. I consider they would take care of the position a great deal better.

Q Isn't it true, Mr. Pfitzner, these gates have a simple operating maintenance by compressed air arrangement, and at other times a single lever, and a one-armed man, they can perform that duty all right?

A Not very well through Paterson.

Q There are no one-armed men through there?

A They are all cranked. I have a one-armed flagman.

Q I notice that statement shows some crossing bells as well as gates?

A Yes.

Q That appears in the statement wherever there is a bell?

20 A Yes.

Cross examination by Mr. Merrey.

Q You get some men for seventy-five cents a day?

A No, only a part of a day, put in part of a day on that work and have another part of the day for something else.

Q Some are paid one dollar and a dollar and a quarter; is there any reason for that; any difference in the character of work they do?

30 A Not a great deal; some of the crossings are a little more important than others.

Q Is Clay and Straight street crossing a very important one?

A Well, Straight street, Clay and Straight are separate, those are separate crossings.

Q They are marked here Clay and Straight streets one dollar.

40 A I know they are marked together. Straight street should be separated there. There is two sets of men on those two crossings.

William H. Willis, direct.

Q You have no trouble with these men, these gate-men, no trouble?

A Sometimes we do; the same as you would with any body of men.

Q Some have been struck there on the crossings, haven't they, lately?

A No, I had one case of a man being struck on Market street.

Q Occasionally they put a gate down when a wagon is on the track, things of that kind?

10

A Not as a rule. You find a majority of the cases of automobiles and wagons going in with the gates partly down; and the man lowers the other gate and they get in between them.

WILLIAM H. WILLIS, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

20

Q Where do you live, Mr. Willis?

A Nutley, New Jersey.

Q What is your position?

A Signal engineer of the Erie Railroad Company.

Q Are you in charge of the signal system of the Erie Railroad, New York to Chicago, and all branches?

A Yes, sir.

Q How long have you been in the civil engineering business?

30

A About twelve years.

Q Have you prepared, at my request, a statement of the signal improvements undertaken in the last years and carried out?

A Yes, sir.

Q I show you a paper and ask you what it is. Just tell us what this statement shows.

A There is three columns of figures there. It shows the appropriations made.

40

William H. Willis, direct.

Q Beginning on the left-hand side the first column shows the division of the road upon which the improvement is made?

A Yes.

Q The second column, the interlocking devices and automatic signals?

A Yes.

10 Q What is the function of both of those features, interlocking and automatic signals?

A The interlocking signals are usually placed at junction points and grade crossings of other railroads.

Q For the sole purpose of what?

A Safeguarding train movement.

Q Automatic signals—the sole function is what?

A Spacing the trains properly.

Q So the two items, interlocking and automatic signals, are entirely for safety appliance purposes?

20 A It is.

Q Go ahead with the next column, the third column.

A The third column is the appropriations made the year ending June 30, 1911.

Q The fourth column?

A The fourth column is the appropriations made the year ending June 30, 1912. The fifth, the appropriations made June 30, 1913.

30 Q Those are appropriations. Have you a note in the bottom corner indicating by an X certain things?

A The percentage worked out.

Q X means what, when opposite a figure?

A 10% of the work completed.

Q It means the other 90% in the course of construction?

A Yes.

Q Where there are two X's?

A 20% of the work completed.

Q Three X's?

40 A 50% completed.

William H. Willis, direct.

Q Four X's?

A 85% complete.

Q Five X's?

A 95% complete.

Q Where there are no X's in front of figures what does it mean?

A The work all completed.

Q All the work in the 1911 and 1912 columns has been completed, is that right? 10

A That is right.

Q The first four items of 1913 are complete?

A Yes, sir.

Commissioner Donges. And the expenditures actually made?

Witness. These are appropriations made and as a rule they cover the exact cost of the work done. I might mention here these figures only cover the amount chargeable to capital account. 20

Q It doesn't cover replacement or renewals?

A It doesn't cover any replacing in kind, anything of that kind.

Q Do you have a surplus over your appropriations or a deficit?

Commissioner Donges. Why not confine it to these figures.

Mr. Minard. What I want to know is about these items that have been complete. Was there a deficit or a surplus? 30

Witness. We had a surplus, very small.

Q How much?

A Take the case of the New York divisions for 1911, that covered work done in the Jersey City yard, three interlocking signals in the Jersey City yard, automatic signals between Jersey City and Bergen. We had approximately \$5,000 out of the appropriations.

Q Out of \$190,000 you had \$5,000 left?

A Approximately that. 40

William H. Willis, direct.

Q Can you say about the rest, whether there was a surplus or not?

A This case (indicating).

Q 1911, the Susquehanna?

A About \$8,000 left.

Q Out of \$234,000?

A Yes.

10 Q Can you tell about Mahoning, 1911?

A We had nothing. That was a contract job; it is the contract figures.

Q What can you say of the New York division, 1912?

A I can't say. I haven't detail figures for that, but I know there was very little left out of the appropriation.

Q When you say "little," what do you mean?

20 A That covers several jobs on the New York division; there might be \$7,000 or \$8,000 left out of the \$40,000.

Q Why didn't you give me to-day the actual expenditures instead of the appropriations?

A The actual appropriations?

Q Yes, showing the surplus and deficit?

A My main reason was my chief clerk was away and I couldn't prepare it.

Mr. Minard. I want to put in the actual expense.

30 *Commissioner Donges.* That should be produced.

Mr. Minard. I am willing to produce that if I may have permission.

Q What does the New York division mean; that embraces New Jersey operation?

A Yes, a part of New Jersey.

Q All of New Jersey operation is embraced in the New York division?

40 A Yes.

R. H. Corson, direct.

R. H. CORSON, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q What is your occupation?

A Telegraph inspector.

Q On the Erie Railroad?

A On the Erie Railroad.

Q Are you familiar with the wires of a telegraph and telephone and signals system through Paterson? 10

A I am.

Q Have you prepared a schedule here showing the wires and stating the points between which they run?

A I have.

Q This statement is entitled, "Wires along the Erie Railroad, Main Line, at certain street crossings in Paterson."

Mr. Merrey. I want to object to offering this table in this way. It will save time to put the table right in as it is. 20

Mr. Minard. I was going to do that; I want him to explain it. I think you have no doubt about his competency to testify.

Mr. Merrey. No.

Q Does this statement show accurately the situation of the wires through Paterson?

A It does.

Q Signals, telephones and telegraphs? 30

A Everything.

Q Does it show the wires of the Erie, or whether they are telephone or telegraph company's?

A Yes.

Q Under the headings of railroad and Western Union?

A Railroad and Western Union.

Q In the last column there are the names of the crossings involved?

A The names of the crossings. 40

Martin Quick, direct.

Mr. Minard. I wish to offer this statement.
Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-13.)

10 Q Those wires operated by the Western Union Telegraph Company, do you know whether they are operated and maintained under an agreement with the telegraph company?

A They are.

Q With the Western Union in 1895?

A 1907.

Q Have you a copy of the contract? It is the same contract that was filed in the Rutherford case. I will file it here. It is the same contract that you identified in the Rutherford case?

A It is.

20 *Mr. Minard.* I will send that to the commission.

Commissioner Donges. It is understood that Mr. Minard may have marked as an exhibit the copy of the contract between the Western Union and the Erie Railroad.

Mr. Murrey. The Western Union filed an answer.

Mr. Minard. I don't think they had a copy with the answer attached.

30

MARTIN QUICK, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q Mr. Quick, what is your business?

A I am chief clerk to the operating vice-president of the Erie Railroad.

Q Recently have you been filling another position?

A For twenty-two months I have been secretary
 40 of the committee appointed by the railroad in the ar-

Martin Quick, direct.

bitration cases with the engineers, foreman, conductors and trainmen.

Q And you were secretary of the managers' committee which represented all the railroads before those two arbitration committees?

A Yes.

Q In that connection did you become familiar with the figures and estimates and all the testimony submitted before those boards of arbitration? 10

A Yes, sir.

Q Did you compile these figures in a statement, "Statement and Estimated Annual Increase in Pay Rolls as follows, and Increases in Wages Awarded by Arbitration Commissions, and Effective since May 1, 1912"?

A Those figures were compiled by individual railroads on instructions issued by this committee, of which I was secretary. 20

Q As secretary, did you receive the figures of the Erie Railroad?

A Yes, sir.

Q Were those figures offered in evidence before that board?

A Yes, sir.

Q Is this a statement of those figures?

A Yes, sir.

Q Just read it, please.

A "Statement of Estimated Annual Increase in Pay Rolls as follows, and Increases in Wages Awarded by Arbitration Commissions, and Effective since May 1, 1912." 30

Commissioner Donges. Are these arbitration commissions established by law?

Witness. The last one, the railroad trainmen, was under the Newlings Act, which was an amendment of the Erdmann Act. It was not in accordance with the Federal law. It was an arbi-

Martin Quick, direct.

tration, an agreement between the railroad and the railroad employees.

Commissioner Donges. Under the Newlings Act it becomes effective under the provisions of the law?

Witness. Yes.

10 Q The first award was voluntary, if you call it voluntary insofar as the department of Commerce and Labor didn't compel the railroad to participate in the award.

A Yes, it was an agreement.

Q The arbitration was brought about through the force and efforts of the Department of Commerce and Labor at Washington?

A Yes.

Q I didn't want it to appear that we voluntarily granted the increase.

20 A No, we were held up.

Q Continue to read the statement.

A Effective May 1, 1912, engineers, the amount of increase as handed down by the arbitrators was \$124,274.40; that is estimated.

Q Per year?

A Per year. May 1, 1913, telegraphers, Erie Railroad, granted an increase per annum of \$47,689.80.

Commissioner Donges. That was the result of arbitration?

30 *Witness.* No, sir. That was the result of negotiations.

Commissioner Donges. Between the telegraphers and the officers of the railroad?

Witness. Yes, sir.

Commissioner Donges. And insofar as it was not required by any authorized body or law, it was voluntary on the part of the railroad?

Witness. Yes, sir.

40 Q Can you say anything about the threatened strike unless these figures were raised?

Martin Quick, direct.

A Yes; the railroad received an ultimatum from the telegraphers that if they didn't have the increase they would leave the service.

Q This was awarded in the matter to save a strike?

A Yes.

Q Can you say whether that first award made by the company under the Erdmann Act was a strike award in effect? 10

A Yes, sir.

Q They voted a strike and this was the alternative?

A Yes. They notified the railroad they would leave the service. Ninety per cent. of the men voted to leave the service if they didn't grant the increase.

Q In other respects it was voluntary?

A Yes. May 1, 1913, firemen received an increase of \$180,353.73. 20

Commissioner Donges. That was the result of negotiations between employees and the company?

Witness. Yes, sir. That was an arbitration under the Erdmann Act, and it was brought about by the same method as the engineers. They took a strike vote.

Commissioner Donges. There was no law compelling it?

Witness. Yes, the Erdmann law. October 1, 1913, the conductors and trainmen were granted an increase amounting to \$339,876.60. 30

Q That was under the Employees Law as amended by the Newlings Act?

A Yes, sir.

Q These figures were all employees on the Erie Railroad?

A Yes, sir.

Martin Quick, direct.

Commissioner Donges. Under the Newlings Act is the railroad obligated to submit itself to arbitration?

Witness. No, I don't think they are.

Commissioner Donges. They may or may not submit themselves?

Witness. Yes, sir.

10 *Commissioner Donges.* But once the question is submitted to the board as provided by the Newlings Act, its judgment is conclusive and becomes effective?

Witness. Yes, sir.

Q What have you to say about the circumstances which brought about this last award. Was there any strike threatened?

20 A Yes; there was the same order of procedure. The conductors and trainmen, through their officers, met and a committee composed of operating officers of the several railroads, representing all the railroads east of Chicago and north of the Potomac River; after negotiation for several days the conductors and trainmen told the railroad they thought they weren't receiving sufficient pay and they took a strike vote and came back with the usual 90% in their pockets and told the railroads if they didn't grant their request they would leave the service of the company; the various companies. It was a collective movement. Then
30 the mediators came up from Washington and entered into negotiations between the conductors and trainmen and the railroad with the result we submitted to negotiations under the Newlings Act.

Mr. Merrey. I object to this testimony.

Commissioner Donges. I don't know whether there is any relevancy or pertinency, but it is permitted to come in.

40 Q Did the Erie Railroad Company attempt to avoid participating in the award?

Martin Quick, direct.

A In the conductors and trainmen's we have got the question up now, whether the Erie Railroad will—in other words the railroad is now trying to defer the effective date of the award until July, 1914.

Q For what reason?

A For the simple reason the financial condition of the company is such we don't see our way out to pay it.

10

Q On these other matters was there any alternative for the Erie Railroad than to go into this increase?

Commissioner Donges. Mr. Minard, this witness testified it is voluntary.

Mr. Minard. If the condition of a man with a pistol to his brain offering to cough up his money is voluntary, I presume this is voluntary.

Commissioner Donges. There was no intimidation from this witness, there was duress.

20

Q Was there any way for the Erie Railroad to avoid this increase?

Commissioner Donges. That is equally objectionable.

Mr. Minard. I don't know; the commissioner seems to have in mind that these awards were all voluntary. I want to explain the circumstances.

Commissioner Donges. Yes, but his explanation, I assume, is the one we should take. Yours is an argument whether the circumstances were voluntary or otherwise.

30

Mr. Minard. Based on the circumstances which brought about the increase; I would now like to know whether there was a way out for the Erie Railroad Company so they needn't pay the money.

Commissioner Donges. The witness said it was voluntary; they participated in it on the judgment of the Erie Railroad, following the better plan.

40

Martin Quick, direct.

Mr. Minard. I think the record will show the payment was voluntary in the sense that the word is used.

Mr. Merrey. There was a way out of it.

Commissioner Donges. It is a matter of argument, I think. Mr. Minard is now seeking to get his argument on the record.

10 *Mr. Merrey.* I think he demonstrated they tried at least to keep it off for one year.

Mr. Minard. I offer this statement in evidence; is there any objection?

Mr. Merrey. No.

Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-14.)

20 Q You are chief to Vice-President Stuart, are you not?

A Yes.

Q And he has charge of all divisions of the road, operating charge?

A Yes, sir.

Q You have a general manager for lines east of what points?

A Buffalo and Salamanca.

Q And a general manager west of that?

A Yes.

Q Who is the general manager?

30 A H. O. Dunkle.

Q Have you any reports in your office from Mr. Dunkle of the cost to the railroad company in repairing damages done by floods done in Ohio this spring?

A I think there is an item in there showing the cost.

Q I show you a paper which purports to be a copy of some correspondence and ask you to refresh your memory—, I will ask you first whether that is correspondence in your office.

Martin Quick, direct.

Mr. Merrey. I object to this.

Commissioner Donges. I think, Mr. Minard, this witness is not competent to testify to a paper made by someone else.

Mr. Minard. We can bring Mr. Dunkle here from headquarters, who sent out the report.

Commissioner Donges. The person who made the record is not here for cross examination; inasmuch as objection is made, I don't see how we can permit this witness to testify to the accuracy of a report made by someone else. 10

Mr. Minard. It was made in the office.

Commissioner Donges. Applying the general rule, it is cross examination of this witness of details of records made by someone else.

Mr. Minard. We have a record made from time slips along this line.

Commissioner Donges. There was objection to this. 20

Mr. Merrey. I object to the whole line of testimony.

Mr. Minard. On what ground?

Mr. Merrey. I object to the testimony on the ground that none of it whatever is pertinent; and I object to the fact, particularly here, there isn't any evidence the witness can tell us the cost of this work repairing the flood damages or making the road twice as good as they had it before. 30

Mr. Minard. We can show all that. The point is whether you object to this witness testifying to this information. We will bring Mr. Dunkle I would like to know when the commission will fix a hearing for Mr. Dunkle.

Commissioner Donges. We will fix it to-morrow, or fix it another day.

Mr. Minard. We can bring him at the time the commission takes testimony at Paterson.

George H. Palmer, direct.

Commissioner Donges. Inasmuch as other hearings are necessary it will be better to confine the testimony of that hearing to the testimony of witnesses, whom, because of physical infirmity, were to be examined at Paterson.

10 *Mr. Minard.* It is one of the elements that go into a hard luck story. It cost a million and a quarter dollars and is something we had to pay for.

GEORGE H. PALMER, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q Mr. Palmer, where do you live?

A New York City.

Q What is your position or occupation?

A Assistant general tax agent, Erie Railroad.

20 Q How long have you been in that land department?

A Thirty-two years.

Q Are you familiar with the records of that department?

A Yes, sir.

Q I show you a paper and ask you what that is.

A That is a statement of the title of the Erie Railroad Company to the property of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company.

30 *Mr. Minard.* Let me say for the information of the commission and to save time: This is a statement along the lines of Mr. Palmer prepared in the Rutherford case. It has attached copies of special acts and incorporation of the Paterson & Hudson River and the Paterson & Ramapo Railroad and all acts supplemental, copies of the lease to the Union Railroad and the lease of the Union Railroad to the Erie Railroad, and the statement gives the subsequent title to
40 the Erie Railroad to-day.

George H. Palmer, direct.

Commissioner Donges. An abstract?

Mr. Minard. An abstract or description of the land affecting the crossings in question. It is a very complete document. I think with that explanation it might be admitted, unless there is cross examination.

Commissioner Donges. Suppose it be marked for identification subject to verification.

10

Mr. Minard. We can offer it in evidence the same as we did before subject to the right of examining the originals.

Commissioner Donges. If that is agreeable to you, this may be marked as an exhibit subject to the right to produce and inspect the originals.

Mr. Merrey. Yes.

Mr. Gourley. Yes.

Commissioner Donges. That will be admitted and marked as an exhibit under that understanding.

20

(Same is marked Exhibit R-15.)

Mr. Minard. The commission asked us to tell where the lines of the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad were separated. We have done a great deal more than we were asked. We have prepared maps of our entire right of way through Paterson.

Mr. Merrey. Are they to scale?

30

Witness. Yes, 100 feet to the inch.

Q Now, Mr. Palmer, what does this map represent; just explain it in detail.

A It shows the land which is in the City of Paterson which is controlled by the Erie Railroad Company.

Q What do the colors show?

A The different sheets show different colors.

Q Will you take sheet marked No. 7?

A No. 7, the property bounded by the yellow design-

40

George H. Palmer, direct.

nation is the property of the Paterson & Hudson River Railroad and the brown the Paterson, Newark & New York Railroad Company. The green bounds the Erie Land & Improvement Company, the red the Paterson & Ramapo Railroad Company.

Q Does that designation prevail throughout all the sheets?

10 A Yes. There is one more, blue, it is the property of the Erie Railroad Company.

Q And the blue lines appear only on sheets where there is Erie land?

A Yes, sir.

Q What have you to say about these little diagrams in the corner of the sheets; for instance in sheet No. 5, what is that diagram index to parcels?

A In the first column the number of the parcel on the sheet; in the second column, the name of the grantor; third column, date of the deed; fourth column, name of the grantee in the deed, fifth, sixth and
20 seventh columns gives the date, book and page.

Q Register's office of Passaic County?

A Register's office of Passaic County.

Q Each piece of ground on the map is marked with a number in a circle.

A Yes.

Q That number corresponds to the number in the diagram as indicating the grantor?

30 A Yes.

Q Is there anything else on this map you can explain, that requires explanation?

A There has been no attempt made to show where the tracks are; simple enough to locate the center line.

Q Simply the arrangement of the real estate?

A That is all.

Q What is the number up in the sheets here (indicating)?

A These maps were made up from land records
40 and these sheets were numbered in our original record.

George H. Palmer, direct.

Q If this map was required to be verified at any time you can refer to that in the original land record?

A Yes.

Q How old are those records?

A These maps were made two years ago.

Q You have old maps?

A We have old maps and record books.

Q Do these maps show actually the land owned by the several companies, grantors, grantees, books and pages of the record? 10

A Yes, sir.

Q And the colored lines indicate accurately the territory covered by each deed?

A Yes, sir.

Q And the number in the circle represents the separate tracts?

A Yes.

Commissioner Donges. Which is accurate as of to-day? 20

Witness. Yes.

Commissioner Donges. I understand these maps are confined as to the character of the streets.

Witness. Taking in the main line.

Commissioner Donges. And all the streets affected by this crossing.

Witness. Yes.

Mr. Merrey. The entire city? 30

Witness. Yes.

Mr. Minard. Have you any cross examination on this map?

Mr. Merrey. No, I haven't.

Q The tracks mentioned in here and numbered here accurately described in those descriptions attached to the statement which we offer?

A I simply confined the copy of the description attached to the statement with the original right of way. I haven't included outlying property. 40

George H. Palmer, direct.

Q Would that or would not apply only to land were the crossing eliminated, or the entire strip?

A The whole strip, the original right of way.

Q The original right of way of the Paterson & Hudson River and the Paterson & Ramapo?

A Yes.

10 *Commissioner Donges.* That is to say, Exhibit R-15 is an abstract of the history applying only to the main stem.

Witness. Yes. I think that is described on the third page. Most of the tracks lie wholly within the original width of the right of way. There may be a few exceptions; in the majority of cases.

Mr. Minard. Any questions about this map?

Mr. Mervcy. No objection.

Mr. Minard. I offer it in evidence.

20 *Commissioner Donges.* It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-16, including eight sheets.)

Q Mr. Palmer, I asked you to prepare a statement of the assessed valuation of the Paterson & Ramapo Railroad and the Paterson & Hudson River Railroad within the limits of the City of Paterson; have you prepared such a statement?

30 **A** Yes; under my direction.

Mr. Mervcy. How is that material?

Mr. Minard. Mr. Palmer will tell us how it is made.

Q Just explain how it was made up.

A The items in the first and second class were property and franchise made up from the reports of the—or from the rates of the State Board of Assessors, and the third class of property, the statement was made up from tax bills of the city of Paterson.

40 **Q** So all the figures were from the officer either

George H. Palmer, direct.

of the State Board of Assessors or the municipal board?

A Yes; excepting the last item was apportioned on the city of Paterson franchise.

Q Mileage basis?

A Yes; we took the total franchise as fixed by the State Board of Assessors and apportioned and mileage of the city as compared to the total mileage of the companies assessed.

10

Q Then the Paterson & Hudson River Railroad is assessed in the city of Paterson, how much?

A \$593,290.

Q The figures of the Paterson & Ramapo Railroad were made up in the same manner?

A In the same manner.

Q They show an assessment of how much?

A \$495,474.

Mr. Minard. In that connection I want to offer a statement sworn to by Mr. Hansel, who valued all the property in New Jersey under the authority of the State. Mr. Hansel is in Philadelphia to-day and I am offering that; it is sworn to before a notary and all, if the commission is willing to accept it. Those are the Paterson & Ramapo and Paterson & Hudson River Railroads, those statements. I might add, the only manner in which those figures differ from the report, which is a State document, is it is entitled "Report of Valuation of Railroads and Canals in New Jersey," for, as he says, he took the assessed valuation in certain parts, instead of his own appraisal, and it is stated in his affidavit what was accepted as the assessed valuation.

20

30

I offer this statement that Mr. Palmer made of the assessed valuation.

Commissioner Dongra. Is there any objection to the admission of the statement made by Mr. Palmer?

40

George H. Palmer, direct.

Mr. Merrey. No.

(Same is marked Exhibit R-17.)

Mr. Merrey. In looking at Map No. 8, I think that runs through the main station at Market street, is a line with a note to the effect for taxation purposes the property is in two parts, divided at that point.

10 *Witness.* At the time the Paterson & Ramapo was incorporated and laid out, the Paterson & Hudson River had its station at the point on Main street about where Grand street now intersects.

Mr. Merrey. Where the St. John's Church is?

20 *Witness.* St. John's Church and round about—I think part of the Ramapo was incorporated in 1847, or to deeds were taken in 1847, and the railroad build around about that time and the line was laid out at the intersection of the Paterson & Hudson River Railroad just east of what is now Straight street. Subsequently, 1855 or thereabouts the Paterson & Hudson River abandoned their old station and bought a strip of land thirty-five feet wide adjoining the land of the Paterson & Ramapo and has a joint station from that time on up near Market street.

Mr. Merrey. After that there was some agreement made between them?

Witness. No.

30 *Mr. Merrey.* As to the taxable proportion; you notice what I mean?

40 *Witness.* I know what you mean; for accommodation on account of lapping on each other. To give a little history. Our office was moved to New York—we had charge of all property outside of New Jersey, the New Jersey office handled that. We moved down in 1890 and we went into an investigation of the assessments. We found we were doubly assessed. The Paterson & Ramapo was assessed on the main stem from Market street to a point east of Straight street to the in-

George H. Palmer, direct.

tersection of the Paterson & Hudson River, and the Paterson & Hudson River was assessed from the main stem between the same points, and we got an adjustment by which only one main stem was assessed and the division was made at that point, a'out the center of the station.

Q That point was taken for convenience as the company's property line?

10

A Yes, that is all.

Q (*By Mr. Merrey.*) This assessment was made on that agreement?

A That arrangement.

Q Now as the property of each?

A No.

Q The property on the map marked blue which belongs to the Erie Railroad was not included in this table?

A Yes, included in this table; all the property of the railroad company is included. It is assessed by the State as belonging to the underlying company.

20

Q Notwithstanding it is owned outright by the Erie?

A Yes.

Commissioner Donges. What is the Erie Land & Improvement Company?

Witness. That is the company controlled by the Erie; some properties stand in their name.

Q (*By Mr. Minard.*) It is a real estate company?

30

A A real estate company.

Q (*By Mr. Merrey.*) The land is not used for railroad purposes?

A Yes, the land in one case just east of Straight street; it used to be a Paterson Iron Company; on the next street, the upper right hand corner; that is used for railroad purposes.

Commissioner Donges. A yard?

Witness. Yes.

Commissioner Donges. Is that a freight yard?

40

Witness. Yes.

George H. Palmer, direct.

Q (*By Mr. Minard.*) Do I understand, Mr. Palmer, this statement we have just offered, Exhibit R-17, included all the land used for railroad purposes owned by the Erie Land & Improvement Company, the Erie Railroad Company or the Paterson & Hudson River Railroad or the Paterson & Ramapo Railroad?

A Yes.

10 **Q** That is the total valuation of all property used by the Erie Railroad Company in Paterson?

A Yes.

Mr. Minard. I offer that as showing the property belonging solely to the Paterson & Hudson River and Paterson & Ramapo R. R. Companies.

Mr. Merrey. The question is whether a statement supported by a affidavit be taken in lieu of the production of Hansel.

20 *Mr. Minard.* Those figures were accepted by the State and accepted by the Board of Assessors. They are merely public figures.

Mr. Sommer. No objection as to their being received as though he testified to them.

Commissioner Donges. And the summary of what Mr. Hansel would testify to if here. Do you desire to reserve any right of cross examination?

Mr. Sommer. None at all.

30 *Mr. Minard.* I offer the one of the Paterson & Hudson River Railroad.

(Same is marked Exhibit R-18.)

Mr. Minard. This I will have marked for the Paterson & Ramapo Railroad. I would like the privilege of taking them with me and having copies made; I will return them to the commission.

Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-19.)

40 **Q** (*By Mr. Minard.*) Mr. Palmer, did you prepare for me a copy of the assessed valuation of the Pater-

George H. Palmer, direct.

son & Ramapo system throughout and the Paterson & Hudson system?

A Yes, prepared under my direction.

Q How is this statement made up?

A Made up in the same way as former statements?

Q By obtaining the information from the State Board of Assessors and the city valuation and the municipal valuation in the various municipalities? 10

A Yes.

Q The first item covers the assessed valuation of the Paterson & Hudson River Railroad, does it not?

A Yes.

Q \$2,727,044?

A Yes, sir.

Q The second memorandum covers the Paterson & Ramapo Railroad assessed at \$1,616,492, is that correct?

A That is correct. 20

Mr. Minard. I offer that in evidence.

Mr. Merrey. No objection.

(Same is marked Exhibit R-20.)

Q Mr. Palmer, did you make any investigation to ascertain when streets were laid out in Paterson?

A Yes, I had one made.

Q What was the result of your investigation?

Mr. Merrey. I object to that.

Mr. Minard. I will admit you have got the original records. 30

Mr. Merrey. If the witness knows he can testify to it. If you have any records put them in.

Mr. Minard. The only thing I can do is produce the man who examined the county records in Passaic County. After a personal investigation, made under Mr. Palmer's supervision, he reported to Mr. Palmer and Mr. Palmer has an abstract of the result.

Mr. Merrey. What will the county records show you? 40

George H. Palmer, direct.

Mr. Minard. They will show you only two streets were in Paterson when the railroad was laid out and all the rest were laid out afterward.

Mr. Merrey. The county records don't show that.

Mr. Minard. They will.

10 *Commissioner Donges.* If they are extant records, why may they not be produced, or a certified copy?

Mr. Minard. They may. If the commission requires that we will have it done.

Commissioner Donges. I think that is the best proof, in view of the objection.

Mr. Merrey. I may be able to agree with him on this subject if I have an opportunity to investigate it.

20 *Mr. Minard.* I want to know now whether it is our duty to produce certified copies or whether it wasn't the plaintiff's own duty to do that.

Mr. Merrey. You set it up. I say it doesn't matter whether it was before or after.

Commissioner Donges. I think it is a matter raised by the respondent.

Mr. Merrey. I may agree on the fact.

Commissioner Donges. Where it is a matter particularly of public record susceptible of legal proof, unless—

30 *Mr. Minard.* Yes. Do I understand the commission to rule it doesn't make any difference whether a street is opened after a railroad was built and operated or not?

Commissioner Donges. The question hasn't been raised on that.

Mr. Minard. Mr. Merrey says it don't make any difference; I say it does.

40 *Commission Donges.* In your answer you distinctly raise that question. If you desire to have any advantage of that it will be necessary for you to introduce proof that the condition or situation raised by your answer exists.

George H. Palmer, direct.

Mr. Merrey. If Mr. Minard will give us an opportunity to investigate his report we may be able to agree. I think that will save dispute and the necessity of taking evidence. As soon as we are satisfied he is right we won't have any dispute on it.

Mr. Minard. We are very willing to do that. We can produce that man; I don't know as we can produce the certified copy. 10

Commissioner Donges. In view of the objection it is a question whether the production of the man who examined the records is sufficient. There are no objections to submitting a copy of what you propose to prove to Mr. Merrey or Mr. Sommer?

Mr. Minard. In a foreclosure proceeding you may submit a certified copy of title. I don't see why any stricter rules of evidence are required here. The man who made the examination is a lawyer, a member of the bar of New Jersey. 20

Commissioner Donges. That is in an uncontested foreclosure, Mr. Minard.

Mr. Minard. Yes, that is true.

Commissioner Donges. That is under a court rule, I think not under statute, and only in uncontested foreclosure.

Mr. Minard. We can produce the certified copy. I want to go back to that point again. You say if we want to take any advantage of this situation; the best advantage to take of it would be to say nothing about it. If he doesn't sustain the burden of his case he don't win. 30

Commissioner Donges. This is not strictly a law suit where one party wins and loses because of a failure of proof.

Mr. Minard. It isn't strict; yet when we want to take evidence in one case it is a strict court of law and in the other it isn't. 40

George H. Palmer, direct.

Commissioner Donges. Where you tendered something else than the best evidence and substitute it for the best, and it is objected to, then I think we are entitled to the best.

Mr. Minard. On the question of whether we need to offer it, it isn't a court of law.

10 *Commissioner Donges.* That may be a thing for you to determine; whether you are willing to rest your case without having that matter before the commission.

Mr. Minard. We will let that go.

Mr. Sommer. We will agree on it.

Mr. Minard. We can probably get a car and bring the contents of the offices up to a hearing at Paterson.

I believe that is all I have for Mr. Palmer.

20 *Commissioner Donges.* Any cross examination?

Mr. Merrey. No.

30 *Mr. Minard.* Most of these gentlemen here in the court room were engaged in taking the census at the crossing. If we can agree on the evidence going in, as we did in the Rutherford case, we will offer a summary subject to our being called on at any time for the original sheets and we will produce the original sheets and the men who superintended the taking. If there is any question as to how the figures were actually taken we will produce any of the men necessary. It is approaching the hour for adjournment; if we could make an arrangement of that kind, we wouldn't bring these men back.

Commissioner Donges. What have you to say, Mr. Merrey.

Mr. Merrey. That is fair.

Commissioner Donges. That seems to be satisfactory.

40 Adjourned until the following day, Friday, December 5, at the Chancery Chambers, Jersey City, at 11 o'clock A. M.

Discussion.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Jersey City, N. J., Friday, December 5, 1913.

PATERSON GRADE CROSSING ELIMI- }
NATION, ERIE RAILROAD COMPANY. }

Before Commissioners Donges and Daniels. F. H. Sommer, Esq., Counsel.

For City of Paterson appears E. F. Merrey, Esq. 10

For Erie Railroad Company appear G. S. Hobart, Esq., and D. E. Minard, Esq.

For abutting property owners, etc., appears William B. Gourley, Esq.

Mr. Minard. I promised yesterday to produce a copy of the Western Union contract, dated September 25, 1907, and the supplement or amendment, supplemental amendment, dated the third of September, 1913. I offer those in evidence in connection with the wires that are operating along the railroad company's right of way. 20

Commissioner Donges. There is no objection to this being a copy of the amendment?

(No response.)

Commissioner Donges. It will be admitted and marked.

(Contract 1907, marked Exhibit R-21.)

(Agreement 1913 marked Exhibit R-22.)

Commissioner Donges. This is a copy, not the original? 30

Mr. Minard. No, I have a copy in the Rutherford case. It is a printed copy in the one case and a typewritten copy in the other.

Commissioner Donges. Was there anyone appearing yesterday who wishes their appearance entered to-day?

(No response.)

Mr. Minard. We might have an opportunity at Paterson to offer testimony which will be satis- 40

William B. Brameld, direct.

factory concerning damage in the Ohio flood. I told you there was one of our witnesses in Chicago who couldn't get here to-day. I would like permission, if it is desired to do so, to bring the matter up then.

10 *Commissioner Donges.* Yesterday the matter was brought up by you an objection was made by Mr. Merrey; it was then decided the hearing at Paterson was for the taking of testimony of witnesses offered because of infirmities, and any testimony of the Ohio floods, will be presented, if at all, at a subsequent date.

Mr. Minard. That applies to some other testimony which I was going to mention.

20 *Commissioner Donges.* The taking of testimony at Paterson will be confined to those witnesses, and now particularly in view of the fact that it is to be used in the Rutherford case as well.

WILLIAM BRAMELD, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q Mr. Brameld, did you at my request put the siding industries on the sidings through Paterson on a blue print?

A I did.

30 Q Where did you get the map from which the sidings were placed on this map?

A This map is a blue print of a tracing in the files of city engineer's office.

Q Simply a right of way map?

A It shows the tracks generally in the city.

Q This map, I notice is entitled "Erie Railroad Company, Map showing track facilities in Paterson, March, 1903."

40 A Yes.

William Brameld, direct.

Q And for this purpose have you not put on all the industrial sidings which were not already on the map and marked it up with letters in circles at each crossing in accordance with the map offered by Paterson in this case?

A Yes.

Q So these letters in circles correspond with the blue print which the city has offered? 10

A Yes, sir.

Q What does this map show, beginning at one end and going to the other?

A It shows the tracks of the company from a point near Thomas street east of Madison avenue on the main line through to Hawthorne. It shows the Newark branch tracks from the city line to the junction with the main line east of Straight street.

Q Does it show all the yards?

A It shows all the yards in the city and sidings to industries. 20

Q I see on the left hand side of the map one track is marked River street yard; that indicates the yard at River street of the company?

A Yes.

Q And a number of tracks in there?

A Yes.

Q I see a building marked "freight house"; that indicates the Paterson freight house?

A That indicates the freight house at the River street station. 30

Q I see a street marked "River street station"?

A That is the passenger station at River street.

Q Proceeding along I see the Paterson depot; is that the passenger station at Paterson?

A That is the passenger station.

Q The Market street station?

A The Market street station.

Q The freight yard is marked?

A That indicates the Paterson city freight yard, yes, sir. 40

William Brameld, direct.

Q What kind of tracks are in there, for what purpose?

A Team tracks.

Q For teams unloading?

A For teams unloading.

Q Do you know whether the map is drawn to scale or not?

10 A It is drawn to scale.

Q So the different distances or the difference of the distances or objects from each other can be determined from scaling?

A Yes.

Q The scale here is one inch to two hundred feet?

A Yes, sir.

Q I see here an object marked "freight house"; is that the Paterson city freight house?

20 A The Paterson main freight house located just east of Cedar street on Railroad avenue.

Q Down here I see storage yard?

A Where they store and sort cars to be placed at the different industries and also the team yard.

Q It is not a team yard?

A Not a team yard.

Q But for putting cars in the team yard? I see here "D., L. & W. R. R."; those are the tracks of the D., L. & W.?

A Adjacent to the Newark branch.

30 Q They run into the main line somewhere?

A No, they have no connection with the main line at that point.

Q I see an object here marked "station, South Paterson."

A That is the South Paterson station of the Newark branch.

Q That is what street?

A Main street.

Q At Main street there is a grade crossing?

40 A A grade crossing.

William Brameld, direct.

Q With trolley tracks?

A No trolley tracks.

Q Running over it? Then this indicates the Paterson branch on out?

A The Newark branch.

Q And the D., L. & W. R. R. running as far as Getty street?

A Getty avenue.

10

Q At Getty avenue there is a grade crossing?

A Getty avenue is a grade crossing.

Q The Newark branch does not run into the main branch between Clay and Straight street and Madison avenue?

A Yes.

Q I notice here a circle with names of objects; what does that represent, in the orange color?

A The circles with the letters in them and the names opposite, shown in yellow, indicate the crossings at grade, which the petitioner desires eliminated.

20

Q They are lettered and named in accordance with the city's petition?

A Yes, sir.

Q And map?

A Yes, sir.

Q I see a circle with a number in red; what does that indicate?

A The small circles with the numbers in them in red indicate the location of the industries that are served by sidings.

30

Q I see here a table from one to forty-six; what is the circle in red with names opposite; what do the names indicate?

A Indicate the owner of the industry served by sidings on the line.

Q Those are the names of owners of sidings marked on the map?

A Yes, sir.

40

William Brameld, direct.

Q You can readily determine the location of each owner's siding by getting the number opposite his name?

A Yes.

Q I notice that the John Agnew Company is marked two sidings, how do you indicate that; also the Weidmann Silk Dyeing Company at 43?

10 **A** By placing a circle with the number 11 in it, it locates the different sidings.

Q Are there two?

A There are three.

Q There are three sidings they have but you have only put two there, is that right?

A No.

Q There is another siding which continues around No. 11?

20 **A** No. 11 is on Prince street; it is a siding that runs to a storage yard at Prince street; the two circles in No. 11 in the vicinity of Governor street, Tyler and Gardner streets, are sidings to coal yards. There are several sidings.

Q Weidmann Silk Dyeing Company are marked No. 43?

A Weidmann Silk Dyeing Company has two sidings, one on both sides of the main track west of Fifth avenue and one at the coal yard east of Fifth avenue.

30 **Q** (*By Mr. Merrey.*) When you say east you speak in railroad direction?

A Railroad direction, Jersey City is east.

Q East is really south?

A On this map, yes.

Q (*By Mr. Minard.*) Where did you get the information that the Weidmann Silk Dyeing Company and the Agnew Company had two sidings?

A I went out on the ground.

Q Why do you say two sidings there and show three on the map?

40 **A** This list on the map is a copy of what is shown in the respondent's answer.

William Brumfield, direct.

Q That is copied from the answer and afterwards you went on the ground and found there were three instead of two?

A I did.

Q Wherever a company has more than one siding there will be the same number of circles with their number in there as they have sidings, is that right?

A Yes, practically.

10

Commissioner Donga. I notice here two No. 10's in circles; that indicates one of the sidings?

Witness. No; that indicates one of the places where they are served.

Q By the same siding?

A This is a different siding; they have a siding they built, taking off the house track siding. That is located on both sides of Taylor street?

Q That is No. 10?

A No. 10 is the Standard Oil Company.

20

Mr. Minard. I offer this map in evidence.

Mr. Merry. We will have no objection.

Commissioner Donga. Suppose Mr. Gourley asks any questions he wishes first.

Q (*By Mr. Gourley.*) Do these sidings indicate whose property that is, the railroad's or abutting property owners?

A They do not.

Q (*By Mr. Merry.*) Do you know anything about the owners of property?

30

A I do not.

Q Do you know whether these names of owners are correct or not?

A I do not. They were taken from the list that was in the respondent's answer.

Q Then it may be that some of the property which is credited up to the different people belongs to the railroad company?

A It may be.

40

William Brewster, direct.

Q Take No. 18 for instance, Morrison Company, that is at Market street?

A Yes.

Q Isn't that owned by the Erie Railroad Company or the Paterson & Ramapo, one of those companies?

A It is so indicated on the right of way on the map; I don't know by personal knowledge.

Q Why did you put the name, Morrison & Company?

A As an industry that was served by a siding.

Q So that these names that you have on this map in the following circles in which there are numbers, merely indicate an industry and not the ownership of any property there?

A That is correct.

Q As far as you know?

A As far as I know.

Q Might I ask about No. 8, M. Gable; there is no such person, as far as you know?

A I inquired from the freight agent and he said M. Gable had a piece of land where it is marked No. 8.

Q Is that owned by the Erie itself?

A I don't know.

Q Do you know whether or not these sidings were made by any permanent right where they cross the street?

A I do not.

Q You do not know whether or not the city of Paterson has given more than temporary permission to cross the street?

A I do not.

Mr. Merrey. Mr. Barber, were you able to locate G. A. Zabriskie in the Paterson matter? You wrote me you couldn't locate him.

Mr. Barber. No.

Q *Mr. Merrey.* He was one of the parties mentioned to send out notices to.

William Brameld, direct.

Mr. Barber. No, the letter was returned to the office. It was registered; we had notice they couldn't make delivery and didn't find the address in the city of Paterson.

Commissioner Donges. You are speaking about No. 5.

Witness. No. 5 is the location of the building occupied by—it is the building on the northwest corner of Clay and Railroad avenue, according to railroad direction. It is an industry located under the name of G. A. Zabriskie. 10

Mr. Gourley. This shows the McNab & Harlin switch?

Witness. Yes, two of them.

Mr. Misard. I offer that map.

Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-23.) 20

Q (By Mr. Misard.) Mr. Brameld, in going over this ground to check up these sidings did you make any observations, geological observation, as to the streets or structures that would be effected by the depression of the right of way through Paterson, as required by the petition or by the elevation of the strip as mentioned in the alternative, of these obstructions and structures not mentioned in the petition or included in the proceeding; did you make this list of those? 30

A I did.

Q Just point out to the commission the location of the different objects mentioned on the list beginning at the top.

Mr. Hervey. Do these refer to all structures?

Mr. Misard. Yes, railroad structures.

Q Begin at the top?

A The first one is the Passaic river bridge, the bridge shown on the map, known as bridge No. 5. 40

William Brameld, direct.

Q Do you know how high that bridge is above mean water level?

A I have taken no exact measurements.

Q Are you able to say from your observation?

A I should judge it would about fifteen to sixteen feet, not over.

10 Q Do you know anything about the elevation above high water, not unusually high, but ordinarily high water?

A I have known them to put a railroad train on the bridge to keep it from being washed away.

Q How wide is the river between the abutments, can you tell, about?

A About 400 feet.

Q The bridge is about 400 feet long?

A Yes.

Q That is a double-track bridge?

20 A Yes; at Fifth avenue there is a grade crossing.

Mr. Merrey. May I call attention to something here?

Mr. Minard. Yes.

Mr. Merrey. Sixth avenue is an open street, permission to cross at grade has been refused, but permission by the ordinance has never been contested opening that street. We will contend hereafter if the question comes up that Sixth avenue is an open street.

30 *Mr. Minard.* I think you refer to the decision of Vice-Chancellor Howell of the Court of Chancery when he decided it was not an open street.

Mr. Merrey. No; he decided no grade crossing could be put over there and the commission refused to allow a grade crossing.

Mr. Minard. The reason it came to the commission was the vice-chancellor decided it was not an open street.

40 *Commissioner Donges.* I don't know that it is necessary to debate that now.

William Brameld, direct.

Mr. Minard. It won't make any difference about our word in the matter. The evidence of the court will settle the question.

Q The next?

A Montgomery street.

Mr. Minard. Do you want Sixth avenue brought in as objects you have omitted?

Mr. Merrey. I am telling you that is our claim. 10

Mr. Minard. I assume the stenographer will get your statement.

Q The next object?

A Montgomery street.

Q What is the condition of that street?

A Not open across the tracks.

Q What have you to say about that street? Has an application been made to open that street across the tracks? What does your memoranda show of that? 20

Mr. Merrey. I object to what his memoranda shows is the street condition. The original application was made to open that street and it was left out in the amendment.

Mr. Minard. Lawrence street. You applied for elimination and you left it out?

Mr. Hobart. All we have is the amended petition.

Mr. Merrey. We have the original here too. 30

Q Fullerton street?

A Now an undergrade crossing.

Q It will be affected by elevation or depression?

A Yes.

Q What is the next one?

A Harrison street.

Q What is the condition?

A Not open across the tracks.

Q The next one?

A Governor street. 40

William Brameld, direct.

Q What is the condition of that street?

A Not a grade crossing.

Q Tyler street?

A Tyler street is not open across the tracks but is included in the original petition.

Commissioner Donges. Is that one of the streets not included in the amended petition?

10 *Mr. Merrey.* It was included in the original petition but not in the amended petition.

Witness. Grand street and Essex street are undergrade crossings.

Mr. Minard. I would like, just for my own information, to inquire at this point, did the original petition consider it part of the proceeding, or was it returned and a new one substituted?

20 *Commissioner Donges.* My impression is the original and amended petitions are part of the files.

Mr. Minard. Part of the files. We were never served with a copy of the original petition and never answered or filed an answer.

30 *Mr. Barber.* It is unnecessary to consider it part of the record for this reason, a petition was filed within a few days after the passage of the law and the commission, before considering it, took up the question of rules and adopted the present rules concerning petitions. The original did not comply with these rules and it was declined.

Commissioner Donges. The petition is taken as a new petition and the original petition is withdrawn?

Mr. Barber. Practically.

Mr. Minard. We will offer the original petition in evidence on our behalf.

Commissioner Donges. Was the original petition withdrawn and returned to the petitioner?

William Brameld, direct.

Mr. Barber. My recollection is the original petition was returned by the board to the petitioner with the statement it didn't comply with the rules and they were told what to do.

Commissioner Donges. And not filed?

Mr. Barber. That is my recollection; I am not positive about that. The only point is, I didn't want it to go on the record that would be a part of the record in this proceeding if I didn't have a copy of the petition in our office; but I will look. 10

Commissioner Donges. It may appear that the so-called amended petition is really the only paper filed and the only paper to be acted on by the board.

Mr. Barber. That is true. The other petition was not accepted.

Mr. Minard. We will offer it in evidence as part of our case; if you haven't a copy, we will send you a copy. 20

Mr. Merrey. Then how will you send a copy?

Mr. Minard. Mr. Merrey, I assume, will send a copy.

Mr. Merrey. If I can get a copy I will furnish it.

Mr. Minard. We will get one some way and present it to the board.

Commissioner Donges. How does the introduction of the petition which has not been received by the board, never acted on, and because of failure to comply with the rules of this board was not received, become material? 30

Mr. Minard. It becomes material in showing—it will show, for instance, that these streets here, which will be affected one way or the other, were not included in the second petition but were in the first. 40

William Brameld, direct.

Commissioner Donges. How does that become material, if the second one is the one we are acting on and the fact that they are not part of the record in this case.

Mr. Minard. I know. I do not understand this discussion is directed to the question as to whether they are part of the record in this case.

10

Commissioner Donges. No. You call upon Mr. Merrey, in fact you call upon Mr. Merrey, to produce a petition sent by him in behalf of the city of Paterson to initiate a proceeding before this board for the elimination of certain crossings at grade in the city of Paterson. That petition was returned by the secretary of this board with the statement that it did not comply with the rules of this board covering the matter and would not be accepted. Then the situation was as if no petition had ever been forwarded. Apparently erroneously the petition afterwards sent to the secretary of the board and received and filed has been referred to as the amended petition.

20

Mr. Minard. It calls itself an amended petition.

Commissioner Donges. When, as a matter of fact, it is an original petition.

Mr. Minard. That in itself considers the other petition part of the record which this pretends only to be an amendment.

30

Commissioner Donges. If the so-called amended petition contains all the matter that would be contained in a petition and the necessary matter, it don't make any difference what it calls itself.

Mr. Minard. If it changes all the matter, it is intended to amend.

Commissioner Donges. No; all the matter necessary to initiate proceedings and notice to parties.

William Brameld, direct.

Mr. Minard. It may contain all the essential information. Lots of information in the pleadings is not essential, nevertheless the importance of it develops.

Commissioner Donges. That would be true, Mr. Minard, if the original petition had been filed.

Mr. Minard. Where did you get the information that these streets you have mentioned in this list were included in the original petition? 10

Witness. In the files of the assistant to the president's office I found a copy of such petition.

Mr. Minard. Do you know how that petition came to be there?

Witness. I do not.

Mr. Minard. That appears, evidently, that the petition came to us. I will offer that copy that came to us in evidence. It must have had some authority. 20

Commissioner Donges. It is this reference to amended petition—I rather assumed, without knowing the state of the files, the petition was filed and an amendment made. It had better be left until we find what the state of the files is.

Mr. Minard. We can take care of that later.

Mr. Barber. As far as the railroad company is concerned with respect to that petition its position would be just about the same as though someone would write, making a complaint against the Erie Railroad Company, and should address it to the Railroad Commission of the State of New Jersey. That could not be accepted as a complaint. It is not the Railroad Commission, it is the Public Utility Commissioners. In such a case the original petitioner would be advised that he should send communications addressed to the Board of Public Utility Commissioners and no copy of that communication would be forwarded 40

William Brameld, direct.

to the railroad. This petition which came in in the first instance was not in proper form, therefore it was not accepted or recognized by the board and no copy was ever sent to the railroad company. It has no position before the board.

Mr. Minard. I assume it was properly addressed.

10 *Mr. Barber.* That may be.

Mr. Merrey. Whatever I put in that was abandoned by the petitioner and this substituted in place; it is practically a new petition.

Mr. Minard. You can change the amended petition by striking out the words, referring to the previous petition?

Mr. Merrey. No, we want to show we brought it in at the beginning.

20 *Mr. Minard.* We will proceed with this list and take that matter up later.

Commissioner Donges. It refers to it as an amended petition.

Mr. Merrey. I drew the petition and I thought the original petition was on file. To differentiate them I put that word.

Mr. Minard. You can't object to our putting that in evidence.

Mr. Merrey. I don't object to it. It doesn't help anything or hurt anything.

30 *Commissioner Donges.* If it is desired, and there is no objection, it will be admitted when offered.

Q What is the next item?

A Taylor street.

Q Just locate that for the commission.

A There (indicating).

40 *Mr. Merrey.* The street was opened formally by ordinance. The ordinance is effective and application has been made, or is about to be made to the Court of Chancery to compel the railroads under their charter obligations to build a bridge.

William Brameld, direct.

Mr. Minard. You want a crossing.

Mr. Merrey. An actual crossing.

Mr. Hobart. Overhead?

Mr. Merrey. Overhead.

Q The next?

A Dakota street, not opened across the tracks.

Q And Hazel?

A Hazel street is an overhead crossing. 10

Q Where the street is now over the tracks by a viaduct?

A Yes.

Q That is the city line, according to this map.

A Yes, sir.

Q As a general proposition, in case of depression as requested by the city, how will these various obstructions or streets be affected?

A That is with reference to the streets they request to have eliminated? 20

Q The streets and obstructions mentioned in your list that will be affected by depression of the tracks to such an extent the grade or the street left at in its present status, as required by the petition.

A You mean if the tracks are depressed to enable the crossing eliminated in the petition.

Q That is right.

A It will affect them.

Q (*By Mr. Hobart.*) What will happen to these other streets? 30

A As far as the Passaic river bridge and Fifth avenue is concerned, I don't believe they will be affected.

Q (*By Mr. Minard.*) Providing the depression is confined down there and the grade crossing left at Fifth avenue?

A Yes.

Q Would Sixth avenue be affected in view of what Mr. Merrey informs us of their intention to open a street there?

A Possibly, a little. 40

William Brameld, direct.

Q Provided, of course, they open the grade crossing there?

A Yes.

Q Referring to those undergrade crossings you have mentioned here, what would become of them if there was depression?

A You would destroy the undergrade crossing.

10 Q And reduce them to grade crossings?

A Or take some other method of eliminating those.

Q As to the station and grounds and tracks of the company, that, of course, would be left up on the bank by depression unless they were changed, the grade.

A We would have to change them to make them connect with the tracks.

Q Other obstructions. The Newark branch would be affected between A and B.

20 A The entire line within the city limits would be affected.

Q The whole thing from the Main Line to the end of the map would be affected and would have to be changed?

A On a depression scheme.

Q Would be or might have to be?

A Would have to be, on a depression scheme.

Q The existing overhead crossings—what would have to be done with them in case of depression?

30 A The abutments would have to be underpinned, partially reconstructed.

Q In the case of elevation would these general obstructions be affected?

A In the case of elevations I believe it would be affected all the way to the Passaic river bridge.

Q Including the raising of that bridge?

A Including the raising of the bridge, and Fifth avenue would be affected and Sixth avenue.

40 Q The line beyond the river it would be necessary to build it down to grade.

A Yes.

William B. Ameld, direct.

Q That would affect it down to the intersection of the New York, Susquehanna & Western Railroad and the main line of the Erie?

A I don't believe it would go as far as that.

Q To what extent would the bridge have to be built; I mean reconstruction of the bridge?

A No, I don't believe so.

Q Simply reconstruction of the foundation and abutments? 10

A No, simply raising it.

Q Would the undergrade crossings be affected by elimination?

A Yes, they would have to raise the bridges and build the abutments higher.

Q And the stone wall along the side of the street and building?

A Yes.

Q In the case of elevation what would happen to the various overhead crossings that have been mentioned? 20

A I believe on the Newark branch, Passaic street and Hazel street bridges would have to be raised.

Q Or else a grade crossing accomplished?

A No, I think you could get out of it without a grade crossing.

Q What about the connection between the main line and the Newark branch in case of elevation?

A Both would have to be raised to get the connection. 30

Q That change would be necessary to an extended distance towards Newark, sufficient to get to the grade again?

A Yes.

Q That would affect several streets in there?

A It would affect Getty avenue and Main street.

Q In that case would or would not all the freight stations and passenger stations and freight yards and 40

William Brameld, direct.

sidings and switches, dwellings and so forth, have to be elevated?

A They would.

Q What would happen to the industrial sidings in either case?

A They would have to be raised; the track would have to be raised or the track would have to be lowered to get the connection to the industries.

10 Q Is that possible, do you think, in all cases?

Mr. Merrey. If the commission please, I object.

Mr. Minard. I withdraw the question.

Mr. Merrey. I mean to the whole line. It is all supposition and it don't appear that any plan was worked out by the witness testifying. He is saying if they are raised it will be affected; if they are lowered, they are lowered. I don't think it is competent unless there is some plan worked out. We know a lot of tracks will be affected if we raise them.

20

Mr. Minard. We must get them on the record.

Commissioner Donga. You may proceed.

Q You are familiar with the locations here where there is a number of streets that come parallel to the tracks?

A Yes.

30 Q In case of depression the highway would have to be tunneled or dug out?

A In case of depression of the tracks, yes. You would have to go under the highway to get to the different coal yards.

Q In case of elevation you would have to build a bridge or trestle over the street?

A Yes.

Q To get into those lines?

A Yes.

40 Q What would have to be done in the case of streets running along the tracks, Ramapo avenue,

William Brumfield, direct.

Waite street, and several other streets, in case of elevation or depression?

A You would have to build a retaining wall to keep the railroad out of the street.

Q Or the street out of the railroad?

A Yes.

Mr. Minard. I offer the statement.

Commissioner Donges. Any objection?

10

Mr. Merrey. No objection, except the lumbering of the record with things immaterial.

Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-24.)

Q I hand you a paper, schedule of the cost of abolition of grade crossings. I ask you if you compiled that statement?

Mr. Merrey. Pardon me. The question is this particular grade crossing.

20

Mr. Hobart. Between New York and Chicago.

Mr. Merrey. You might qualify him as to what he knows about the estimates or the information it is based on.

Q Did you compute those figures?

A I did.

Mr. Merrey. I object. This witness is not qualified to estimate the cost of the elimination of grade crossings.

30

Commissioner Donges. I don't think he has qualified.

Q Can you add and subtract and multiply?

A Yes.

Q Can you divide?

Commissioner Donges. Mr. Minard, the objection is the witness has not qualified as an expert who is competent to testify as to the cost of

40

William Brameld, direct.

grade crossing elimination. If you desire to qualify him, qualify him along that line.

Mr. Minard. I wanted to begin at the beginning.

Q Are you an engineer, Mr. Brameld?

A I am.

Q As such do you work for the Erie Railroad Company in the engineering department?

A I do.

Mr. Minard. Do you want any more?

Mr. Merreg. Of course.

Commissioner Donges. If Mr. Minard wishes to qualify this witness he may proceed to qualify him. The witness is not qualified to testify to the subject matter contained in this schedule.

Q How long have you been an engineer?

A Since 1899 I have been working in the engineering department of the Erie Railroad.

Q Are you familiar with the geography of the grade crossings of the Erie Railroad from New York to Chicago?

A In a general way, not each specific instance.

Q Have you visited most of them on one occasion or another?

A I couldn't say; I visited most of them.

Q Do you know what they are and where they are and how many there are?

A Only from lists prepared by different superintendents of the railroad.

Q Did you cause such a list to be prepared and sent to you?

A Yes, sir.

Q For the purpose of preparing this statement?

A I did.

Q For whom was this statement prepared?

A Prepared for Mr. Tucker, First Assistant General Manager.

William Bramfeld, direct.

Q To be filed with the Bureau of Railroad Economics at Washington?

A Yes, sir.

Q They prepared it on this form?

A They did.

Q These figures were prepared in pursuance to special questions asked by them of which these were answers?

10

A They were.

Q Have you been associated or connected with the elimination of any grade crossings?

A I have, for fourteen years on the Erie.

Q Of the amount of grade crossing elimination testified to yesterday, which has been done, several hundred thousand dollars, have you had anything to do with it?

A I have.

Q With it in all cases?

20

A Not all.

Q Most of them?

A I couldn't say just how many, but a great many of them.

Mr. Minard. I offer this witness as competent to testify to these figures such as this and cross examination as to his qualifications or accuracy of the figures.

Mr. Hervey. I took it from the statement of the commission it wasn't necessary to cross examine if he hadn't qualified. 30

Commissioner Donges. I think this witness is not yet qualified to testify on the matter contained in this schedule. You may, however, ask him any questions concerning which he has qualified himself to testify to. I don't think he is qualified.

Commissioner Daniels. Have you in special cases made plans for and estimates on proposed grade crossing eliminations? 40

William Brameld, direct.

Witness. I have, for practically all the eliminations east of Buffalo, Salamanca, New York, those are my duties.

Commissioner Donges. Both plans and estimates?

Witness. Plans and estimates.

10 *Q (By Mr. Merrey.)* I might ask now; have you made plans and estimates on the grade crossings between New York and Buffalo?

A No, sir.

Q You have not?

A No, sir.

Q Is it not a fact that different plans would cost different amounts of money?

A They do. We have taken an average figure.

20 *Q* Have you made an estimate of the cost of eliminating the Paterson crossings which are now in question?

A Not any detailed estimate, just from a general knowledge of the situation as to the cost of such kinds of work. That is, I have no detailed plan.

Q Is there a wide range in the cost of elimination on crossings?

A There is.

Q One plan costs five or six times as much as another?

30 *A* That is a fact.

Q Until you come to the detail and agree on the plan it is impossible to estimate the cost of the work?

A It is, in a specific manner. Roughly we can judge from previous experience about so much.

Q But actually it may turn out one-third of your estimate, or it might be five times the amount of the estimate?

A That depends on the man's judgment in the matter, whether he is off that much.

William Brameld, direct.

Mr. Merrey. My theory is the Bureau of Railroad Economics is a railroad bureau for the purpose of influencing public opinion.

Mr. Minard. No, what I had in mind was to take each item as we go through and testify to it. I surmise Mr. Merrey's chief objection is to that cost of elimination.

Commissioner Donges. I gather from Mr. Merrey his chief objection is to this witness testifying to matters that are not within his knowledge. 10

Mr. Merrey. That is all, of course.

Commissioner Donges. As to any matters within this witness's own knowledge he may testify to; as to matters not within his knowledge, or taken from reports or schedules or approximations he may not testify to. I think to that extent Mr. Merrey's objection will be taken and sustained. 20

Mr. Minard. To what?

Commissioner Donges. To this witness testifying to matters not within his knowledge.

Q Mr. Brameld, do you know how many grade crossings there are on the Erie Railroad between New York and Chicago?

Mr. Merrey. I object.

Q Do you know?

A Only as taken from the records; if the records are correct, I know. 30

Q You are the engineer in charge of this kind of work in the engineering department?

A I am.

Mr. Merrey. I haven't any objection to this witness testifying as to how many there are.

Q How many are there?

A The number of public grade crossings on May 1, 1913, was 2410.

Q On the Erie Railroad?

40

A On the Erie Railroad.

William Brameld, direct.

Q How many in each state, do you know?

A I haven't a list before me.

Q There it is (handing witness paper), under No.
5.

A That is the number of public grade crossings to be abolished under such legislation. That doesn't cover them all.

10 Q This is the number required by law to be abolished?

A That would be abolished under law.

Commissioner Donges. How do you get 256 for New Jersey?

Witness. On the Erie Railroad. That doesn't include the New York, Susquehanna & Western and the New Jersey & New York Railroads.

20 *Commissioner Daniels.* That proposes to show the number of public grade crossings to be abolished under such legislation?

Witness. Yes.

Commissioner Daniels. By the Erie Railroad?

Witness. By the Erie Railroad, yes.

Commissioner Daniels. How do you get that number for this State?

Witness. Under the legislation they have to be eliminated.

Commissioner Daniels. That includes all the grade crossings?

30 *Witness.* All the grade crossings in this State.

Commissioner Daniels. That is on the assumption the law requires the elimination of them all?

Witness. At some time or other.

Commissioner Donges. So this estimate covers not the present, but the future.

Witness. All the grade crossings we have in New Jersey at the present time.

Q How many in each State?

A New York 931, New Jersey 256, Pennsylvania
40 417, Ohio 589, Indiana 189.

William Brameld, direct.

Q (*By Mr. Sommer.*) That is, you have that number of grade crossings in these several States?

A That are to be eliminated under the law. In Indiana they don't all come under the law at the present time.

Q What does New York include, all?

A All.

Q (*By Mr. Minard.*) In other words, where the law would not apply to that particular location or municipality you put them all in, is that right? 10

A No. In some States the law provides the crossings shall be eliminated within certain districts, municipalities, those are not in on this statement if there is no grade crossing to be eliminated under such legislation.

Q You excepted where the act did not apply to certain portions of the State?

A Yes. 20

Q You have put all the crossings in?

A Yes.

Q Take New York, did you include all the grade crossings on the system in that State?

A All the grade crossings on the system, because the law covers all.

Q In New Jersey? ———

A All of them.

Q In Pennsylvania?

A All of them. 30

Q In Ohio?

A All.

Q Indiana?

A In Indiana there is a restriction inside of incorporated villages.

Q It only includes those crossings in Indiana which are in incorporated limits or incorporated villages?

A Yes.

William Brameld, direct.

Commissioner Daniels. In this State you have taken all the grade crossings, because you think possibly some time in the future all the grade crossings may be subject to elimination?

Witness. Yes, sir.

Commissioner Daniels. Not because the law at present time requires that they shall be?

10 *Witness.* No, that will come at some time under the provisions of the law.

Commissioner Daniels. Haven't you perhaps neglected to notice the law provides the elimination of crossings where they are a menace to life and an obstruction of the public highway sufficient to warrant their elimination?

20 *Witness.* It is impossible for me to decide which of the crossings come under that category. We assumed they came under this provision of this law because we were unable to determine whether five did or fifty did.

Q I suppose you object to this cost. This note at the bottom shows what?

A Per cent. of cost required by law to be paid by the railroad.

Q For the different States, what is it?

A New Jersey 100%.

Q The law requires the railroad to pay 100% of the elimination?

30 A Yes.

Mr. Merrey. Not always.

Commissioner Donges. Suppose you wait until cross examination.

Mr. Merrey. I thought I would merely get it straight. The law doesn't put 100% on the railroad where there is a trolley crossing.

Mr. Minard. Where there is.

Q The next?

40 A New York, 50%.

William Brameld, direct.

Q Pennsylvania?

A 80% ; it was an estimated amount. The law doesn't specify ; it gives the commission power to assess the amount and we have estimated about 80%. Ohio, 65% ; Indiana, 75%.

Q Those are in every case the amount required by law to be paid by the railroad?

A I believe so.

Q With the exception of Pennsylvania?

A Yes, sir.

Q Did you estimate the uniform cost of eliminating all the crossings on the Erie system?

A An approximate estimate, yes.

Q That is what I meant.

Mr. Merrey. I object to that.

Mr. Minard. I want to state we offer to prove—or to show to the commission that the estimated cost by the engineers of the railroad—

Mr. Sommer. It is offered to show by this witness.

Mr. Minard. We offer to show by this witness, who is a member of the engineering department, that the estimate—

Commissioner Donges. Make your offer without stating figures.

Mr. Minard. Not without stating figures.

Commissioner Donges. You offer to show by this witness what the cost of eliminating the crossings, public grade crossings—to show by this man what the cost is.

Mr. Minard. I offer to show by this witness the cost of eliminating the grade crossing—I offer to prove by this witness the cost. (Mr. Minard makes statement of what he intends to prove.)

Mr. Merrey. I move this be stricken from the record.

Commissioner Donges. It will be stricken from the record and Mr. Minard will be given an oppor-

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William Brameld, direct.

10 tunity to prove by this witness any matter he desires that is material. I told you you could proceed to prove by this witness whatever is within his competency as a witness, and if the witness is competent to testify to it no doubt you may prove it. You were neither denied the right then nor now denied the right; but your statement as to what this witness will testify to, the witness not being asked, will not be permitted to go into the record. You may proceed to examine this witness and he can proceed to answer any questions the board has already ruled competent. Anything in addition he is competent to testify to, you may examine him on. You now ask to put into the record an offer containing a lot of figures without having asked this witness regarding them.

20 *Mr. Minard.* I will ask the witness about each separate one.

Q Do you know how much it would cost to eliminate the grade crossings on the Erie System in New Jersey?

Mr. Merrey. I object.

Commissioner Donges. What is the objection?

Mr. Merrey. The objection is the witness is not qualified to answer the question. He doesn't know what it will cost.

30 *Commissioner Donges.* He is asked whether he knows.

Mr. Merrey. I withdraw the objection.

Mr. Minard. Answer the question.

(Question read.)

A I don't know.

Q Have you estimated the amount of cost?

A I have estimated the amount.

Q What is the basis taken for your estimate?

40 **A** In the State of New Jersey I took each individual crossing and classified that according to my

William Brameld, direct.

general knowledge of such matters as to whether it would cost \$30,000 or \$50,000 to eliminate it, as far as I could according to my previous experience, and so classified them.

Q On the basis of your experience and of your classification what amount have you estimated it will cost to eliminate the grade crossings on the Erie System in New Jersey?

10

Mr. Merrey. I object. It appears from the previous examination of this witness he is not familiar with the crossings to be removed or the plans to be adopted.

Commissioner Donges. I think, in view of the witness's previous testimony, he has not gone over and familiarized himself with the details of the crossings, that an estimate made by this witness will not be permitted.

Mr. Minard. Of course, the commission has taken into consideration what he just said. That is the ruling.

20

Commissioner Donges. That is the ruling.

Q Based upon your experience and the classification that you have made, what is your estimate of the cost of eliminating the grade crossings of the Erie System in New York under the laws of New York, requiring us to pay 50% of the cost of each crossing?

A The cost to the Erie Railroad—

Mr. Merrey. I object on the same ground.

30

Commissioner Donges. Sustained.

Q Based upon your experience and classification you have made, what amount will it cost to eliminate the Erie Railroad crossings in the State of Pennsylvania under the laws of that State which cover an estimated amount of 80% chargeable to the railroad.

Mr. Merrey. I object.

Commissioner Donges. Sustained. This is because the witness testified his familiarity with

40

William Brameld, direct.

the crossings comes from reports and records made and not his personal knowledge.

Mr. Minard. All right.

Q Based upon your classification and upon your experience, what is the cost to the Erie Railroad Company of the elimination of its crossings in Ohio under the Ohio law which requires the railroad to pay 60%?

10

Commissioner Donges. What do you mean by "your classification"? Tell us the classification he made.

Mr. Minard. His classification, that he made.

Commissioner Donges. I don't recall he said he made any classification.

20

Witness. I said according to my experience and general classification. What I meant by my classification; quantity record of cost; I know we have eliminated them for approximately \$20,000; I put that \$20,000. If it is in a town where we had to spend probably \$125,000—taking Buffalo, for instance—I have put them in that classification. In that way I have arrived, as near as I could, at the cost approximately.

Commissioner Donges. Did you classify these crossings from personal observation?

30

Witness. Some of them, that I am familiar with. I have been over every crossing in New Jersey. I have been over every mile of line in New Jersey and from travel over the country.

Commissioner Donges. Outside of New Jersey?

Witness. Outside of New Jersey, I have been over practically every mile of track. I can't remember distinctly every crossing.

Commissioner Donges. So you take other people's reports?

40

Witness. As far as the number of crossings is concerned, yes. I took as an average cost in Jersey City; I didn't take any average; I took as

William Brameld, direct.

the crossings classification crossings from \$20,000 to \$40,000 to \$50,000. That is the way it was done in New Jersey. In other States I took the average. I divided the number in New Jersey, or \$54,000 per crossing, used that as a basis on the Erie system—\$55,000. To see how close I was on this other report I read, the reports of Massachusetts and also the State of Pennsylvania.

10

Commissioner Donges. You did not take each crossing?

Witness. No plan or general scheme of elimination.

Commissioner Donges. Or detail plan for each crossing or a general plan, any such plan.

Witness. No, just arrived at the figure \$55,000.

Q (*By Mr. Merrey.*) How many crossings eliminated in New Jersey coming under your observation from which you average the \$54,000?

20

A It wasn't taken in the elimination in New Jersey of any particular crossing. It was from my general knowledge of the eliminating of crossings along the line.

Q You said you had estimated the cost in New Jersey at \$54,000?

A It was \$54,820, some odd.

Q That wasn't actual work?

30

A It was from my judgment of what it would cost to eliminate the crossings. I had this grade crossing matter for something like forty years. I started from the ground up; made surveys; made our plans and paid contractors. I have had charge from beginning to end; in the field from my general observation that way I have roughly—sufficiently, in my judgment—I can estimate, come pretty near hitting it right when I check with the detailed work.

40

William Brunold, direct.

Q How many of the crossings eliminated in New Jersey were under your jurisdiction—under your observation?

Commissioner Donges. Under his observation or under his direction?

Mr. Merrey. Either direction or observation.

10 **A** Under my direction there is Broadway, Warren Point; there is four grade crossings eliminated at Beaver Lake. I guess that is about all we have eliminated in the State of New Jersey.

Q You did eliminate a great many in Jersey City?

A That was before 1899; that was when I came with the road.

Q As far as your observation goes in New Jersey there is only the three or four or five or six crossings that you have now mentioned?

20 **A** Yes; I have also eliminated them in New York.

Q The Broadway crossing and Warren Point you struck very unusual conditions?

A Sand, struck water there.

Q It was a very difficult proposition to get rid of the water; besides that it was a trolley crossing?

A It was a trolley crossing. I think that is the basis that is used in arriving at these figures. I checked it up and found—by the other ones used—and found they matched up with the other fellow.

30 *Commissioner Donges.* But after all it is an estimate.

Witness. After all it is.

Commissioner Donges. It is not an estimate based on any actual figures?

Witness. Not based on any actual figures or drawings.

Recess from one to two o'clock P. M.

William Brameld, direct.

AFTER RECESS.

(Before Commissioners Donges, Hillery and Daniels.)

WILLIAM H. BRAMELD, resumes the stand.

Further direct examination by Mr. Minard.

Q Just before the noon recess you were asked about the number of crossings you had eliminated or superintended the elimination of in New Jersey. Can you say whether the conditions surrounding that sort of work in New Jersey differ from similar kinds of work over in Indiana, New York, Ohio or Pennsylvania? 10

A No two conditions are alike.

Q I mean are any of the conditions in which the crossings in one State differ from the crossings in another State because of the State, except the participation in the cost? 20

A Why, as far as being on one State or the other; it may be through the lowland out in Indiana you might have drainage conditions that would cost more.

Q But similar conditions in New Jersey would cost substantially the same?

A If conditions were the same.

Q The fact that the crossing eliminated was in Pennsylvania doesn't distinguish that crossing, as far as elimination is concerned from any crossing in the other States? 30

A No, sir.

Q I had asked a question which wasn't completed when we got into a controversy between Mr. Brameld and the commission. Referring to that statement: What is the amount that it would cost the Erie Railroad Company under your estimation based upon your experience and classification you made to eliminate the grade crossings in Ohio, taking into consideration the 65% required to be paid by the railroad company? 40

A \$21,956,750.

William Brunfeld, cross.

Mr. Merrey. My objection went to all this.
Commissioner Donges. The objection was made
Mr. Merrey, after the answer.

Q What would be the cost of eliminating the grade crossings in Indiana on the Erie Railroad in accordance with your estimate and based upon your experience and classification, taking into consideration the fact that the railroad company is required to pay 75% in Indiana?

Mr. Merrey. I object.
Commissioner Donges. Sustained.

Cross examination by Mr. Gourley.

Q In the estimates you have made or information you gave the commission concerning the elevation of the tracks at River and Putnam streets; what elevation did you calculate upon?

20 A I haven't calculated any special elevation. The value was taken into consideration, it is down hill from River street to the river, therefore raising and maintaining the grade going to the river; the river is the low part.

Q As a preliminary to that, I desire to get the elevation calculated; can you give me that result?

A I haven't figured on anything definite.

Q It depends on that, of course?

A Yes, the elevation; I haven't definitely figured.

30 Q Have you in your mind that probable height?

A Different cases at different heights.

Q I am speaking of River and Putnam streets?

A It depends on the municipality.

Q It is the extreme northerly point in the petitioner's petition?

A It depends entirely on what the municipality determines or what the commission determine. Cases differ; sometimes you might want fourteen feet.

Q Yes. You haven't the precise elevation?

40 A No, sir.

William Braumfeld, cross.

Q Suppose it was elevated twenty feet, would that be a fair height?

A I haven't figured it out. Crossing streets might require a greater floor difference, on account of the elevation of the street. That would have to be determined.

Commissioner Donges. You mean twenty feet clearance in accordance with food railroad practice? 10

Witness. From a clearance depth underside of the bridge.

Q And the grade of the street?

A Raising the railroad tracks above the street?

Q Yes.

A It depends on the bridge structure.

Q Let me put it sharply: Would an elevation of twenty feet, the railroad be raised twenty feet from the grade of the highway at River and Putnam streets be a fair elevation for the physical conditions at that point? 20

A It might be and might not be. It might be excessive and it might not be enough.

Q My point in asking that is whether if it was twenty feet high or approximately that, how far would that carry your grade on your tracks north from that point?

A I couldn't say; I haven't figured.

Q Would you say to the river? 30

A That depends on the grade that is established on the railroad tracks. You could get to the river; whether that would be the proper grade to use, I don't know.

Q You can't give any information on that subject?

A No, because I haven't investigated.

Q What is the grade of the railroad at River and Putnam streets?

A I couldn't say. 40

William Brameld, cross.

Q You haven't any data or map showing that?

A I haven't any data with me.

Q (*By Mr. Merrey.*) You said the tracks might be affected as far as the Passaic river?

A Yes.

Q What percentage of grade do you intend to put in to cause that?

10 A Well, I haven't figured on that. It is from my general knowledge of the situation, I believe it would be affected.

Q That isn't founded—

A No actual figures, no.

Q Mr. Gourley spoke of an elevation of twenty feet. That is rather high to elevate the railroad tracks?

20 A You see the skew of the street sometimes requires a long girder; on account of the length of the girder and extensive floor depth. If you built the structure, on account of the station, you couldn't extend the girder along on account of the station platform. It would be necessary to take in the structure; and taking in the structure they take up six or seven feet, which will give you only six or seven—well, three or four feet clearance, enough for trolley cars—I couldn't say.

Q Can you tell about the average amount the railroad has been elevated in places you have been where the track was elevated?

30 A Different amounts. Sometimes lower the street, sometimes lower the street so the railroad would be raised all the way from three to ten or eleven feet.

Q You haven't any idea of an average depth?

A Not an average for raising the railroad, but an average clearance underneath. That is the height in some cases of twelve, thirteen and fourteen feet. Then, of course, the rest of the height you raise the bridge depends entirely on the length of the span and the type of construction used.

William Brameld, cross.

Q What is the average clearance that you give ordinarily?

A Twelve, thirteen and fourteen feet.

Q You spoke about the River street bridge over the Passaic river; what is the condition of that bridge?

A I don't know.

Q Isn't it quite likely you will have to rebuild that bridge in the near future?

A Not to my knowledge.

Q Hasn't there been a lot of increase in weight in equipment, very considerable?

A The only thing I know about is just through rumor; I don't know definitely.

Q You haven't been called upon to strengthen your bridges lately?

A Not in my department.

Q Would your department look into that?

A No; it is handled by the engineer of bridges and buildings.

Q You do not know the conditions on other structures you spoke about this morning, whether they are likely to be removed in the near future; whether there is any change of grade or not?

A No, that doesn't come under my jurisdiction.

Q You said the highest elevation you used was twelve to thirteen feet?

A That is the clearance of the underside of the bridge to the street.

Q The clearance?

A Yes.

Q How high an elevation to the tracks?

A That varies from thirteen to sixteen or seventeen feet.

Q Does that include the lowering of the grade of the street, or above it?

A Above the grade as it was originally.

Q (*By Mr. Sommer.*) Can you submit data in your office of the changes in the grade on this map you furnished?

Robert Hoppen, Jr., direct.

A No, no profile is attached to that.

Q Is there any data in your office to furnish the information?

10 A I don't know whether we have profiles covering that territory or not; a profile that I know is right, anything like that. A great deal of the information we have in the office is compiled from profiles of years ago; whether they are changed or not, I can't say.

Q Will you look in the office and see if you have the information? I presume the board would like to have it.

A Covering the territory you mean?

Q Yes, covering the territory.

Mr. Minard. I think we can furnish that.

Mr. Minard. I am prepared to prove the census of travel at these crossings. I have here the original records. I let the persons who actually took the census go subject to be called.

20 *Commissioner Donges.* Yes.

Mr. Minard. We have prepared a summary.

Commissioner Donges. Subject to verification.

Mr. Minard. Which is classed in letters according to the city's map so that it will facilitate the investigation of that map.

Commissioner Donges. That is to say you have marked these summaries A, B, C, and so on with the same letter as indicates the crossings on the city map?

30 *Mr. Minard.* Yes, that is the summary.

ROBERT HOPPEN, JR., sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q Mr. Hoppen, you are an engineer?

A Yes, sir.

Q Did you have supervision of the taking of the census of traffic records at the different streets embraced in the petition in this case, fourteen streets?

40 A Yes, sir.

Robert Hoppen, Jr., direct.

Q I show you a bundle of papers, blue prints, and ask you whether that is a summary taken from the original records and whether the two sheets pinned together in each case are not the records of the two separate days with the day and date at the top of each sheet, is that right?

A They are, yes, sir.

Q Does this record also show at the top each street at which the record is taken? 10

A Yes.

Q The top column, taking the first one, does it show the hours during which the census was taken?

A Yes.

Q The second column shows what?

A Pedestrians.

Q In each hour?

A In each hour.

Q The third column? 20

A Horse-drawn vehicles each hour.

Q The fourth column?

A Autos.

Q The fifth column?

A Bicycles.

Q The sixth column?

A Motor cycles.

Q The seventh column?

A Gates down.

Q What does that mean? 30

A It means the number of times the gates were lowered.

Q The next column?

A Passenger trains.

Q The next?

A Freight trains.

Q The last column?

A Drill engines.

Q The total is under each column?

A Yes. 40

Robert Hoppen, Jr., direct.

Q On the first page of each sheet is the day of the last date of taking the census at that particular crossing, each statement shows a line of figures which indicates the amount under each column for each day?

A Yes, sir.

Q They are added together?

A Yes, sir.

10 **Q** Then, what did you do after they were added together?

A Took the average.

Q Per day?

A Per day.

Q For those two days?

A Two days.

Q All the crossings a census was taken for two days?

20 **A** Some of the crossings the census was two days and others three days.

Q Which were taken for two days?

A Madison avenue, Cedar street, Ellison street, Van Houten street, Fair street, Hamilton street, Lafayette street, Franklin street, Keen street, Warren street.

Q Now then, those you took two days?

A Two days.

30 **Q** Referring to those extended out there, those that were continued three sheets. Read the list of those.

A Straight street, Clay street, Market street, Broadway, and River street.

Q Those were taken for three days?

A Three days.

Q With the dates marked on them?

A The date marked on the top of the sheet.

Q Where the census is taken three days you take an average also?

A An average for three days, yes, sir.

Robert Hoppen, Jr., direct.

Q You have the original records of these with you here?

A Yes, sir.

Q They show the entries on the ground at the time?

A Yes, by each man.

Q Does each show the man who took the record?

A Yes. 10

Q At the crossing?

A Yes.

Q Bearing his signature?

A Yes.

Q And the time he took it?

A Yes.

Q This letter down in the right hand corner, A in a circle, at Madison avenue; what does that refer to?

A That refers to the letter for the different crossings. 20

Q Down where?

A Shown on the maps presented.

Q By whom?

A By the city.

Q In the case of Clay and Straight street you found on the map for the city it covered both?

A Covered both crossings.

Q So you put the B on the Straight street record as well as the Clay street? 30

A As well as the Clay street.

Q In no other case is there a duplicate of the letters, you know of?

A No, sir, that is the only one.

Commissioner Donges. How about Warren and River streets?

Mr. Minard. Putnam and River?

Commissioner Donges. Warren and River?

Witness. Warren is a separate street. 40

Robert Hoppen, Jr., direct.

Q You made a separate sheet for that?

A Yes, sir.

Commissioner Donges. Are not the records for Warren street and River street both given the designation M, or is it M and N?

Witness. N and M. River street is N and Warren street is M.

10 *Mr. Minard.* I offer these in evidence.

Commissioner Donges. They will be admitted and marked as exhibits.

(Seventeen blue prints of counts marked Exhibit R-25.)

20 *Mr. Minard.* I offer the original records taken on the ground by the persons who took the census of the traffic and hold these in readiness for production whenever requested, and also hold ourselves in readiness to produce the persons who took these records whenever required.

Commissioner Donges. Have this witness identify these as the originals.

Q Do you know anything about these original records?

A I know they are original records.

Q Did you prepare those forms from them?

A I prepared some of them and some were prepared under my direction.

30 Q Were these forms prepared under your direction?

A Yes, sir.

Q Was or was not all this traffic record taken under your supervision for this proceeding and didn't you look after this personally?

A Yes.

Q During all the time they took the traffic record?

A Yes, sir.

40 *Commissioner Donges.* It had better be marked for identification; there is no objection to mark-

Robert Hoppen, Jr., direct.

ing the originals as exhibits, they better be marked for identification.

Mr. Minard. We don't want to put them in this record unless it is necessary.

Commissioner Donges. Mark them for identification.

(Same are marked R-26, for identification.)

Commissioner Donges. Are there any questions about the census? 10

Mr. Merrey. No.

Q Did you make a series of view maps?

A Yes, sir.

Q You have before you Mr. Hoppen a series of maps; what do they represent, in a general way?

A They represent the views taken at the center of the street and the center of the sidewalks looking both ways up and down the railroad.

Q At the various crossings in this proceeding? 20

A The various crossings in this proceeding.

Q How are these maps distinguished one from another?

A They have the letter A in a circle or ought to have a letter which designates the crossing as well as the name of the crossing.

Q How did you get that map?

A This map was traced from the city engineer's map.

Q In other words you traced the map produced by the city in this case? 30

A Yes, sir.

Q And used those as a basis for your view map?

A Yes, sir.

Q You used the similar letters designating the different streets they used?

A Yes, sir.

Q That conforms to that the same as your census of travel conforms?

A Yes, sir. 40

Robert Hoppen, Jr., direct.

Q Is there a schedule on this map?

A Yes, sir.

Q What does that schedule show, or table; explain all the details?

10 A The table shows the point at which the view was taken and the direction in which the person was looking taking the view and the length or distance away from the center of the crossing of that view either up or down the railroad.

Q It also shows the distances to the points of view?

A Yes, sir.

Q The length of view. On that map the word "clear" appears somewhere?

A Down at the bottom of the table indicates what the word "clear" means. We designate as one thousand feet or over indicates clear.

20 Q Anything above one thousand feet?

A Yes, sir, anything above one thousand feet.

Q Any place clear is used it is explained by a little note on the map?

A On the map, yes, sir.

Q I see here three lines of dots; what does that represent?

30 A The one in the center of the street represents where the person stood making the observation. The one in the center of the sidewalk on the east side and the center of the sidewalk on the west side.

Q So that each map shows the view on each sidewalk as well as the center of the street?

A Yes, sir.

Q And the little mark leading from these dots indicates the range of vision in the direction of the view?

A Yes.

Q The little dots indicate what? The row of little dots?

40 A Indicates the distance.

Robert Hoppen, Jr., direct.

Q No. These little dots signify a particular thing, do they not?

A Yes.

Q What do they signify?

A They signify the view; that is, a person standing at the station.

Q What do the larger dots signify?

A The larger dots signify where the photographs were taken. 10

Q That appears on the map?

A Yes, there is the table.

Q Here is a legend down here explaining the different dots and marks?

A Yes.

Q Each one of the large white marks or dots indicate the position of the camera when taking the view?

A Yes, sir. 20

Q On this map does there appear a schedule of the views taken at each of the crossings?

A Yes, sir.

Q What does the schedule show?

A The schedule for the photographs?

Q Yes, on each map.

A It shows the number of photograph—

Q Just wait. That corresponds to the number opposite the dot on the street?

A Yes. 30

Q The next column shows what?

A The direction of the view; the direction in which the camera was pointed.

Q The direction of the view speaking in railroad terms, not the points of the compass?

A Speaking in railroad terms.

Q The third column indicates—

A The distance from the nearest rail to the camera.

Q The fourth column? 40

Robert Huggan, Jr., direct.

A The fourth column the distance. The third distance column is the distance from the center of the crossing. The fourth column is the distance from the near rail.

Q The center of the crossing is indicated by a circle?

A Yes, by a circle.

10 *Commissioner Donges.* Do you mean the center of the crossing exactly, or a point in the middle of the track?

Witness. The center of the two operating tracks.

Q The other figures indicate the distance from the camera to the nearest operating rail?

A The nearest operating rail, yes, sir.

20 Q Taking the same list of maps the same is true of the tables and schedules?

A Yes.

Q You have a map for each one of the crossings?

A Yes, sir.

Q Just as the city offered them?

A Yes.

Q From A to M, inclusive?

A To N, River street.

Q Those views are correct and the distances are correctly designated on those maps, are they?

A Yes.

30 *Mr. Minard.* I offer them in evidence.

Commissioner Donges. No objection, Mr. Gourley?

Mr. Gourley. No.

Mr. McCreary. No.

Commissioner Donges. They will be admitted and marked as exhibits.

(Blue print A marked Exhibit R-27.)

(" " B " " R-28.)

40 (" " C " " R-29.)

J. E. Bailey, direct.

(Blue print D marked Exhibit R-30.)

(" " E " " R-31.)

(" " F " " R-32.)

(" " G " " R-33.)

(" " H " " R-34.)

(" " I " " R-35.)

(" " J " " R-36.)

(" " K " " R-37.)

(" " L " " R-38.)

(" " M " " R-39.)

(" " N " " R-40.)

10

Mr. Merry. No questions.

J. E. BAILEY, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q Mr. Bailey, where do you live?

A Midvale, New Jersey.

Q What is your occupation?

A Photographer for the Erie Railroad.

Q How long have you been photographer?

A Since 1902, for the Erie.

Q Did you take a list of photographs at Paterson in connection with this case?

A Yes, sir.

Q Did you take it in collaboration with Mr. Hoppen and the view maps?

A Yes, sir.

Q Do you know whether the points marked on these maps in large round dots you have heard testified to indicate the points of your camera in the views?

A I don't know about the maps.

Q In each case your camera was set up in position was the position fixed by Mr. Hoppen and his men?

A Yes.

Q I show you seventeen envelopes containing pictures; what pictures are they?

40

J. E. Bailey, direct.

A Pictures of the crossings in the city of Paterson.

Q On each of the envelopes is the name of the crossing on which the picture was taken?

A Yes, sir.

Q Each photograph contains some printed matter at the bottom; can you tell us what it is?

10 A Yes. First the print, Paterson, N. J., the name of street below it. Then comes the number of the photograph, next the number of same, north or south indicated by a letter N or S; then the direction in which the camera was looking by the letter E or W, and the date.

Q Then N-E in this case means your camera was located on the north side of the track and you were looking in an easterly direction?

A Yes, sir.

20 Q According to railroad terms?

A Yes, sir.

Q Any photographs where the letters are S-W, for instance, that means that your camera was on the south side of the track and pointed in a westerly direction, would it not?

A Yes, sir.

Q This explanation applies to all the pictures?

A Yes, sir.

30 Q (*By Mr. Merrey.*) West is toward Buffalo and east toward Jersey City?

A Yes, sir.

Q (*By Mr. Minard.*) These pictures are in groups of each street or numbered consecutively throughout?

A Each street separately.

Q So we have Fair street, 1 to 10, inclusive?

A I believe so, yes.

Q Each of the other streets you have one to whatever number you take?

A Yes, sir; each street is numbered separately.

40 Mr. Minard. I offer these in evidence; they speak for themselves, as you might say.

J. E. Bailey, direct.

Commissioner Donges. They will be admitted and marked as exhibits.

Mr. Minard. Mark each envelope; each envelope shows the number of photographs in them.

Commissioner Donges. Mark them one exhibit with the number of pictures in each envelope.

(Same are marked R-41, respectively, as follows:)

19

(A, Madison avenue, 1 to 12 pictures inclusive.)

(B, Straight street, 1 to 14 inclusive.)

(B, Clay street, 1 to 15 inclusive.)

(C, Cedar street, 1 to 11 inclusive.)

(D, Market street, 1 to 13 inclusive.)

(D, Park avenue, 1 to 7 inclusive.)

(E, Ellison street, 1 to 6 inclusive.)

(F, Van Houten street, 1 to 4 inclusive.)

(G, Broadway, 1 to 9 inclusive.)

23

(H, Fair street, 1 to 10 inclusive.)

(I, Hamilton avenue, 1 to 9 inclusive.)

(J, Lafayette street, 1 to 10 inclusive.)

(K, Franklin street, 1 to 9 inclusive.)

(L, Keen street, 1 to 8 inclusive.)

(M, Warren street, 1 to 9 inclusive.)

(N, River street, 1 to 8 inclusive.)

(N, Putnam street, 1 to 8 inclusive.)

Q How high was the lens of your camera from the ground at the time you took the pictures?

30

A Six feet, six inches, in every photograph.

Mr. Merry. No cross examination.

James C. Patterson, direct.

JAMES C. PATTERSON, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q You have produced here two maps which are maps offered by the city of Paterson as alleged proposed elimination schemes?

10 **A** I don't know them to be maps of the city of Paterson.

Mr. Minard. They are; I guess there is no dispute about that.

Commissioner Donges. These are copies of exhibits.

Mr. Minard. Copies of exhibits.

Mr. Merrey. These are maps that the Erie Railroad furnished us.

Mr. Minard. The 1910 map?

20 *Mr. Merrey.* I don't know when it was made.

Mr. Minard. The map you offered in evidence.

Mr. Merrey. As having been furnished us by the Erie Railroad.

Mr. Minard. However you put it. The map was offered by you in evidence which it was alleged was given by some officer of the company to Mr. Muzzy.

Mr. Merrey. Yes.

Mr. Minard. A profile?

30 *Mr. Merrey.* Yes; that map is in evidence and in the custody of the commission.

Mr. Minard. That is a copy.

Commissioner Donges. There is no objection to using that as a copy of the exhibit?

Mr. Merrey. None as a copy.

Q What is your occupation?

A Civil engineer.

Q Are you a graduate of a college?

A Yes.

40 **Q** What college?

James C. Patterson, direct.

A Pennsylvania State College.

Q What experience have you had as a civil engineer?

A I have had about eight years and a half experience.

Q Where?

A I have been with the Pennsylvania Railroad.

Q For how long?

10

A With the Pennsylvania Railroad about fourteen months.

Q In what kind of work?

A Civil engineering work; engaged in the maintenance and way department.

Q Where else?

A I have been with the New York Central Railroad.

Q In what kind of work?

A Designing engineer's office about eight months. 20

Q Where else?

A I have been also with the Big Four Railroad.

Q Where is the Big Four Railroad?

A The Cleveland, Cincinnati, Chicago & St. Louis Railroad.

Q For how long?

A I should say four or five months.

Q In what kind of work?

A Railroad location.

Q Where else?

30

A I was engaged in drainage and levy work in southeastern Missouri.

Q For how long?

A About a year and a half.

Q Was there any other company you worked for?

A The Northern Pacific Railroad Company.

Q What kind of work?

A Resident engineer in charge of construction.

Q Any other company?

A The Chicago, Great Western Railroad.

40

James C. Patterson, direct.

Q In what kind of work?

A In charge of drafting.

Q Where next?

A Next with the Erie Railroad Company.

Q Now you are what?

A Chief draftsman in the Erie Railroad.

10 Q Did you examine this map and profile for the purpose of ascertaining whether it presented a plan for the elimination of the grade crossings?

A I did.

Q Did you find that it was a plan from which the elimination could be made?

A It is not a plan that the practicability of the elimination could be determined.

Q What are the defects of the plan?

A It is not really a plan, it is merely a scheme.

20 Q Did you prepare a memoranda of the defects of these two blue prints as a plan for elimination of the crossings or series of crossings?

A Yes.

Q Will you just read the items of what your memoranda indicates the objections or defects of the plan as a plan?

30 A First, the profile shows a proposed 2% east-bound grade, approximately 2,000 feet long; 500 feet of this grade would be equivalent to 2.14% since it is located on a four degree curve, or what appears to be a four degree curve from the map. As .035 per degree is allowed for the resistance of the curve, .14% which added makes 2.14% which a portion of this grade would be equivalent to.

Q What have you to say about the practicability of that from a railroad proposition?

A I should say the grade was prohibitive.

Q What is the ruling grade now of the New York division?

40 A The ruling grade of the New York division at the present is a little over 1%.

James C. Patterson, direct.

Q When you say the ruling grade, what do you mean?

A The ruling grade is the one that limits the tonnage of a division.

Q What limits this division?

A The limits of the New York division are Port Jervis and Jersey City.

Q And the ruling grade is the one which determines the tonnage which trains can carry over the division no matter where the grade is located? 10

A Or between the terminal points; the train might not necessarily go over to the end of the division.

Q That means the greatest grade over any point over that particular area?

A It is necessarily the greatest grade.

Q How do you distinguish that?

A There might be greater grades yet a shorter one and a train would pass over them. 20

Q Then the controlling grade is determined not only by the grade itself, but the length of it?

A Yes, sir.

Q Have you made any estimates of figures showing the difference in tonnage between the controlling grade now of the division and this proposed grade here?

A Merely as a comparison.

Q The type of engine operated over this division is what is called the Erie Class N-1 engine, Mikado type, draw bar pull, 57,543 pounds. Computing from your rate—tons? 30

A No; draw bar pull of 57,543 pounds. Computing from the formula just passed on it appears on a 1% grade the engine could haul 1,814 tons, that is net tons exclusive of the weight of the engine; and 905 net tons on a 2% grade; that is exclusive of the weight of the engine. Or on a two-tenths per cent grade, which is the grade at which the Erie is now reducing to, the engine could haul 5,550 tons net. 40

James C. Patterson, direct.

Q Have you given the percentages now?

A The 905 tons would only be 16.3% of the 5,550 tons.

Q In other words, the tonnage capacity of that engine on the grade proposed on this blue print would only be 16%, or 16.3% of the present capacity of that engine?

10 A No. The present ruling grade is about 1%. The 2% grade would give a tonnage which would be only 49.9%.

Q Do you know whether or not the Erie Railroad is now adopting a standard grade of two-tenths throughout its entire system?

A They are reducing the grade where practicable to two-tenths and three-tenths per cent.

Q Do you know they have gone to thousands, even millions, of dollars expense for the reduction of grade?

20 A I understand they have.

Q To reduce it to two-tenths of one per cent.?

A Yes, two-tenths of one per cent.

Q Throughout a very large portion of its territory two-tenths of one per cent. grade has been established, has it not?

A Yes.

Q And accomplishing that by laying new tracks or making new cuts or new routes, is that not true?

30 A Yes, sir.

Q So that instead of accomplishing a two-tenths of one per cent. grade, which is now in the course of development, that there would be restoring a grade back from 1% to 2% and a fraction?

A Yes.

Q What is the next item you found on the map?

A No profiles of the street is shown.

Q What is the necessity for that?

40 A It is impossible to determine whether the proposed rate of grade shown on streets to be depressed

James C. Patterson, direct.

could be attained, and if so, the beginning and ending. It might be the grade existing at the present time with the street depressed would be very close to the proposed grade. There is no way to show that.

Q The next item?

A Nothing is shown regarding drainage. It is impossible to determine whether the streets to be depressed could be properly drained or whether they would be below the grade of the sewers. 10

Q Do you know whether such depression might not be below the water line of the Passaic River?

A There is nothing to show whatever.

Q The next item?

A Nothing is shown in regard to taking care of the spurs or sidings to industries that would be affected by changes in grade; it might be necessary to abandon some.

Q The next item?

20

A Nothing is shown in regard to details or type of construction. It is impossible to estimate the cost.

Q The next item?

A It is impossible to determine the damage to property from the data furnished on the plan. The damages might be so large as to render the scheme prohibitive.

Mr. Merrey. This was not offered to show a complete plan. It was never claimed it was a complete plan. It was simply offered to show the matter was considered by the railroad company and that they had gone far enough to make sketches. We don't say now it is a complete plan of the elimination of crossings; we never claimed that. 30

Commissioner Donges. Now this witness is pointing out what, in his judgment are the defects of that plan, or rather, the respect in which that plan fails of being a complete plan.

Mr. Merrey. He is negating something we have not confirmed. 40

James C. Patterson, direct.

Commissioner Donges. He is pointing out what is necessary in addition to this to deal with the situation fully.

Q The next item?

A It being the only plan presented, or only sketch, there is no comparison with other schemes, for that reason no assurance that scheme is the best, either as
10 regards cost or convenience to traffic.

Q The next item?

A The clearance of the subways is not shown in every case. It is impossible to determine whether they are adequate or whether sufficient depth has been allowed for the overhead structure to carry the tracks.

Q The next item?

A No ground line is shown on profile of Erie tracks. It is impossible to determine whether the tracks are in a cut or fill and whether overhead cross-
20 ings might be advisable in some cases in which subways are shown, or where it is overhead there is no information furnished on the plan that it might not be advisable to have it in a cut.

Q Your estimate of the ineffectiveness or inefficiency of this map was based entirely on examination of the map, or also on examination of the ground?

A I had nothing further than the map. I know nothing about the situation except what I have seen on the map.

30 Q Then your criticism is from the viewpoint of a person receiving these maps for the purpose of carrying out some scheme which they purport to show?

A Yes, sir.

Q Do you know anything about engineering conditions of 1910 and now as far as the cost of construction work and that sort of thing?

A I know that construction is higher probably than then.

40 Q Do you know what percentage higher?

James C. Patterson, cross.

A No, I do not.

Q The general conditions are different?

A The cost of labor is perhaps a little higher.

Q And material?

A Yes, sir, material is perhaps higher.

Cross examination by Mr. Merrey.

Q Did you investigate the files of the company to
find what data and plans were made? 10

A Nothing further than the plan before me.

Q Did you investigate and try to get other data?

A No, sir.

Q Do you know whether the company has in its
possession or not data upon which this plan was
made?

A I do not.

Q You knew it was a plan offered by the Erie Rail-
road, didn't you? 20

A No. I never knew that. I heard a rumor it
was; I never knew it from my own knowledge.

Q Didn't you try to ascertain whether that was
true or not?

A No, sir.

Q You spoke about the grade, the ruling grade
shown; can you tell us the grade of the passen-
ger service from the ferry at Jersey City up over the
hill at the Bergen cut?

A No, I couldn't tell you that grade exactly. 30

Q Is that more than 2%?

A I am sure it is not more than 2%. The main
line of the Erie, as far as I know, has no 2% grade.

Q You are talking of the tracks over which the
freight is hauled?

A Not necessarily.

Q You do not know, you say, what the grade is
from the ferry up over the cut, the Bergen cut?

A No, sir.

Q It is quite steep, is it not? 40

James C. Patterson, cross.

A I don't know.

Q Haven't you ridden over it?

A Yes, sir, I have ridden over it.

Q You haven't any idea as to what that is?

A I know there is a grade there. I have no idea what the per cent. is.

Q Do you know anything about the operation of the road, of the Erie?

10 A Not to any large extent; I am not an operating man; I am an engineer.

Q Do you know whether they carry freight through Paterson?

A I couldn't say as to that.

Q Do you know the great bulk of it is diverted over the Bergen Short Cut?

A No, I don't know that.

Q And that any train of any weight going over the proposed change will be that of passenger service?

20 A No, I don't know that.

Q You haven't made any study of that condition?

A No, sir.

Q Would you say now, taking into consideration the use made of these tracks, whether a 2% grade would interfere with the operation of the road at this point?

A A 2% grade could be prohibitive either for passenger or freight, I should say.

30 Q It would be?

A It could be.

Q It could be?

A Yes.

Q There is not a 2% grade on the road?

A I know of no 2% grade.

Q Do you know of a grade where—

Commissioner Donges. You say you know of no 2% ruling grade?

Witness. Yes, sir.

40 *Commissioner Donges.* How does that differ from a 2% grade?

James C. Patterson, cross.

Witness. A 2% ruling grade is a grade long enough to limit the tonnage hauled by the train.

Q Freight train or passenger train?

A It might be either.

Q You mean to say that a grade that would interfere with a freight train, a long heavy freight train, would interfere with the operation of a light passenger train?

10

A It might or might not. There are a number of elements that might enter into that question.

Q Can you tell me about the grade of the passenger service between the ferry and Paterson?

A No, sir.

Q Do you know what is the ruling grade there?

A I know the ruling grade is about 1% each way.

Q Where is that? Where is the grade you call the ruling grade located?

A I couldn't tell you the exact position.

20

Q You mean the ruling grade is the extreme grade?

A No, I mean the ruling grade. The grade long enough and heavy enough to limit the tonnage that is hauled over the division. That is the greatest grade that limits the tonnage.

Q You know that is about 1%?

A Yes, sir.

Q Whereabouts is that located?

A I couldn't tell you the exact position of the grade.

30

Q You know it is 1%?

A I merely know it from the records in the office.

Q Do you know from the records where that grade is?

A The records show the approximate position of some of the grades. We have a chart that indicates the ruling grade on the division.

Q That chart shows the location of that grade?

A Only approximately.

40

James C. Patterson, cross.

Q My point is; it is near what point?

A The chart approximates the position of those grades.

Q If you know it is about 1% between Patterson and Jersey City, why can't you tell where that point is?

Mr. Minard. He didn't say that.

10 A I can't tell you that, because I haven't the chart from which to check it off.

Q What was your longest experience with any particular road?

A Any particular road?

Q Yes?

A I was four years with the Chicago, Great Western Railroad Company.

Q How long did you say you have been engaged in the railroad business?

20 A About eight and a half years.

Q How many companies have you worked for from that time?

A Worked for six railroad companies.

Q Most of the changes were made at your own initiative?

A Is it necessary to answer that question?

Q Don't answer if you wish.

A Every change was made at my own initiative, my own betterment, too.

30 Q (*By Mr. Minard.*) In your experience with other roads where you were in charge of maintenance and way and resident engineer, do you know what the rules are on those systems with regard to reducing grade?

A Reduction in the grade and increase in tonnage.

Q What is the standard grade adopted or sought, generally?

A The standard grade—that is a question that is a little hard to answer. It depends on the topographi-

40 cal condition of the country.

James C. Patterson, cross.

Q What can you say as to the uniform custom to reduce grades below 1% ruling grade?

A Almost all grades are below 2% where possible.

Q You know, Mr. Patterson, the through trains, the Chicago trains, go through Paterson?

A Why, I have understood they do.

Q You have ridden through on some of them?

A I have been over the line, yes, sir.

10

Q Those trains are heavy trains?

A Yes, they would be, through trains.

Q They stop at the Paterson station, do they not?

A Yes.

Cross examination by Mr. Merrey.

Q Do any of those trains approximate the weight of a freight train, the passenger trains?

A I should say, as a rule they are somewhat lighter, but they operate at a higher speed.

20

Q There are somewhat lighter?

A Yes, sir.

Q What is the weight of the heaviest freight train?

A The weight of our heaviest freight train depends on the ruling grade over which it is handled.

Q Over the ruling grade on the New York division?

A On the New York division?

Q Yes?

A It depends entirely on the weight of the cars. If loaded cars they could haul more tonnage than empty cars.

30

Q When you start out a freight train you put about as much weight as you can move safely, don't you? How much can you put behind one of the largest engines in the way of freight?

A The tonnage depends on whether they are empty or loaded.

Q If loaded; what is the extreme weight?

A Well, what grade?

40

James C. Patterson, cross.

Q On the ruling grade of the New York Division?

A I have already stated 1% is the ruling grade, limiting it to 1,814 tons to the engines of the class I mentioned.

Q N-1 Class I think you said, is it?

A Yes, sir.

Q How much do your express passenger trains weigh?

A I can't tell you that.

Q Does it go over 500 tons?

A I can't tell you that I said.

Commissioner Donges. What is the steepest grade you go up on the railroad right of way on the New York division?

Witness. On the New York division?

Commissioner Donges. Yes?

20 *Witness.* I don't recall any over one and a half per cent. for a very short grade, which of course does not limit the tonnage in any way.

Commissioner Donges. What is the greatest grade, steepest grade, on the New York division?

Witness. I say I don't recall any over one and a half per cent.

Commissioner Donges. Is it short or long?

Witness. The longest grade, I don't recall any over 1.1%.

30 *Commissioner Donges.* So there is no grade on that division in excess of one and a half per cent.?

Witness. Not to my knowledge.

Commissioner Donges. And the short grade exceeding one and a half per cent., would that interfere with the hauling of such loads as are commonly hauled over this road?

Witness. It would depend entirely on the loca-

40 A *tion* of the grade. A short grade at the top of a a little hard steep grade might stop a train and might cal conditionuling grade, but at the foot of a grade

James C. Patterson, cross.

where the train was traveling at a high rate of speed it would probably pass it all right.

Commissioner Donges. So the mere fact of a grade in excess of one and a half per cent. in itself would not prevent the operation of a heavy train?

Witness. No noticeable effect on the train.

Q (*By Mr. Minard.*) That would depend on the length of that train? 10

A Depend on the length and position.

Q Also depend on the rate of speed the train was required to pass in approaching the grade?

A And whether there was a signal on the grade to stop the train.

Q A semaphore?

A Yes.

Q A train approaching a passenger station? 20

A Yes.

Q And a train in the station discharging passengers?

A Yes.

Q And if they struck a two and a half per cent. grade with the semaphore against them and had to stop, there might be trouble starting again?

A Yes.

Q There might be some trouble hauling the train on that grade if you stopped it?

A Yes. 30

Commissioner Donges. Would there likely be?

Witness. Not so likely to be as trouble starting the train once it stopped.

Q In the case of the City of Paterson, if there were rules and regulations limiting the speed of trains through there, it would make a difference about the percentage of the grade?

A Yes, sir.

Mr. Minard. I have been trying to gather the siding agreements, Paterson sidings; there are 40

James C. Patterson, cross.

10 fifteen some. I have been unable to get them all at this time, but I expect to be able to get them by the time we close the testimony. I have here a bundle of them, most of which are original, the remainder are true copies, which I have obtained from the secretary's office and bear his notation, a true copy, with the secretary's initials or signature to that effect. I don't suppose Mr. Merrey will object to these documents?

Mr. Merrey. What are they?

Mr. Minard. Agreements with siding owners.

Mr. Merrey. We don't object to putting them in.

Commissioner Donges. Mr. Gourley?

Mr. Gourley. We want them in.

20 *Mr. Minard.* The gentlemen I have brought in from the division engineer's office who negotiated these agreements and keeps them there.

The first agreement I have is the agreement with the Weidmann Silk Dyeing Company.

Commissioner Donges. Between the Erie Railroad—

Mr. Minard. Between the Erie Railroad and the Weidmann Silk Dyeing Company, the twelfth of July, 1911. They will show in themselves how many sidings they cover and the length of the sidings. I would like to offer them.

30 *Commissioner Donges.* They will be admitted and marked.

(Same is marked Exhibit R-42.)

Mr. Minard. The next one is between the Erie Railroad Company and David G. Rogers Company, dated the twentieth day of October.

Mr. Merrey. The original copies will be furnished the commission.

Mr. Minard. I will bring the original as if you want them.

40 *Mr. Merrey.* I would like to have you do that.

James C. Patterson, cross.

Mr. Minard. I would make this arrangement; they will be available to any party any time you want them. I will bring them next hearing if you desire.

Mr. Merrey. There is no time at the hearing.

Mr. Minard. Come to my office.

Commissioner Donges. Would it be possible before the next hearing to have copies made and submit them to counsel on the other side? 10

Mr. Minard. Yes.

Commissioner Donges. And produce at the next hearing the originals and have them marked? If at that time counsel desires the originals, it may be done.

Mr. Merrey. If he left copies with the commission, one copy is sufficient.

Commissioner Donges. Mr. Minard is going to furnish you copies before the next hearing. Between now and the next hearing copies will be supplied also, so that any questions may be asked about them and the originals brought here for marking. 20

Mr. Minard. In the view of the development in yesterday's testimony in regard to the opening of the streets, we will have a man in the county register's office and various places make a complete search of that matter and we will be able to furnish certified copies of the record. We couldn't get ready to-day, but next hearing we hope to have the office record of all the streets in Paterson. 30

Commissioner Donges. I understand that concludes all you desire to offer to-day.

Mr. Minard. That testimony about the Ohio flood I am endeavoring to arrange about.

Commissioner Donges. Mr. Gourley, are you prepared to say what your position is in regard to this testimony? 40

James C. Patterson, cross.

Mr. Gourley. I have no objection to the fact that I was not made a party.

Commissioner Donges. You make no objection to it, that you were not made parties originally or given notice originally?

Mr. Gourley. Yes.

10 *Commissioner Donges.* They submit themselves now.

Mr. Gourley. To the same jurisdiction as if they had been present then.

Commissioner Donges. They waive nothing, but raise no question of jurisdiction because of failure to give you notice.

Mr. Gourley. Yes.

20 Adjourned until Thursday, December 11, 1913, at the City Hall, Paterson, and after Thursday, to December 26, 1913, Friday, at the Chancery Chambers, Jersey City, at 10.30 o'clock A. M.

30

40

William McGill, direct.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Paterson, N. J., Thursday, December 11, 1912.

PATERSON GRADE CROSSING ELIMINATION, }
 ERIE RAILROAD, *et al.* }

Before Commissioner Hillery.

For the City of Paterson appears E. F. Merrey, 10
 Esq., and Randall Lewis, Esq.

For the Paterson & Ramapo Railroad and the Paterson & Hudson River Railroad appears W. I. Lewis, Esq.

For the Erie Railroad Company appears Duane E. Minard, Esq.

WILLIAM MCGILL, sworn on behalf of Erie Railroad Company.

Q Please give your name in full? 20

A William McGill.

Q Where do you reside?

A Church and Ellison streets.

Q In the City of Paterson?

A Yes, sir.

Q How long have you lived in Paterson?

A Fifty-seven years; I was born here.

Q Where did your father live at the time of his death?

A Until a week or so before he died he lived in 30
 the same house, three hundred and seventeen (317)
 Summer street.

Q In the City of Paterson?

A In the City of Paterson, yes, sir.

Q Did you find among the papers that he left anything relating to the railroad which runs through the City of Paterson to the City of New York, now known as the Erie Railroad?

A I found a time-table left by my grandfather, not by my father. 40

William McGill, direct.

Q Among your father's papers?

A Yes, sir.

Q Will you please produce it for the inspection of the commission?

(Same is produced.)

10 *Mr. Minard.* We will have a photograph taken of that if Mr. McGill will let us, and said photograph will be offered as Exhibit No. R-43.

Q Will you please read the contents of the timetable which you found?

A "Summer arrangement, Paterson and New York Railroad Line from Paterson. Morning at 6½ o'clock by steam, 10¼ o'clock by steam; afternoon, 2½ o'clock by horses, 5¼ o'clock by steam, 6½ o'clock by horses. From New York, morning 5½ o'clock by horses, 8 o'clock by steam, 11½ o'clock by steam. Afternoon, 3 o'clock by horses, 6½ o'clock by steam.
20 On Sundays, from Paterson, 6½ o'clock A. M. by steam, 3½ o'clock P. M. by horses, 5 o'clock P. M. by steam. From New York, 8 o'clock A. M. by steam, 9½ o'clock A. M. by horses and 6½ P. M. by steam. June 15, 1835."

Q Mr. McGill, will you please tell the commission with particularity as to where you found that timetable?

A In an old hair trunk in the garret of our house.

30 Q Had you ever seen it before you took it out of the old hair trunk?

A Never, it was down in the bottom of the trunk.

Mr. Merrey. We will admit that.

Mr. Lewis. You will admit this was a timetable of that road at that time, of the Paterson & Hudson River Railroad at that time?

Mr. Merrey. Yes.

William H. Levi, direct.

WILLIAM H. LEVI, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. W. I. Lewis.

Q Where do you live, Mr. Levi?

A Paterson, N. J.

Q What place?

A 61 Pearl street.

Q How long have you lived in the City of Paterson? 10

A My parents moved here about 1841 and I have lived here ever since, except four years.

Q Where were you during those four years?

A In the service of my country in the war of the Rebellion.

Q Do you remember when you came to Paterson in 1841, whether there was any railroad running at that time from Paterson to New York? 20

A Yes, sir.

Q How old were you when you came to Paterson in 1841?

A About three and a half to four years old.

Q What year were you born in?

A 1837.

Q When you came to Paterson, was there a railroad running from Paterson to New York?

A Yes, sir, as far as I know. I know there was a railroad in Paterson proper. 30

Q When did you first learn where that railroad ran to?

A About 1847 or '48 I went down to New York with my parents.

Q You were then ten or eleven years of age?

A Ten or eleven years of age.

Q Where did you start from?

A We started from Main street depot.

Q Where did the road run to from that point out to the junction, how did it run to the junction? 40

William H. Levi, direct.

A The road started at the depot and before it got to the gate, the fence enclosing the yard, there was an S curve, which started from the depot in this way and curved this way and another curve that way (indicating) and ran direct from the entrance to the yard to the junction.

10 Q How would you describe the location of the junction?

A I don't know it is exactly on the ground where the Lambert Mills stand, but in that locality.

Q That is in the vicinity of Clay street?

A Yes, sir. There was no Clay street there then, in the vicinity of Straight street.

Q In the vicinity of what would be the Straight street crossing now?

A Yes, sir.

20 Q Whereabouts did you start from on that trip to New York?

A Started from the Main street depot.

Q And where was that located?

A Located on Main street and on the corner which is now De Grasse street, but no De Grasse street then; the main entrance to Colt's Garden.

Q Do you recall whether there was any railroad then running from Market street out to New York, to the junction, and then to New York?

A At what time?

30 Q At about the time you are speaking of in the trip to New York?

A No, not when I was ten years old, no road run through there then yet.

Q Do you remember the construction of the Patterson & Ramapo Railroad?

A I remember of its being built.

Q Do you remember having a ride on that railroad to Sufferns?

40 A Yes, sir. When I was a boy, I was going to school then yet, I went up on the locomotive in company of the fireman, up as far as Sufferns.

William H. Levi, direct.

Q Was that before or after your trip to New York with your parents?

A That was a short time after or previous to that, I don't remember which.

Q You cannot tell whether it was before or after?

A After that, I think.

Q But about that time?

A Yes.

Q Before your trip to New York in 1847 or '48, had you been familiar with the railroad as it went from Paterson toward New York?

10

A Yes, sir.

Q Tell us how you became familiar with it?

A It was a common playground in the neighborhood of what we called old Paterson, Cross street, Allen street, Ward street, a great playground for the boys. We used to go there to play after school hours or on Saturday, and the playground was generally on the southwest section of the yard, which would be in the neighborhood of where Slater street goes through, crosses now, and if we would forget ourselves and go out of that section, out of that neighborhood, we would be apt to be chased out of the yard by old Dody Claxton, who was the general yardmaster. If we got thirsty we would go to the railroad spring and get a drink of water.

20

Q Do you remember the building of the station at Market street and the railroad?

30

A I don't remember of its building, but I remember after its being there, after built and being used.

Q What is your earliest recollection of that railroad station?

A Young men, fourteen, fifteen, sixteen years old, a common place to go there and see the train go through.

Q The station at Market street was maintained at the same time that the station on Main street was maintained?

40

Peter Doremus, direct.

A Yes, sir.

Q For how long a period of time?

A The last I remember of using the railroad from the old depot was in 1861 when three hundred of the boys went down to join Sickle's brigade in New York, the fifth of May, 1861.

10 Q When you say you watched the trains go through, where would you be standing?

A We would be walking around on the platform. That station was built of brick, probably eighteen or fifteen feet to twenty feet square.

Q Where did the trains come from then?

A From Sufferns.

Q And go through—

A As a rule—

Q Go through to New York?

20 A I don't know what year the Erie Railroad got possession of the old Paterson & Hudson River Railroad, but previous to that the trains ran to the junction and there the passengers and baggage would be transferred to the Paterson & Hudson River Railroad because the Paterson & Ramapo was a six-foot gauge roadbed and the Paterson & Hudson River is a four-foot eight and a half. That is why the junction was built there, to transfer passengers and freight to the old line.

30 PETER DOREMUS, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. W. I. Lewis.

Q Where do you live, Mr. Doremus?

A 581 East Twenty-fifth street.

Q In the City of Paterson?

A Yes, sir.

Q How long have you lived in the City of Paterson?

40 A Since 1844.

Q How old are you now?

Peter Doremus, direct.

A Past eighty-five.

Q You still attend to business affairs?

A Oh, yes.

Q You are a director of the Second National Bank of Paterson at the present time, are you?

A Yes, and have been for the past fifty years, nearly.

Q When you came to Paterson, do you recall whether there was any railroad here at that time? 10

A Yes, there was the Hudson River Road.

Q And where did that road run from at that time?

A The depot was down near the Court House. They used to run the cars from there up to the corner of Main street with the horses.

Q That is to say, at that time they ran from the site near the Court House with horses down to the corner of Main and Market streets?

A Yes, sir. 20

Q That was then known as Congress Hall?

A Yes.

Q Starting from the Court House in the other direction, where did the road run to?

A It ran down in connection with the Pennsylvania road.

Q At what point?

A I don't know exactly what point it was.

Q Where did it take you to?

A To Jersey City. 30

Q Do you remember the construction of the Paterson & Ramapo Railroad?

A Yes.

Q Where did that road run from?

A It formed the junction with the Hudson River Railroad. Mr. Coult made an exchange of lots on Main street for the lots that were occupied by that road.

Q Where did it run from the junction?

A I don't know just exactly where it was. 40

Peter Doremus, cross.

Q Did it run out towards Sufferns?

A Yes, it ran up to Sufferns, that is, it ran as far as the Jersey line, then it became the Union road from there up to Sufferns to connect with the old Erie.

Q Do you recollect what time that road began to run from Sufferns to the junction?

A No, I think it was about 1849.

10 Q You are not quite precise about that in your recollection?

A I know when it was in building.

Q When was it building?

A It was building from 1847 to '49.

Q You would say then it was running at a time no later than 1850?

A How is that?

Q You would say it was running at a time no later than 1850?

20 A Yes.

Q At the time you first remember that Paterson & Hudson River Railroad running, do you recall what streets the Paterson & Hudson River Railroad crossed in the City of Paterson?

A I don't think it crossed any street.

Q In the City of Paterson?

A In the city. It started from there and went right down and there were no streets laid through.

30 Q At the time the Paterson & Ramapo Railroad started to run, what street did it cross in the City of Paterson?

A It crossed Market street, Broadway and River street.

Q Did it cross any other streets at that time?

A There were no other streets to cross, the only three outlets in the city.

Cross examination by Mr. Merrey.

Q Do you remember when Straight street was laid out?

40 A I don't remember the time. It was laid out in the first place from Broadway just north of Broad-

Peter Doremus, cross.

way some three hundred feet or four hundred feet through to Market street, then afterwards, it was opened from there down to River street.

Q Do you remember when it was opened south from Market street to where it now crosses the Erie Railroad?

A Yes, it must have crossed the Erie Railroad, it must have run down there to connect with the Erie. 10

Q Are you sure Straight street was not laid out before the railroad was laid out on its present right of way?

A I am not sure of it below Market street.

Q You are not sure of the conditions south of Market street?

A No.

Q When you say below Market street you mean south?

A Yes. 20

Q You were not so familiar with that section of the city?

A No, at that time it was all really a wilderness.

Q So it is possible, however, that Straight street or some other street may have been laid out over the railroad?

A Yes, so far as I know.

Q And may have been laid out before the railroad started to operate?

A It might have been, I am not positive about that. 30

Q It is a long time ago and you cannot be sure of your recollection?

A No.

Q There may have been some other streets, so far as you know, laid out to the north crossing what was afterward the Paterson & Ramapo Railroad, besides the three you mentioned?

A I didn't quite get that.

Q May there not have been other streets beside Market street, Broadway and River street that were 40

Peter Doremus, cross.

open before the railroad was laid out, so far as you know?

A I cannot say positively, but I think there was. I think Godwin street was.

Q Was Van Houten street and Ellison street?

A Van Houten street was not opened, Ellison street was opened from Main street out.

10 Q And crossed where the railroad now runs?

A I don't know, it didn't cross there. It was merely opened from Main street to Church.

Q Was it opened from Church to Straight?

A No.

Q It was not?

A No, there was a pond there, the button mill pond, it was called, where Market street is now located.

20 Q How far from Market street did that run?

A How far from Market street?

Mr. Lewis. What, the pond?

Mr. Merrey. Yes.

Q How far from Market street did that button mill pond extend to the north?

A To the north, to Ellison street. That was a pond fed by streams from that section of the city.

Q Did that cross Ellison street, where Ellison street now is?

30 A Yes.

Q Did it go as far as Van Houten street?

A The pond?

Q The pond.

A No, the pond ended at Ellison street, but the water went through Van Houten street and Broadway.

Q Did it run off in a brook?

A The water ran from this pond down to the river, it was called Dark Brook.

40

Peter Doremus, cross.

Q Was that stream of any size, Dark Brook, was it a large stream?

A It was quite a stream at the time.

Q It wasn't necessary to bridge it, not necessary to put a bridge across it?

A They had a temporary bridge across.

Q Where Ellison street now is?

A Yes. 10

Q Did they have one at Van Houten street?

A No, I think not.

Q (*By Mr. W. I. Lewis.*) When you speak of Godwin street crossing the track, Mr. Doremus, as a matter of fact Godwin street doesn't cross the track to-day, does it?

A It goes under. There is no claim there. That has its underground passage at Godwin street. Godwin street is where Katz' brewery is.

Q When you speak of Godwin street going under, 20 is what we call Straight street now going under?

A Yes.

Q Did they use to call that Godwin street?

A Yes. Godwin street runs from—

Q From Bridge street, doesn't it?

A Yes.

Q Up to Agnew's coal yard?

A Yes, and the railroad runs over that.

Q Over what is now Straight street?

A Yes. 30

Q Down by the brewery?

A Yes, down by the brewery.

Mr. Minard. I want this testimony as far as it relates to the Paterson & Hudson River Railroad to be used in the Rutherford case. That was understood before the commission when we arranged for this hearing.

Commissioner Hillery. I understand that to be true. 40

A. L. Sorensen, direct.

SEVENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

Jersey City, N. J., Friday, December 26, 1913.

PATERSON GRADE CROSSING ELIMINATION, }
ERIE RAILROAD COMPANY, *et al.* }

- 10 Before Commissioners Donges, Hillery and Daniels.
F. H. Sommer, Esq., Counsel.
For petitioners appears E. F. Merrey, Esq.
For respondents appear G. S. Hobart, Esq., and
D. E. Minard, Esq.
For various siding owners, etc., appears W. B. Gourley, Esq.

- 20 *Mr. Minard.* Mr. Gourley is here with a large number of siding owners. They, perhaps, should go ahead; they are business men and delay would evidently interfere with them. I would like to put Mr. Sorensen, chief clerk, on to-day, because his duties in New York require his early return. I have also a gentleman here from Cleveland.
Commissioner Donges. If that is agreeable, Mr. Gourley?

Mr. Gourley. Very satisfactory.

A. L. SORENSEN, recalled on behalf of respondent.

- 30 *Direct examination* by Mr. Minard.

Q During one of the previous hearings Commissioner Daniels raised the question of the per ton mile. I have taken the liberty of working that up so his question might be answered. Mr. Sorensen, I hand you a statement; what does this statement show?

- A This statement shows the operating revenues, operating expenses in detail and operating income for the period 1903 to the period 1913, expressed in mills per traffic unit, namely, revenue ton miles plus passenger miles. It shows these various items for years
- 40

A. L. Sorensen, cross.

in mills, 1903, 1910, 1913 and then five years' average, 1903, 1907, and five-year averages, 1908, to 1912, in mills, worked down to operating income.

Q 1903 to 1913, this statement shows that operating income per ton mile, including freight and passenger has been reduced from 2.77 down to 2.03, is that right?

A It is.

10

Mr. Minard. I offer that in evidence.

Commissioner Donges. Is there any objection?

It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-44.)

Cross examination by Mr. Merrey.

Q Will you kindly explain the meaning of this table. I notice in the first place you say that it is revenue ton miles plus passenger miles.

A This is the revenue tons one mile plus the passengers carried one mile; resolving the figures to the one-mile unit basis.

20

Q That means then that the total operating expenses for transporting a ton of freight one mile and the passengers one mile is so much; that is what I understand?

A Yes, sir, as here expressed.

Q Just tell me how you combined those two things?

A We have combined the revenue—taken the revenue tons carried one mile, which is arrived at by taking the revenue tons and multiplying by the total tons carried and passengers carried one mile, and arriving at that on a one mile basis and adding the two together.

30

Q Is there any separation showing the revenue of carrying a ton of freight one mile, separating the revenue received from the passengers carried one mile?

A There is not, no, sir.

Q You have those figures, have you?

A We could arrive at those figures, yes, sir.

40

James Burke, direct.

Mr. Merrey. This table, as I understand, was prepared in answer to a question you propounded.

Commissioner Daniels. It is so stated. I assume I did so ask the question. I think I probably did.

10 *Mr. Minard.* Commissioner Daniels made an inquiry in that room when we had the hearing on figures, the figures per ton mile. The statement went in and we didn't show it. It occurred to us as a good suggestion to show the earnings per unit for one person and a ton mile. It is a concrete clear way of showing the earnings of one to the other and to avoid confusion of millions of dollars.

Mr. Hobart. It is standard; I think it is the same statement made before the Interstate Commerce Commission.

20 *Mr. Minard.* This statement is taken or copied from a statement of Comptroller Crawford before the Interstate Commerce Commission on the five per cent. rate increase.

Witness. It was taken from the testimony.

Mr. Minard. We copied it out after the commissioner made the inquiry about it.

Mr. Merrey. I have no further questions.

30 *Mr. Minard.* I have put the photographs in a convenient book form. This is all the photographs we have offered.

JAMES BURKE, sworn on behalf of respondent.

Direct examination by Mr. Minard.

Q Give your full name and address.

A James Burke.

Q Where do you live?

A Cleveland, Ohio.

Q When did you come here?

A I came here this morning.

40 Q When?

James Burke, direct.

A This morning.

Q What is your business?

A Superintendent of roadways, bridges and buildings.

Q On lines west?

A On the Erie Railroad on lines west of Salamanca, New York.

Q The question of replacement of any damage done by a flood, does that come under your personal supervision? 10

A Yes, sir.

Q Do you have all the reports and data on the subject?

A I do.

Q And from that date have you compiled a statement and presented it here by divisions of the cost of repairing in kind damages to track, roadway, bridges, structures and so forth, also the expense involved in cleaning creeks, channels, track ditches, and so forth, as a result of the flood condition in March and April, 1913? 20

A Yes, sir.

Q That is more conspicuously known as the Dayton flood?

A Yes, sir.

Q Are these statements compiled by yourself from original data and memoranda?

A They are given by divisions by the Division superintendents to my office. 30

Q On their official reports.

A Yes, sir.

Q With which you are familiar?

A Yes.

Q And in the line of your duties in this office?

A Yes, sir.

Q Just read the figures on it.

A Meadville division \$33,787.85.

Mr. Minard. We can save a little time, as everybody has a copy of this memoranda— 40

James Burke, direct.

Q Are these figures correct?

A They are.

Q I notice a note at the bottom: "The above cost does not include loss of gross revenue sustained during the months of March and April as a result of flood conditions, which was very heavy, but difficult to arrive at in figures." Have you any figures of loss of revenue during that time?

10

A I have.

Mr. Merrey. This seems to be a new way of testifying; to come with a statement and hand it to the witness and ask one question about it. I have no particular objection at this time.

Mr. Minard. This has been the practice ever since the case started.

Mr. Merrey. With our sufferance.

Commissioner Donges. The purpose is to save time.

20

Mr. Minard. You can ask any questions you want.

Mr. Merrey. It is immaterial.

Q What figures have you on loss of traffic, and how did you get them?

A It is arrived at by taking the number of trains that were put over the road for the previous twenty days before the flood season came on.

Q Using as a basis the previous twenty days before the flood—it was not anticipated so the traffic wasn't heavier than usual?

30

A No heavier. It was assumed the same as in the flood season.

Q Which is a reasonable assumption in your opinion?

A Yes, sir.

Q What are the figures; can you give the first month for loss of revenue?

40 A In the month of March it was figured \$722,815 loss in earnings.

James Burke, cross.

Q Based on the twenty days previous?

A Yes, sir.

Q What was it in April?

A \$308,736.

Q Have you got that totalled up?

A I have; \$1,247,361.89.

Q That includes the addition of your statement
of physical damages?

10

A Yes, sir.

Q That applies on the road east of Salamanca?

A It does—west of Salamanca.

Q West of Salamanca?

A Yes.

Mr. Minard. I offer that in evidence.

Mr. Merrey. How far is Salamanca from Pat-
erson?

Q Did you ever hear of Paterson?

20

A Yes. It is four hundred and fourteen miles
from Jersey City, and Paterson is something like
eleven or twelve miles I think.

Cross examination by Mr. Merrey.

Q So none of this loss has anything to do with the
division of which Paterson is a part?

A No, sir.

Q You say there was some loss in traffic while this
flood was on?

A Yes, sir.

30

Q Was the traffic augmented after the flood was
over?

A I don't think it was augmented to the extent it
was before, for the reason a great many of the factories
were idle on account of the inability of the railroad
to serve them and so forth.

Q Have you deducted from this table of loss of
traffic the amount the traffic was later augmented from
the fact that the flood was over and the stuff delayed
was being sent over the road?

40

James Burke, re-direct.

A I didn't quite understand the question.

Q I understood from your testimony you say after the flood subsided and the road began to operate you carried a lot of traffic that had been delayed?

A Yes.

Q Have you deducted that from the amount lost during the flood period?

10 A I think that was deducted.

Q Do you know?

A No, I do not know. I am not in the traffic department.

Q This table you gave us was based on something you don't know of?

A It was made from figures that the traffic department had.

Q You don't know whether your road lost that amount of traffic or not?

20 A I couldn't actually swear to it. It is only an estimate.

Re-direct examination by Mr. Minard.

Q Any traffic that was delayed of that nature on account of the flood—wasn't there a large amount of traffic on account of the flood that otherwise would have gone to take its place?

A Yes.

Q Very large?

A Yes.

30 Q And for months after the flood there was large amounts not shipped?

A Yes, sir.

Q I understood this statement specifically states it does not include loss of traffic; that is the amount actually spent on the several divisions?

A Yes.

Mr. Minard. I offer that statement.

Commissioner Donges. It will be admitted and marked.

40

(Same is marked Exhibit R-45.)

H. W. McGrath, direct.

Re-cross examination by Mr. Merrey.

Q Do you know whether the road is in as good condition after these repairs were made as before? Was it not in as good condition as it was before?

A It was in many places.

Q Wasn't it better?

A No, I don't think it was any better.

Q Did you build any stronger bridges where they had been washed away? 10

Mr. Minard. This statement says, "in kind."

Commissioner Donges. Let the witness answer.

A We didn't lose any bridges in that district; the statement don't show any bridges.

Q You had damages to bridges?

A Yes.

Q When they were repaired were they made better than before? 20

A No; made as good.

Q Do you know that?

A I do.

Q When you cleaned out the creek channels, did you make them a little deeper than before the flood?

A No; we didn't go any further than we had to.

H. W. McGRATH, sworn on behalf of respondent.

Direct examination by Mr. Minard.

Q What is your position? 30

A I am engaged in special work in the office of the general manager.

Q Did you undertake to make up an estimate of the amount of damages due to floods in March and April, 1913?

A Yes, sir.

Q On the various divisions?

A Yes, sir.

Q How did you reach that statement?

A I went to each one of the division offices and from their time books and material books and records 40

H. W. McGrath, direct.

of vouchers issued, took the information in figures that is represented in this statement.

Q Then these figures were taken from the original time slips?

A Yes, sir.

Q And vouchers that are in the offices of the company?

10 A Yes, sir; offices of the districts.

Q The figures set forth in this statement are true and accurate?

A Accurate.

Q It does not include any estimate for loss of traffic?

A They do not.

Q Can you explain why it does not?

20 A There were no records available now. These records available are not in such shape or condition and we took the figures we had at the time as absolutely correct.

Q Were any divisions taken east as to that?

A No.

Q What about the Susquehanna division?

A They had figures amounting to \$1700. When I went to go to the very records to find out if they were exact there wasn't enough proof of it.

30 Q In other words, in the divisions mentioned in this statement they did not maintain a twenty-day previous record, anything of that sort to ascertain the loss of traffic?

A No, sir.

Mr. Merrey. He has nothing more than his general observation; as a matter of fact that is all you are testifying to.

Mr. Minard. I offer this statement in evidence.

Commissioner Douges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-46.)

40

Recess from 1.10 to 2.10 o'clock P. M.

AFTER RECESS.

Mr. Minard. We set up in our answer a certain number of sidings in that section. That information was taken from our files at the time. Since that time I have given personal attention to it and have gone over the ground personally with our engineer and with the division freight agent and have gone over the result with the local freight agent at Paterson. We find certain conditions. Some of the siding owners mentioned in that list—the sidings are there and enjoyed under an agreement which gives them the benefit and to their heirs and assigns and successors and assigns, so our obligation is the same and theirs is. But there are others where the sidings were built to accommodate one concern and another concern built a plant on adjoining land and we extended that siding; so, while the siding is one siding, yet we have an agreement or understanding with three or four more concerns on the same siding. I thought it better to have that absolutely clear; all these different things clearly explained and the detail about the different sidings and that pointed out, and I have gotten up a statement to that effect, which I find adds considerably to those which we have in the answer. We have sixty-two such concerns which are served by an arrangement which the railroad company is not at liberty to break.

10

20

30

Commissioner Donges. Sixty-two concerns affecting twenty-eight or twenty-nine sidings?

Mr. Minard. Yes; I show this by a letter or legend, which is explained at the end, showing how they are affected. I make this statement so these additional people may have notice—perhaps they ought to have notice before another hearing. I don't know whether the other siding owners will take the rest of the day. This list ought to go up to the secretary, who ought to

40

Discussion.

make notices and give them notice. I can prove this by the freight agent who is here.

Mr. Mervey. This gives the name of the siding?

Mr. Minard. Yes.

Mr. Mervey. It doesn't show from these names of the parties who owns the siding.

10 *Mr. Minard.* That is our record. If you don't like it, prove it. That is our record.

Mr. Mervey. For instance, No. 8, record of Martin Goble, does he own it?

Mr. Minard. Yes, that is our arrangement.

Mr. Mervey. Do you know whether the Erie Railroad owns that and Martin Goble has left?

20 *Mr. Minard.* We don't know anything of that sort. We have an arrangement with Martin Goble to provide a siding on our own land, but the obligation is the same.

Mr. Mervey. Haven't you evicted him from the land for non-payment of rent?

Mr. Minard. I never heard of it.

Mr. Mervey. I did.

Mr. Minard. That is part of your case; take your oath and go ahead.

Mr. Mervey. You are going to swear these are sidings owned by these particular people?

30 *Mr. Minard.* Suppose we let this matter go through the usual method.

Mr. Hobart. We undertake to furnish what perhaps we are not legally required to do, a complete list. We feel in honor bound, not legally bound, to submit what we can.

Mr. Minard. We will have to prove it later. I think the commission should give notice to these other people.

40 *Mr. Mervey.* That is just the trouble. I am not asking you to go to proof. I asked you if

Discussion.

the people named own the sidings; I have my doubts.

Mr. Minard. There is doubt about whatever we prove. We are doing this for him.

Commissioner Donges. You raise the point in your answer?

Mr. Minard. Yes.

Commissioner Donges. Perhaps, if you expect benefit from failure to give notice, or expect your case is affected by the fact that you are called upon to furnish certain service to switch owners, you ought to prove just what the relation is, what your obligations are and how you may be affected. 10

Mr. Minard. We will do it as far as we can. We ask an opportunity to offer acceptable proof on that. I am doing it to the best of our information. If somebody ought not to be there or somebody is left out, Mr. Merrey is at liberty to ask the commission to serve the notice on somebody else. 20

Mr. Merrey. For instance, if the Erie Railroad owned a property which they used to lease to an individual and the name is down there, how will we get that information?

Mr. Minard. You suggest the information?

Mr. Merrey. I suggested this particular case.

Commissioner Donges. If you and Mr. Minard are not agreeable to agreeing that the statements contained in this paper are accurate, then you may call on Mr. Minard for proof and have the right of cross examination. If the proof is in the hands of the railroad company, you may call upon them to produce any agreement or writing they may have. 30

Mr. Merrey. The reason I am making this statement—I don't understand this is in evidence? 40

Discussion.

Commissioner Donges. It is not now in evidence.

10 *Mr. Merrey.* I understood Mr. Minard was offering it to the commission for the purpose of informing the commission of other parties interested, in order that they could serve notice. I am endeavoring, rather than objecting, endeavoring to find out whether the persons concerned are parties who should be notified.

20 *Commissioner Donges.* Mr. Minard's statement, as I understand it, is he here submits a list of persons who appear by the records of the railroad company to have rights in sidings. Mr. Minard suggests, although it hasn't been proved or offered or admitted in evidence, that these parties might be notified before the next hearing, in order to save time, and then proceed with the proof formally in the matter.

Mr. Merrey. This discussion was brought about by the question put to Mr. Minard whether the list was an accurate list. I notice one or two instances in which names are not given accurately and are not the owners of switches. I want to know from him to be sure about it.

30 *Mr. Minard.* It may be necessary to amend a section of the answer to add additional names. I assume there will be no objection to that. It won't change the section, but add additional names for the purpose of the pleading. Another point is, in order that this may be the list which we will prove—we can prove it now—I suggest that it be marked for identification so it can be identified.

Commissioner Donges. It will be so marked.

(Same is marked Exhibit R-47, for identification.)

40 *Mr. Minard.* Mr. Martin spoke to me during

Discussion.

the noon recess. He represents Armour & Company.

Mr. Martin. My attention was called to this a short time ago, but my principal was in Chicago. I have received authority to file an answer with the commission, but the answer is not yet prepared. I would plead an extension of time to have an answer prepared and filed with the commission. 10

Commissioner Donges. How much time do you need?

Mr. Martin. Say Monday.

Mr. Merrey. May I ask, if that be done, that the testimony already taken be admitted?

Commissioner Donges. You consent that the testimony already taken shall be binding on you?

Mr. Merrey. Subject to the right of cross examination. 20

Commissioner Donges. Yes; cross examination and calling back any witnesses you wish to examine. The point is you submit yourself to the jurisdiction of the board and also to be bound by the testimony that has been already taken?

Mr. Martin. Yes.

Commissioner Donges. Very well; upon that understanding you may file your answer.

Mr. Gourley. I file an answer for Fuller's Express Company and the National Silk Dyeing Company. 30

Commissioner Donges. On the same conditions.

Mr. Gourley. On the same conditions.

Mr. Minard. Fuller's Express Company was one of the concerns not in the original answer.

Mr. Merrey. I think the stenographer didn't get Morris & Company's name correct. It is here Nelson Morris Company. 40

Daniel O'Connell, direct.

DANIEL O'CONNELL, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Q You are president of the McNab & Harlin Company in Paterson?

A Yes, sir.

10 Q What business is your company engaged in?

A The manufacture and sale of brass and iron goods for steam, gas and water requirements.

Q How long has that company been engaged in business in Paterson?

A It has been engaged in business altogether fifty-eight years about.

Q How much of that in Paterson, about, broadly?

20 A I really can't say. I have only been in the company twelve years myself. But I should say they have been in Paterson thirty or forty years, perhaps, altogether.

Q Where is their place of business?

A Their factory is on Straight street and runs through to Railroad avenue. We have what we call the old plant and the new plant.

Q The old plant then—

Mr. Merrey. Pardon me. Railroad avenue wouldn't be right.

Witness. Ramapo avenue.

30 Q What manufactory have you on the south side of Taylor street or Bond street?

A The new plant?

Q No, the old plant?

A The old plant consists of a brass foundry and finishing shop.

Q How many men are employed altogether, about?

A Between six hundred and seven hundred men.

Q You spoke of the new shop; where is the new shop?

40 A After you pass Cedar street, then you come to the Graham brewery, then you come to what we call

Daniel O'Connell, direct.

the National Biscuit Company's property, and then our iron foundry, new plant, follows that. The switch runs the whole length in front of the Graham brewery and the National Biscuit Company's property.

Q And the old plant adjoins the Erie Railroad's property?

A Yes.

Q Isn't there any ground between your property and the railroad property on the south side of the street, of the old plant? 10

A None I know of that doesn't belong—as I understand, our property runs up to the railroad property, but our switch is on our own property.

Q You have a deed to your property?

A Yes; in the safe deposit box in New York.

Q What switch have you connecting your property with the railroad?

A We have a switch that runs from the main line and away out the whole length of the property, both to the old plant and the new plant. 20

Q What do you use the switch for?

A We use the switch facilities, one of the uses, the main one, is to get raw material, pig iron, coal and coke and other raw materials that we want.

Q You use it for outgoing cars?

A Some outgoing cars, but the great volume is incoming freight.

Q The new yard or the new shop, have you switching privileges? 30

A Yes, that is where the switch runs in.

Q The switch continues down?

A Continues down.

Q What is the switch used for on the new plant?

A The same; raw material, coal, coke and pig iron.

Q Have you any idea the number of cars per month you use, or per year?

A I think last year the incoming freight was something over 500. 40

Daniel O'Connell, direct.

Q Last year?

A I think last year I made the calculation. The average was about that.

Q What have you to say, Mr. O'Connell, as to the adaptability of your property in a manufacturing relation to the railroad; what use is the railroad to your property for manufacturing purposes?

10 A We consider the contiguity of the railroad company to our property a very favorable asset.

Q You may state why?

A In connection with switching facilities and for the reason that it makes a short haul to the metropolitan district, which is our great market and brings our material in from the west.

Q How would you take care of that volume of incoming business without the switch?

20 A Well, we would simply have to buy a large trucking outfit and have that large amount carted by horse and wagon from the depot.

Q Where would you have to go to get it?

A Go to one of the Erie freight depots, wherever that might be situated, if this improvement is made. This, of course, we know nothing about.

Q Would that be of materiality in the cost to you in the price of the goods?

30 A It would be a very large sum of money and aside from the inconvenience and delay of it, it would add to the overhead expenses of billing and add to the cost of our product. In close competitive bidding in some pieces of business it would be a very important item. We might lose a lot of business on an overhead of that kind.

Q Have you considered the condition of depression or elevation through there?

A I am not an engineer—I don't know as I am competent to pass judgment in such a matter—from what I have heard.

40 Q Perhaps you may go on.

Daniel O'Connell, direct.

A The sentiment in Paterson—

Q No. Have you any knowledge of your own, how it can be adapted?

Mr. Gourley. Mr. Hobart calls attention to the fact that the plaintiff's case is based entirely on sentiment.

Mr. Minard. I don't know why the witness should be headed off. 10

Commissioner Donges. I don't know as there was any sentiment.

Witness. From my knowledge of the surroundings and without being an engineer, I would say elevating the track, if it has got to be done, it would be preferable to depression as far as our mill is concerned.

Q How would you adapt your mill to that elevation? 20

A I don't know as we could. It looks like a very important and very serious thing to determine just where we are going to be left if the tracks are elevated and what, if any—how any switch can be put there, if a switch is put in, if such a switch can be put in. .

Q Your property abuts on Bond street near the railroad?

A Our entire plant runs along what we consider the railroad tracks and crosses one public street, namely, Cedar street, I think that is what they call it. 30

Q Would elevation of your structure allow—crossing that street at right angles interfere with you?

A I should think it would, absolutely. If you are going to elevate that street, Cedar street, which separates one mill from the other, I can't conceive how you can get a switch from such elevation into the old plant.

Q In making that obstruction, and remembering that your property abuts directly on the railroad, the 40

Daniel O'Connell, cross.

property south of Bond street, would that affect the elevation of the railroad, damage or increase the value of that property?

10 A We would consider it a very serious damage to have any change in this switch, or elevation or depression of the tracks. We haven't seen any detailed map of how it is to be done or what they will put us in; looking over the situation as well as we can, without being an engineer, that is the way it impresses me.

Q That situation will affect your light and air?

A Yes, it would affect our light and air.

Q I mean the plant property, where it crosses the street?

20 A Yes; the light in the main plant would be affected, and I don't know but what the light in the new plant; it would darken up the rooms where the hands are working.

Cross examination by Mr. Merrey.

Q That altogether depends on the height the track is elevated?

A It depends on this contemplated improvement, whatever it is going to be.

Q I understand the bulk of your business with the railroad was receiving raw material, coal and coke?

A Pig iron and coke and all raw material.

30 Q Isn't that much more cheaply handled from a trestle than a ground track? In other words, don't you think it an advantage to you to have an elevated track into your plant so the coal could be dropped through the bottom of the cars into pockets?

A Well, I don't know. Before I should want to answer that question I should want to see a blue print how this is going to be. I don't think that feasible.

Q If it were it would be an advantage?

40 A I don't say it would be an advantage. I couldn't with the data at hand, I couldn't pass on such a subject.

Daniel O'Connell, cross.

Q (*By Mr. Hobart.*) Do you know that your company has an agreement with the railroad company?

A Yes. I intended to bring that along. Mr. Gourley got me out of bed pretty early. It is available to the commission. I will bring it along. We have the correspondence and agreement, whatever it is, with your railroad.

Mr. Hobart. Just so it is understood that 10
that can be offered later.

Mr. Gourley. Yes.

Q (*By Commissioner Daniels.*) Do you incline in any way to offset the advantage you and others derive as citizens as against the loss suffered as a manufacturer by the separation of the thoroughfare from the railroad?

A You ask me my sentiment as a citizen to see the improvement made.

Q Is there any offset? Do you regard it a net 20
loss or is part of that loss compensated by the elimination of the possible danger?

A I'll tell you frankly what I feel about it. I suppose my Paterson friends would think I am trying to throw cold water on it. I have run along those tracks for the past ten years. I really don't see the great necessity, as far as public safety. It seems to me there might be a middle ground by which you could still maintain those crossings by devices and better protection, perhaps. It is a question in my mind 30
whether such an improvement is needed with all the uncertainty about these mill owners and switches. As a general proposition I am very much in favor of improvements that make life and property safer. Do I answer your question?

Q Yes. I wanted to know if you had weighed the two things?

A Yes, I have, thoroughly. I don't know what the record is for the last ten years, the element of public safety as shown on the tables, I don't know about 40

Daniel O'Connell, cross.

that. It doesn't seem to me there should be any serious accidents crossing those crossings in the City of Paterson with any care on the part of the passenger, passerby.

By Mr. Merrey.

Q Where do you live?

A In Passaic.

10 Q What part of the business do you attend to, manufacturing or sales?

A Both. I attend to the manufacturing and I attend to the executive part of the company.

Q Most of your time is spent in the office in New York?

A No. I spend usually three days in the manufacturing department in Paterson and three days in the executive offices in New York.

20 Q How do you travel between Paterson and Passaic?

A On the Erie Railroad; sometimes on the D., L. & W.

Q When you travel on the Erie Railroad you get off at the Market street station?

A In Passaic?

Q In Paterson.

30 A Yes, I get off at the depot, you call the Market street station, and I walk back along the track to the mill. I don't ever go on the street. I walk back on the track.

Q You get off the rear end of the train?

A I get off whatever car I am on and walk back.

Q The rear end would be nearer your plant?

A Yes. It is quite a walk from the depot to our plant along the track.

Q You don't cross the crossings, or any of them?

A Not as a rule, I do not. I walk along the track.

40 Q (By Mr. Hobart.) You are a member of the Board of Trade?

A No, I am not a member of the Board of Trade.

Charles Agnew, direct.

CHARLES AGNEW, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Q Mr. Agnew, you are president of the John Agnew Company?

A Yes, sir.

Q And you have been in business and your father for a great many years, I think? 10

A Nearly fifty.

Q You occupy what places in Paterson?

A Our coal yard—

Mr. Gourley. It is marked No. 11.

Mr. Minard. There are three.

Witness. We have one yard at Slater street; a switch running from the Erie tracks up Green street, crossing the D., L. & W. tracks.

Mr. Minard. Suppose Mr. Gourley points that out on the map. 20

Witness. Coming from the Erie tracks up Green street to our yard and runs down through the yard to Slater street. Then we have one north of Hamilton avenue.

Commissioner Donges. Crossing Godwin street?

Witness. Crossing Tyler street down to Governor street. I think there is in the neighborhood there of—I should say nine hundred feet of track all told. 30

Q (*By Mr. Gourley.*) In the coal yard?

A In the coal yard, what we call the Ann street yard.

Q From Hamilton avenue down?

A From Hamilton avenue north. Here (indicating.) We have a switch running about one thousand feet down here.

Commissioner Donges. Prince street?

Witness. Prince street. That (indicating) is what we call the Slater yard; parallel to Prince 40

Charles Agnew, direct.

street. Not in the street; it is in our yard, right in the center of the yard.

Commissioner Donges. They are all coal switches?

Witness. Yes, sir.

Q This Prince street is for what purpose?

A Handling mason materials.

10 Q Hamilton avenue is for coal, I think?

A Yes, sir.

Q This immediately adjoins the property of the Erie Railroad?

A Yes.

Q Prince street is some distance off?

A Yes, we are a block from the Erie Railroad tracks.

Q Where does this switch that supplies your Prince street property connect with the Erie Railroad?

20 A Just north of Cedar street.

Q Would that interfere with you in the operation of the Prince street property if that switching privilege was destroyed, taken away?

A Yes; deprive us of that switch altogether?

Q Yes; what is your reason for that particular place? Not Hamilton avenue, just Prince street?

A If you took the switch away?

Q Yes. Would it embarrass you in the cost of materials?

30 A Now, you see we run cars right into the storehouse and unload material, everything from them, like stone and brick, that kind of stuff, into the warehouse. That would necessitate hauling from the railroad.

Q That would seriously add to your overhead cost?

A Yes. It would make the difference on the margin. Those things are handled close; it would cost

40 fifty cents per ton.

Charles Agnew, direct.

Q In handling?

A Handling.

Q Extra handling?

A Yes.

Q Take the yard adjoining the railroad; that is entirely used for coal?

A Yes.

Q The Hamilton avenue yard?

10

A Yes.

Q In depression or elevation of the tracks—there is no doubt depression would seriously interfere?

A If they depressed the tracks it would kill our place altogether.

Q If they elevated?

A On elevation it would depend entirely on what plan they made, whether we could connect with it or not.

Q In other words, if a plan was made that permitted you to dump your cars on a trestle it wouldn't seriously interfere with you? 20

A No; if we could connect with the main track after elevation, such kind of elevation.

Q What way could that be done? Is there any way without interfering with you?

A Yes; if they elevate beyond a certain height it is almost useless; if it were too high we couldn't connect.

Q What about your other property still north of Hamilton avenue; what do you use that for? 30

A At the present time it isn't used at all.

Q It immediately adjoins the railroad track?

A Yes, immediately abutting on the main tracks. I forgot about that switch. My brother and I own it.

Q Have both Fulton street and Hamilton avenue property, or not, additional value because of abutting on the property of the Erie Railroad?

A Yes.

Q They are worth more money?

40

Charles Agnew, cross.

A Yes. Without the tracks there they wouldn't be worth—it is hard to tell—merely nominal.

Q Any plan that would seriously interfere with that would depreciate the value of your property?

A Yes; anything that removes our rights, or in the elevation of the track that causes a large amount of money to develop our property to meet that.

10 Q Have you made a contract with the Erie?

A I suppose we have. That yard has been a yard for nearly fifty years and I really have forgotten it. I suppose there is an old arrangement, we have some contract somewhere?

Q You feel as though you were actually running the railroad itself.

A We kind of work together as agreeably as we can along those lines.

Q Will you look for the agreement if you have it?

20 A Yes, I will.

Cross examination by Mr. Mervey.

Q Your Prince street property is connected by a switch which runs through Green street?

A Yes.

Q That is at grade at Green street?

A Yes.

Q Also crosses Railroad avenue at grade?

A Yes. That is at grade all through, all the way through.

30 Q Do you own that switch or does the Erie Railroad?

A That switch is ours.

Q For how many years were you given permission to keep that switch in the street?

A There was no definite period; we were given the right to lay the switch.

Q You are not organized as a railroad company?

A No, sir.

40 Q You don't know whether any change of plan would necessitate the removal of that or not?

Charles Agnew, cross.

A If it was either depressed or elevated it would necessitate the removal of that switch. It would leave it useless to keep. They couldn't, of course, elevate through the street, nor they couldn't depress through the street.

Q If they do elevate through the street it would be useful to you?

A No. In that class of material we couldn't handle it elevated. They would have to elevate through the yard or we couldn't handle that class of material. 10

Q You haven't any copy of the order of the Board of Aldermen giving you the right to maintain your tracks through the street?

A Pardon me?

Q Have you any order of the Board of Aldermen to maintain that switch through the street?

A No, we haven't any order, but we got permission from the Board of Aldermen to place the switch there. 20

Q You don't know whether it was limited or not?

A It wasn't limited.

Q You haven't a copy of the paper to show what it was?

A No. The permission was put in a general way, without time, giving us the right to put the switch there.

Q How long ago was it given to you? 30

A I should say twenty years ago. Our switch is parallel to the D., L. & W. tracks. We own half the block and the D., L. & W. owns the other half. Their freight yard adjoins our yard.

Q You could get service over the D., L. & W. at that point?

A Not service from this switch.

Q If you hadn't any connection you could get service from the Delaware, Lackawanna & Western?

A No; no more than we could from the Erie; go to their yard and cart it. 40

Charles Agnew, cross.

Q Is there a siding there you could use for conveying material?

A No, sir; not without carting. We would have to cart the material from the D., L. & W. yard.

Q What material do you stock in that yard?

A Lime, cement, lath, loose stone, brick, all kinds of drain pipe.

10 Q Have you a large storage capacity?

A Yes; we have a yard I suppose, I think, eighteen city lots.

Q It is practical to stock all your wagons direct from the cars?

A No, sir. We have got to keep a large amount of material in stock.

Q You don't know whether elevation of the tracks would injure your Ann street yard or not, or your Hamilton street yard?

20 A Yes; it begins at Hamilton avenue and ends at Governor street.

Q That includes three switches?

A Three switches in the yard; two frogs from the main tracks.

Q You have an extension to some other property you and your brother own?

A Yes; running about two hundred feet from the main track.

Q That runs separately?

30 A That is north of Governor on Fulton street.

Mr. Merrey. Will you file an answer for Mr. Agnew and his brother?

Mr. Gourley. I will do it if you want.

Mr. Merrey. John P.

Witness. Yes.

Q Do you know whether this property on Hamilton avenue or Ann street would be injured by elevation of the tracks?

40 A I couldn't say that until I see the plan.

Charles Agnew, cross.

Q You already have a trestle and pockets?

A We have a trestle; no pockets.

Q You receive coal from the bottom of the cars, it drops into heaps and you shovel it on the wagon?

A Yes; from a trestle.

Q The height of that trestle at that point isn't sufficient to allow you to use pockets?

A Yes; we could use them.

10

Q It is not convenient for you?

A Yes, we could use them.

Q If you had twelve or fourteen feet more you could use it more conveniently?

A No; that would be too high to drop the coal; anthracite coal.

Q Break the coal?

A Yes, injure the coal.

Q Are you familiar with the pockets of the Delaware, Lackawanna & Western shed?

20

A Yes.

Q It is a great deal higher than yours with twelve feet added?

A No.

Q Do you know how high it is?

A No.

Q Do you know what the drop is?

A They have it ten feet from the ground before the pocket comes.

Q So you can load it from the pockets into wagons?

30

A Yes, sir.

Q You could do that?

A We could but don't. We dump it on the ground and we gain that much storage room.

Q That makes your system of loading more expensive?

A No, I think not; the way we have it arranged it doesn't. We have a conveyer underneath the coal to load it into wagons.

40

A. A. Beekman, direct.

Q You think that it is not more expensive than pockets?

A Pockets are very expensive.

Q You use power to operate the conveyer?

A Yes.

Q What power.

A Steam power.

10 Q That is more expensive than the gravity system where the coal runs out by its own weight from the pockets into the wagons.

A There is an off-set; the additional cost of the pockets and the maintenance, upkeep, is very costly.

Q (*By Mr. Gourley.*) I forgot to ask Mr. Agnew the number of cars in and out per month or year?

A I should say about 3,000.

A. A. BEEKMAN, sworn on behalf of switch owners.

20 *Direct examination by Mr. Gourley.*

Q You represent Morris & Company?

A I do.

Q Who are they?

A A Chicago beef concern, the so-called beef trust.

Q You are in charge of the Paterson branch?

A I am the local manager of that concern.

Q Your place of business in Paterson is where?

A Market street, the Erie depot, north side.

30 Q What kind of a building have you there?

A We are in an old brick building.

Q How long have you been there?

A We have been there twenty-seven years, going on twenty-seven.

Q How do you get your supplies?

A On the Erie Railroad, on our switch.

Q Through box cars?

A In refrigerator cars.

Q Have you a siding there?

40 A Yes.

A. A. Beekman, direct.

Q Is it on the property close to the building?

A Yes; it makes what we call a big switch; they come in and back up to the street on account of not crossing the street.

Q How near is the switch to the building?

A Possibly ten feet.

Q Ten feet from the building?

A Yes; I couldn't say exactly. 10

Q How many cars can you store there at a time?

A Three.

Q How many cars a month do you use coming and going?

A We received about nine—eight to ten cars a week.

Q Do you send any cars out?

A About once a week we load a car and ship it up the road.

Q What value is that to you in handling your business? 20

A It is the only way we could do it. We have a bar that we let down from our box that runs into the car. It comes in refrigerator cars and we have a little vestibule running the length from the box into the car. We put that up and run this beef in that way on the switch.

Q What relation to operating your business would depressing the tracks or elevating them have upon you? 30

A Well, depressing them would put us out of business. We would have to move to some other place.

Commissioner Donges. Why?

Witness. Because there is no way we could get our meat from the track to our place. If it was depressed I don't think we could get a switch. Our building is about thirty-five or forty feet from the main line and there wouldn't be room to put a retaining wall and still get the service in. 40

A. A. Beekman, direct.

Q And elevating would affect you how?

A There is an arrangement comes for dropping—like an elevator. If it was elevated we could get an arrangement to do it. It is slow and more inconvenient. I have never seen one used; it works like an elevator.

Q That would add to the cost of the work?

10 A Yes; it would cost considerable.

Q A great deal more than at the present time?

A A great deal more. It would take a great deal longer to elevate with that service.

Q Are you interested in the Paterson Beef Company?

A We have that. It is Morris & Company; we closed it up. At the present time we are doing all the business from the Market street plant.

Q Morris & Company doesn't own the property?

20 A Morris & Company owns the building and rents the ground from the Erie Railroad.

Q The building and property is Morris & Company's?

A The building and all the equipment is Morris & Company's.

Commissioner Donges. The land is land owned by the Erie Railroad?

Witness. Is leased from the Erie Railroad.

30 Q Have you a copy of the lease?

A No, sir, I have not.

Q Where is that lease?

A I presume it is in Chicago, but I couldn't say.

Q Can you get it for us?

A It is sort of a perpetual lease; I couldn't tell you about it; while at the time you were talking about it—

Q This Paterson Beef Company is situated where?

A Ellison street.

40 Q How far back from where you are?

A. A. Beckman, *direct.*

A One block back. The same switch leads from the main line to ours runs through to the Paterson Beef Company?

Q How does that add to their facilities in handling that material?

A That is, having the switch there?

Q Yes.

A The beef house; it is next to impossible for a beef house to run a business without tracking facilities. There is some places that cart it. You take it out in the air and keep it a few minutes and it takes the bloom off the meat. It is impossible for those people to compete with those having facilities for unloading it. 10

Q I suppose depression of the tracks is out of the question as far as the Paterson Beef Company is concerned?

A There is no method of getting it up. 20

Q How about elevating the tracks?

A That applies the same over there as it does in our other plant.

Q In other words, run a trestle over to this property?

A Yes.

Q On the same level the Erie tracks are elevated?

A Yes.

Q And take it over to the Paterson Beef Company? 30

A That is the only way I understand you can get a switch in there.

Q That is the only way you can see from the point of an operating man?

A Yes.

Q How far is that; how many feet?

A Three hundred or four hundred feet; that is a long block.

A. A. Beckman, cross.

Cross examination by Mr. Merrey.

Q You say that the building is owned by Morris & Company or Nelson Morris?

A Which building?

Q Where you operate.

A Market street?

Q Yes.

10 A Market street is an old round house which the Erie people had and we rebuilt everything inside and built an entirely new loading platform and storage room on the west side.

Q Did I understand you to say Morris & Company owned the building and equipment?

A Morris & Company own Market street?

Q The Paterson Beef Company?

20 A The Paterson Beef Company, Morris & Company own.

Q Not the one on Market street?

A They don't own the shell on Market street, everything else but that.

Q That building isn't occupied entirely by Morris & Company?

A The Erie has a store room upstairs in the rear.

Q How many stories do you occupy?

A It is one and a half stories, you might say. It is the first story and ice on the upper story.

30 Q That is, all in front upstairs is ice?

A Yes.

Q The land where the Paterson Beef Company is is land of the railroad company?

A Yes.

Q You don't know whether the Erie Railroad or the Paterson & Ramapo Railroad Company?

40 A That I couldn't say. I couldn't swear it was owned by the Erie Railroad Company, because it is an offset on the land they own. The Paterson Beef Company sets in a little.

A. A. Beckman, cross.

Q The Paterson Beef Company's interest in that land is subject to this lease?

A All the Erie Railroad Company owns is the shell, just the brick walls. The installation is put there by Morris & Company.

Q You had a fire there a year ago?

A No, sir; this last summer.

Q Did Morris & Company collect any insurance on the building? 10

A On the building?

Q Yes.

A No, sir; not on the outside, framework. They did on the fixtures, such things as that.

Q Do you count the fittings inside as fixtures on part of the building?

A That is built as part of the building.

Q The Erie collected on that?.

A No, Morris & Company collected on that, too. 20

Q (*By Mr. Gourley.*) When you spoke of the lease of Morris & Company it is the lease of the Paterson Beef Company?

A Morris & Company owns both of those.

Q (*By Mr. Merrey.*) This was the Paterson Beef Company. Is that an independent company?

A The Paterson Beef Company is a concern that used to handle Hammond beef from Hammond, Indiana. Then they were bought out by the National. When the Government compelled the National to dis- 30
solve it fell to Morris & Company's share to take over the Paterson Beef Company.

R. J. Stell, direct.

R. J. STELL, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Q You represent P. S. Van Kirk Company?

A I do.

Q The Diamond Coal Company?

A The Diamond Coal Company and the Olive Oil Soap Company.

10 **Mr. Mervey.** I would ask you, Mr. Gourley, to file an answer for these two.

Mr. Gourley. I think they are in the answer of the Van Kirk Company.

Witness. They are in the same answer.

Mr. Mervey. That switch is through to the Diamond Coal Company?

Witness. No, to our people.

Q What is P. S. Van Kirk Company?

20 **A** General contractors and lumber.

Q Where is their place of business?

A Fulton street, Summer street, Lawrence and Erie Railroad.

Q Where is the Diamond Coal Company?

A At Fulton street and Erie Railroad.

Q Who owns that company?

A The land or the company?

Q The land.

A P. S. Van Kirk.

30 **Q** And the Olive Oil Soap Company?

A P. S. Van Kirk.

Q Does this land abutt on the property of the railroad, adjoin the Erie Railroad?

A Yes.

Q How far does your property abutt the Erie Railroad, how many feet?

A Approximately, I should say, two hundred feet. I am not certain of those figures.

Q How do you get your supplies?

40 **A** By the Erie Railroad.

R. J. Stell, direct.

Q By a switch?

A By a switch.

Q The switch of the Erie Railroad Company is direct to your property?

A Yes.

Q There is no street between?

A It crosses Lawrence street to get there.

Q I mean where your property adjoins? 10

A No.

Q How many cars do you receive?

A About three hundred cars of lumber a year.

Q What about the Diamond Coal Company?

A Five hundred cars a year or six hundred.

Q What about the Olive Oil Soap Company?

A Five hundred cars a year.

Q They are tenants?

A The Olive Oil Soap Company get their cars on the Van Kirk switch? 20

Q They are tenants on the Van Kirk land?

A Yes.

Q The Diamond Coal Company, I suppose, is a coal yard?

A Yes.

Q Is Mr. Van Kirk interested in that?

A He is.

Q Interested in the Olive Oil Soap Company?

A He is.

Q Their yard runs to the Olive Oil Soap Company's? 30

A That simply is an unloading platform on the Van Kirk switch.

Q How many switches have you?

A Two; one for the Diamond Coal Company and one for Van Kirk.

Q How long is that?

A The Van Kirk is approximately 240 feet—I haven't gone over these figures at all. 40

R. J. Stell, direct.

Mr. Minard. We have a copy of the Van Kirk agreement that gives the exact length.

Mr. Gourley. That will do.

Q How would you get your material in your place if there was no switch there?

A It would necessitate carting from the public yard.

10 Q Where is the yard now?

A Market street or right back of the passenger depot—Market street.

Q How far from your place?

A I should say between half and three-quarters of a mile.

Q Would that seriously affect you in carrying on your business?

A Yes, it would.

Q Add to the cost of your products?

20 A Cost of handling.

Q I suppose you haven't figured how much?

A In the neighborhood of one dollar a thousand on lumber; add one dollar a thousand on the lumber straight through.

Q For hauling?

A Yes.

Q Is there any defined margin in the selling price of lumber that a lumber man regards as safe?

A Not that I know of.

30 Q No decided percentage in sales margin recognized in the trade?

A No.

Q That would be a serious impairment of your present prices?

A It would.

Q About depression or elevation of the railroad there so as to affect your property, what have you to say about that?

40 A Inasmuch as the road is somewhat elevated at our switch, depressing from there would be entirely out of the question, from our point of view.

R. J. Stell, direct.

Q What about elevating?

A Elevating would hinder us to a great extent in our yard.

Q Would elevating the tracks or depressing them affect, as far as you know, the value of your property as land?

A It all depends upon how much you elevate them.

Q If you elevated them enough to add to the cost of your material? 10

A You couldn't do that.

Q In other words, you think if the cost of the structure was added to that you would have the same facilities for handling material afterward?

A We would, yes.

Q The cost would only be the cost of the original adaptation to this plan?

A That is all, in our case that is all, putting in the structure. 20

Q Does that apply to the Olive Oil and coal company?

A That applies to those, all of them.

Q How would it be with the lumber company?

A That is the one you are asking me about?

Q Yes; elevating that structure in that way, how would you get the coal down?

A Most of our lumber is unloaded at the cars from a derrick, necessitating a hoisting derrick. Unloading from box cars it would hinder us to some extent, because we would have to shoot the lumber down in piles. It wouldn't materially hurt us. Depression would put our yard out of business; we would have to move somewhere else. 30

Q Your building is up to the street line?

A Yes.

Q Up to the street line?

A Yes.

Q Elevating the track would interfere with you?

A It would not, going in front. 40

R. J. Stett, cross.

Q Elevating near your building would interfere with your light and air?

A I can't see as it would, Mr. Gourley.

Cross examination by Mr. Mervey.

Q Fulton street runs under the railroad right at your place?

A Yes.

10

Q There is quite an elevation from the railroad up to the Van Kirk yard; there is quite a climb to get up to the yard?

A It is about on a level now. You mean from the main tracks into your switch?

Q No; from where Fulton street goes under the railroad up to the entrance of your railroad yard.

A There is a slight grade from the Erie Railroad.

20 Q The Diamond Coal Company lies between the lumber yard and the railroad?

A Yes.

Q The switch going to the lumber yard goes over the coal company's property?

A No; back of the coal company's property. The entire block, whether coal company or soap company, the land is owned by Mr. Van Kirk; the coal company, soap and lumber company lease the land from Mr. Van Kirk.

Q The lumber company leases the land?

30

A Mr. Van Kirk owns the land, yes.

Q Has he owned it long?

A It must be twenty years. It was owned formerly by Mrs. Hope.

Q Do you know about that?

A He owns the land.

Q He owned it for twenty years?

A No; I am mistaken. It is ten years exactly, because we have just wiped the mortgage out on it.

Q You are not sure of that?

40

A Quite positive. The company has been there for twenty years.

Elmer E. Hassan, direct.

Q You know when they made the agreement with the railroad company?

A I can't say as to the date.

Q That is about five or six years ago?

A I couldn't say without seeing the agreement.

Q You don't sell lumber, do you?

A Yes; lots of it.

Q Most of it is used in contracts for buildings? 10

A We sell most of it used in the building part.

Q In your building, don't you have much lumber delivered at the point?

A I haven't taken those cars into consideration when I said three hundred cars a year.

ELMER E. HASSAN, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

20

Q You are president of the Herman Company?

A Yes.

Q Where is your place of business in Paterson?

A Ellison street and the Erie Railroad.

Q What kind of a building do you occupy?

A On one side of the street a three-story brick building, on the opposite side a two-story concrete building.

Q Are both of these properties built close to the line of the Erie Railroad? 30

A Yes, near the line of the Erie Railroad?

Q What space is there between your northerly building, built on the northerly side of Ellison street and the Erie Railroad line?

A About half the distance from the side track.

Q Half the distance from the switch?

A The switch, of the side track, about half the distance.

Q Is the switch on your property and the Erie Railroad Company's? 40

Elmer E. Hassan, direct.

A Half on our property and half on the Erie Railroad's property.

Q How long is the switch?

A I should say one hundred and thirty or one hundred and forty feet.

Q What do you get in over that switch?

A Merchandise, groceries.

10 Q What quantity, how many cars a month?

A I should imagine we get in between three hundred and four hundred cars a year. Probably more; it varies.

Q And going out, do you do any shipping that way?

A Very seldom ship anything. Not over a dozen cars a year.

Q What class of goods do you get in that way?

A A full line of groceries; canned goods.

20 Q How do you get them in from the car to your house?

A From a platform that connects our unloading doors and the door of the freight car.

Q On a level with the door of the car?

A Yes.

Q Room for a vehicle to go in and out?

A Hand trucks, yes, sir.

Q What difference would it make if there was elevation or depression of the tracks there?

30 A Quite considerable.

Q How?

A Necessitate putting in, if you elevated the tracks, we would have to change our inside arrangement and put unloading facilities to deposit goods on the various floors where they are stored. If you lowered the track we would have to put in additional elevator service to get the merchandise to the convenient floors. In other words, we would have to carry the elevators as high as the next story to do that.

40 Q And unload from the next story?

Elmer E. Hassan, cross.

A If the tracks are elevated.

Q How high is that?

A I should say, about sixteen feet.

Q Have you a lease from the Erie?

A I think we have.

Q You haven't it with you?

A I have not.

Mr. Gourley. Have you a copy of that lease? 10

Mr. Minard. I haven't located that.

Witness. I have diligently tried to locate these leases.

Q This building on the northerly side of the street is built up on the line of the property?

A Yes, sir.

Q Suppose the Erie Railroad elevated across this street at right angles, would that interfere with the light and air of your first story?

A Very seriously. 20

Mr. Merrey. No questions.

By Mr. Hobart.

Q Suppose the tracks were elevated to the line of the railroad property, what would you have to do then in order to connect up?

A Go out of business, or else move.

Q Or else change your tracks to correspond?

A Or build along the line of the D., L. & W.

Q (*By Mr. Minard.*) Your concern is a whole-sale grocery house? 30

A Yes, sir.

Cross examination by Mr. Merrey.

Q What did you say would cause you to go out of business?

A If the tracks were left at the line of the property owned by the Erie Railroad.

Q Where is that line?

A Half the distance from the side track, from the westerly wall of our building. 40

Elmer E. Hassan, cross.

Q In answer to Mr. Gourley you said elevation would only require your changing your elevating facilities?

10 A I referred not to the elevation of the railroad proper; the side track is half on the Erie Railroad and half on our property. If it were extended to the line of our property that would necessitate putting our half of the side track out of commission.

Q Couldn't you build that up to the same extent that was elevated?

A I don't know that we could.

Q Why not?

A Pardon me. I am a wholesale grocer, not a builder or engineer. I can't answer that question. I can say we wouldn't do anything with our half of the side track.

20 Q That is all you mean. You couldn't operate unless you elevated your grade as well?

A Not half the side track.

Q If any was elevated you would have to elevate your side track?

A Yes.

Q As long as that was done you wouldn't go out of business?

A I am not prepared to say, because it would add materially to the cost of handling the goods.

Q How tall are your buildings?

30 A Three stories.

Q If you should load into the second story, it would cost more than the first?

A Yes. Increased labor.

Q When you load now you have to bring the stuff to the second and third story?

40 A Not altogether. If you will permit, I will make a suggestion. If we put the loading or unloading facilities on the second floor, we must take part of our storage space away to provide for unloading facilities, whether it is an elevator or whatever device is used

Elmer E. Hassan, cross.

for distribution or handling the merchandise from one floor to the other. Consequently we lose certain valuable storage space which we figure out in square feet. You take a car of goods that goes into a certain section of our warehouse and occupies so much space, and it costs us so much. Whether we figure one month or one year or a day or a week, it costs so much to put it there. If we take away from our valuable storage room for unloading it must necessarily cost more money. 10

Q What you lose on the second floor wouldn't be gained on the first?

A What will we do with our cellar?

Q Use the cellar as you are doing now. If you had to change your loading from the first floor to the second floor you gain in the first floor what you lose in the second for storage space? 20

A Not necessarily.

Q You might.

A For instance, we have got to put that additional loading device in there, which means extending it from the second floor to the third floor and from the second floor to the first floor and then the basement.

Q You already have a device for carrying your stuff from the first floor to the second floor and third floor?

A We have, which is one elevator.

Q All that is stored on the second floor at the present time must first come into the first floor and be elevated and then taken out; and then to take it out you have got to take it to the first floor and deliver it to your customers? 30

A Yes, but—

Q If you unloaded that stuff on the second floor you would only have one operation, taking it down and out; isn't that true?

A We have to distribute it to the various storage places. 40

Elmer E. Hassan, cross.

Q So the thing is as broad as it is long?

A No, I don't quite agree with you.

By Mr. Minard.

Q The fact is, the ground floor of a storage warehouse is used for heavy material like salt, and those things that are very heavy and bulky; you use the ground floor?

10

A No.

Q Where do you put them?

A Cellar. We use a large portion of our first—that is the storage portion of our first floor, for the putting out of orders. We must collect those goods in order to ship them and deliver them to the various clients of the concern. I might further explain we have on our present unloading facilities the heavy articles are deposited from a chute from the car door.

20

Q Where you would have to handle those with an elevator, now you chute them in?

A Yes, sir.

Q Could you chute them in the second story?

A No; not very well; not without putting in a very expensive device.

Q What has been said of elevation of the crossing, applies with a little more force to depression. There you would have to excavate yourself to get a track; if an excavation was made at the Erie property line in case of depression?

30

A Yes.

Q In order to substitute for that situation, only a more expensive situation, in front?

A Yes; it would probably mean the abandonment of the building for our purpose. I am not sure our foundations are built to stand additional excavation underneath to connect.

By Mr. Merrey.

Q That could be reinforced for that purpose?

40

A Possibly that might. I can't answer that question.

James Wilson, Jr., direct.

Q (*By Mr. Gourley.*) That could be torn down and built again?

A Yes; we could tear down the building and rebuild.

JAMES WILSON, Jr., sworn on behalf of siding owners.

Direct examination by Mr. Gourley.

10

Q You are a member of James Wilson & Sons, corporation?

A Yes, sir.

Q Your business in the City of Paterson is that of coal merchant?

A Yes, sir.

Q Your place of business is where?

A Railroad avenue and Slater street, eastward to Dale avenue.

Q You are across the street from the Erie property? 20

A Yes, sir.

Q Railroad avenue is between your property and it?

A Yes.

Q How do you supply your coal yard with coal?

A Our pockets run parallel to the Erie tracks and we operate a conveyer by means of a bridge crossing the street.

Q Do you say conveyer or purveyor? 30

A Conveyer.

Q What size is that?

A It is capable of handling one hundred tons car an hour, about.

Q On the outside it is apparently a frame with wood and runs upward some distance?

A Yes.

Q How high above the level of the Erie tracks?

A About forty-five feet.

Q Straight up?

40

A Yes.

James Wilson, Jr., direct.

Q And then runs straight over to your property?

A Yes, sir.

Q It is a continuous winding arrangement?

10 A Not exactly. It is rather complicated. The coal is unloaded at the side of the public yard, the westerly-most track; what is known by the Erie people as No. 5 track. On the track is the derrick hopper. Through this hopper the coal is dumped and carried by means of a conveyer up and across the street and deposited in the predetermined coal bin on the opposite side of the street.

Commissioner Donges. There is no switch between Railroad avenue and Dale street and between Slater and Grand street?

Witness. No.

Commissioner Donges. That is where your yard is located?

20 *Witness.* Yes.

Commissioner Donges. There is no switch running into your property?

Witness. There is none.

Q How would elevation or depression of the tracks affect your present situation?

A If by elevating the tracks you involve the abandonment of the present public yard through which we are switching, I would say track elevation would absolutely preclude the use of our plant.

30 Q Depression, I suppose—

A Depression would have very much the same effect.

Q Of course, if the yard was maintained there, and only the two main tracks elevated, that wouldn't make any change?

A That would not seriously hamper us; I don't think, at all.

Q Your objection is only in case the whole yard is elevated?

40 A Yes.

James Wilson, Jr., direct.

Q If the whole yard were elevated how would that embarrass you; wouldn't it only be the additional hauling of the coal up?

A I can't conceive of an elevated freight yard being the slightest use to the neighborhood.

Q There wouldn't be any use getting into the yard?

A Yes.

10

Q Assuming it could be done, as far as your conveyer is concerned?

A If they simply raised two or three tracks, we would raise our machinery entirely.

Q It is only in the view that they wouldn't raise that great wide yard, there wouldn't be any occasion for the yard?

A I can't see any occasion for raising the yard. What use would a great yard up in the air be to the public?

20

Commissioner Donges. It wouldn't affect your operation?

Witness. No, it would not.

Q You can't see how they could have a yard under such circumstances?

A Not unless the engineers could elevate the right of way, the main tracks, east and westbound tracks, and leave the present switch service at grade. If they were practical it seems to me everybody's interests would be conserved. The community, because high speed trains would be running on an elevation, not at grade crossing. Switch service can be done at night or at lower speed or with a greater degree of caution, and thus safely. I am not an engineer; it seems to me if some such plan were devised the interests of both the community and the railroad company and the switch owners would be conserved.

30

Q How much money does your conveyer represent?

40

Jacob Meyer, direct.

A I suppose I have invested in the plant about \$60,000.

Q And the coal chutes?

A The pockets and equipment.

Q That, of course, would be useless without the conveyer?

10 A Perfectly useless. It wouldn't be useful in any other purpose whatsoever.

Q And the yard itself, independent of the overhead structure, the yard itself without the connection with the railroad, would that fact increase or decrease the value of your land?

A It would very seriously decrease it.

Mr. Merrey. No questions.

By Mr. Hobart.

Q You are a member of the Board of Trade?

A I am.

20 Q You voted in favor of this proposition some time ago to elevate the tracks?

A No, I did not.

Commissioner Daniels. Was there a vote, a formal vote, by the Board of Trade?

Witness. I don't recall. There was more or less agitation some years ago; I don't know as it ever came to a formal vote.

30 Q As far as you know no formal action was taken by the Board of Trade?

A I believe not.

JACOB MEYER, sworn on behalf of siding owners.

Direct examination by Mr. Gourley.

Q What firm do you represent?

A Meyer & DeVogel.

Q Your place of business is on what street?

A Corner of Franklin and Summer street and the railroad.

40 Q How much property have you there?

Jacob Meyer, direct.

A We have sixty-five feet on Franklin street, one hundred feet on Summer street and one hundred feet on the railroad. The other building don't come in, on Spring street. It comes in at a point; that is about twenty-three feet on the other end and sixty-five feet at one end.

Q What business are you engaged in?

A In the feed business.

10

Q How long have you been engaged in that business?

A We have been in business at least twenty-four years next May, but I lived there about twenty years.

Q Why did you buy the land there?

A We bought it so we could put in an elevator to raise my grain.

Q Was it because of the railroad facilities?

A On the railroad to unload our cars directly into the building.

20

Q Does your property abut on the railroad?

A Yes.

Q No streets between you?

A No, sir; there are two switches there.

Mr. Gourley. Just point it out to the commission on the photograph.

(Witness complies.)

Commissioner Donges. You are now referring to a photograph marked "Paterson, N. J., Lafayette Street, No. 7, 19 feet, S. W. 11-13," are you?

30

Witness. Here is the building.

Commissioner Donges. That is the one you refer to?

Witness. That is the one.

Q Describe that?

A This is the main railroad and there is the switch laid there before we come. They put in another switch for us, to accommodate us alone.

Q Is that in writing, your agreement or lease?

40

Jacob Meyer, direct.

A Yes, sir.

Q You haven't that with you?

A No, sir.

Commissioner Donges. That agreement will be put in later?

Mr. Gourley. I presume you people had a copy.

10 *Witness.* The switch passes around here (indicating). Here it is inside and only runs as far as Franklin street; comes in from back here to our place.

Commissioner Donges. Back here; where is that?

Witness. North end.

Commissioner Donges. From what street?

Witness. From Keen street, but don't touch Keen street.

20 Q What material is that building?

A Brick.

Q How much money have you invested there?

A That building cost \$13,000. I put in \$2,700 in machinery besides.

Q You adapted it to its present situation?

A Yes.

Q Could you use that property for that purpose if the tracks were depressed?

A We could never use it.

30 Q What objection have you to elevating the tracks?

A Our objection is it would throw the building out of shape and cost quite a lot of money to put it in condition.

Q Suppose it was raised and they break through at the second story?

A You couldn't cut in the second story. If the Erie brings the switch to that position then it could be done.

40 Q What about your walls?

Jacob Meyer, direct.

A My walls would have to be broken out on the railroad.

Q Are your walls thick enough above, on the second story?

A Yes.

Q You think you could do that?

A Yes.

Q The line of your wall is how close to the Erie Railroad? 10

A About fourteen inches, a little over a foot, I guess.

Q How thick are your walls on the first story?

A Twenty-four inches, the bottom floor.

Q And above, how thick is your wall?

A It runs to a two-brick on the top.

Q How many?

A Twelve inches.

Q On the second story? 20

A Yes, the most it is eighteen inches on the side.

Q Would that in any way impair the strength of the wall, in case you cut in the wall a place large enough to permit the handling of material?

A I guess it would.

Q Would you say it was the thing to do?

A I don't think so, because the floor would have to be altered to get my supplies in shape to unload in my car.

Q Have you any knowledge of what it would cost, independent of the insecurity of the building, what it would cost to adapt your building to that purpose, if it can be done? 30

A A good \$3,000 or \$4,000.

Q What do you use your first storage for in such cases?

A We have to elevate our stuff from down below, up? Understand we have the first floor level with the car, the floor of the car. We run our oats out of the car into a bin and that elevates it up above, way up on 40

William Kearns, direct.

the top and it is dropped down on the scales, from the scales it is dropped in the granery.

Q Where are the scales?

A The top. The granery is on the second floor. Then it is dropped from the second floor to the cellar and then from the cellar an elevator takes it to the top. Then an elevator at the top takes it to each bin
10 wherever we need it. Then it takes the oats out afterward. Those bins hold eighteen hundred bushels, some hold twelve hundred.

Q That would all have to be changed?

A The bins would have to be changed. We would have to fix it so the oats go to the cellar and work it
up.

Commissioner Donges. You do that anyway?

Witness. We do that from the bottom floor.

Mr. Merrey. No questions.

20

WILLIAM KEARNS, sworn on behalf of siding owners.

Direct examination by Mr. Gourley.

Q You are a member of the National Silk Dyeing Company?

A Yes, sir.

Q I believe that company has some property along the line of the railroad for the purpose of supplying
30 itself coal, what street is your property at?

A Wait street on the east, East Seventh on the west, Bleecker on the north and Woods on the south.

Q Wait street is between your property and the railroad?

A Yes, sir.

Q Why did you buy your property where you did?

A On account of the company's facilities with our coal.

Q Or in consequence of the nearness of the railroad?
40

A Yes.

William Kearns, direct.

Q You have an office across the street?

A Yes.

Q I assume the depression of the tracks would be a serious embarrassment to you?

A It would be useless.

Q But elevating the tracks; you have been in the coal business; how would that affect you?

A That would improve our facilities in regard to the pockets and storage. 10

Q In other words, it wouldn't do you any harm at all?

A Other than the expense.

Q If somebody did it for you?

A We are contemplating putting a store room in there. That was on the grade; that means instead of one story it would be two stories; you would have to elevate to load the wagons, which means an increase in regard to the cost. 20

Q If you had an overhead structure there, would that, other than the cost of erecting it, would the handling of coal be any more expensive?

A It would be less.

Q It would improve things?

A Yes; you would get more storage.

Q That would depend on your right to construct an elevated structure across the street?

A Yes.

Q And being subject to indictment or subject to prosecution by the Board of Aldermen and other things? 30

A Yes.

Mr. Mervey. I have no questions.

William Elliott, Jr., direct.

WILLIAM ELLIOTT, JR., sworn on behalf of siding owners.

Direct examination by Mr. Gourley.

Q You are a member of Leslie Elliott & Company?

A Yes.

Q You are at what street?

A East railroad and Sixth avenue.

10

Mr. Gourley. Leslie Elliott is probably not affected.

Mr. Minard. They are not in the sphere between Madison avenue and Straight street.

Mr. Gourley. No, beyond Madison avenue. The witness is here in answer to a formal notice.

Q What is the character of your business?

A Boiler business.

20 Q In the boiler machinery business you have invested considerable money?

A Yes.

Q How long have you been there?

A Eight years.

Q How many people do you employ?

A Fifty.

Q A switch runs across the street and connects you with the railroad?

A Yes.

Q How many cars a month do you get in?

30 A Five or six.

Q And send out how many?

A I guess four or five.

Q Had the fact of the closeness of the railroad anything to do with your purchase of the property?

A If we couldn't have a switch around there we wouldn't have bought the property.

Q Have you a lease with the Erie Railroad for your switch?

40 A Part of the ground, most all the ground, two-thirds, it runs on land we own. I guess one-third of

William Elliott, Jr., cross.

it is on Erie property itself. We pay for everything we can.

Q Of course, depression of the tracks would be a very serious evil?

A Yes.

Q What about elevation?

A The same thing.

Q Any disturbance about the present conditions would affect you? 10

A Just the same.

Q Add to the cost of handling your material and all that?

A That is it.

Q Would it affect your property for present purposes?

A Yes. I don't suppose the property would be good for what we are using it for.

Cross examination by Mr. Merrey. 20

Q How long have you been in business?

A Eight years.

Q How long have you had the switch?

A Two years. I guess the switch we have had going on two years, a year and a half.

Q Didn't you petition the Board of Public Utility Commissioners to put that switch across the street?

A Yes, about a year and a half ago.

Q Isn't the railroad a little lower than your ground at that point? 30

A I suppose the grade of the street there might be eighteen inches.

Q More than that, isn't it?

A I don't think so.

Q An elevation of six or seven feet would be the same to you, an elevation of the railroad?

A It would be impracticable; you couldn't go across the trolley tracks if that were the elevation. They would have to have the same amount of grade to run the cars. 40

Robert H. Smith, direct.

Q They run now on two or three feet.

A Not on the level.

Q The switch is on the level.

A It drops in 150 feet, maybe eight or ten inches.

Q More than that?

10 A No. You have in mind, right along the railroad there is quite a bank of dirt. We dug through that bank of dirt that was piled up from years of cleaning the railroad and throwing rubbish and old stores; we dug through that. If it is eight or ten inches, that is the most of it is in the whole length.

ROBERT H. SMITH, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

20 Q You are a member of the firm of Samuel Smith & Sons?

A No, I am employed by the firm.

Q Was Samuel Smith your father or grandfather?

A My grandfather.

Q Your place of business is on the westerly side of Railroad avenue and there is a switch connecting your property with the property of the Erie Railroad, running across the street?

A Yes.

30 Q How long has Samuel Smith & Sons been in business there?

A I think we moved up there about 1890.

Q There? You have been in Paterson a long time?

A Yes; since 1884.

Q Your business is what?

A Making boilers.

Q What advantage is this switch for the purposes of your business?

40 A We receive all our raw material and ship practically all our boilers over that switch. Probably

Robert H. Smith, direct.

ninety per cent. of our trade is outside of Paterson; very close to that.

Q And outgoing is what?

A We ship our boilers out.

Q No way to handle them any other way than that?

A No crane for handling there and we couldn't handle them any other way.

10

Q I suppose there are some local shipments?

A The same all the way through.

Q But supplies even for those come over the railroad?

A Yes. If there is any possible way of sending on the railroad, we do it.

Q What advantage would that property be to you without the switch?

A We would have to abandon it for that purpose.

Q I presume you would have no objection if the freight yard were left at grade?

20

A Yes.

Q As long as present conditions were not disturbed?

A With the track elevated at our factory we couldn't load our cars. We load them with a traveling crane; by the time you put ten boilers weighing twenty-five tons, nine or ten feet in diameter, we couldn't lift them more than five or six feet from the ground. Of course, with depression we could not load and unload the cars.

30

Q Have you a lease?

A I couldn't tell you.

Q Will you find out from your uncle and let me know about it?

A Yes.

Q When you are busy how many cars do you get a month?

40

Robert H. Smith, cross.

A Probably three cars a week and turn out three or four a week.

Cross examination by Mr. Merrey.

Q Where is your plant situated?

A Railroad avenue between Center street and Green street.

10 Q Haven't you a place below Slater street?

A No, that is all the property we have, Railroad avenue.

Q Your switch crosses Agnew switch?

A No, I think it doesn't cross any switch. It crosses the street into the yard.

20 *Mr. Gourley.* That takes in all the witnesses I have, except H. H. Post and the Paterson Brewing & Malting Company, who are not here. I would like to have an opportunity, in case you have a moment, to let us have some other day to put them on. There is an answer of Morris & Company who testified; that is not here; I will file that.

Commissioner Donges. We will take an adjournment now and Mr. Gourley will be given a continuance until the next hearing.

30 Adjourned until Friday, January 9, 1914, at the Chancery Chambers, Jersey City, N. J., at 10.30 o'clock A. M.

Discussion.

EIGHTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Jersey City, N. J., Friday, January 9, 1914.

PATERSON GRADE CROSSING ELIMINATION, }
ERIE RAILROAD COMPANY. }

Before Commissioner Ralph W. E. Donges.

For City of Paterson appears E. F. Merrey, Esq.

For Erie Railroad Company appears G. S. Hobart, Esq., and D. E. Minard, Esq.

For siding owners, etc., appears W. B. Gourley, Esq.

10

Mr. Minard. I have ready the amended answer which we arranged at the last hearing, regarding the additional siding people. The rules require the filing of two copies; I assume one of those is for Mr. Merrey.

20

I assume notices have been sent out to all these people since the last hearing, that weren't sent out before.

Commissioner Donges. You have filed an answer.

Mr. Gourley. Some already appear here.

I wish to file an answer for Armour & Company and Morris & Company.

30

Commissioner Donges. They will be filed subject to the same stipulation.

Mr. Gourley. Yes.

Mr. Merrey. I think the commission ordered that notice be sent to those parties.

Commissioner Donges. I think we had no list before.

Mr. Minard. We gave you a list at the last time for that purpose. The commissioner may recall that. I gave a list like this.

40

W. H. Brameld, direct.

I have taken the map and have added these other siding people and indicated their sidings on the map.

Commissioner Donges. You had better formally prove it.

10 *W. H. BRAMELD, re-called on behalf of Erie Railroad.*

Direct examination by Mr. Minard.

Q You are the engineer who prepared this original map showing sidings?

A Yes.

Q The one introduced previously?

A Yes.

20 Q Did you, at my request, locate the sidings of the additional concerns which we have found to have loading or unloading platforms at Paterson on this map and make a list of their names?

A I did.

Q And given them each the number in a circle on the map; included in that number the location of their sidings?

A Yes.

Q This was the same map originally used?

A Yes.

30 Q As the basis?

A Yes.

Q You simply added the names and locations?

A Yes.

Mr. Minard. I would ask that this be marked.

Commissioner Donges. It may be marked.

Mr. Minard. For the record's sake it might be just as well to put the same number as the other map.

Mr. Merrey. I have no objection to that.

William H. Willis, direct.

Commissioner Donges. My thought was to give it the same number designation as the other and mark it A. This may be marked R-23A.

(Same is marked Exhibit R-23A.)

Commissioner Donges. Any cross examination of this witness?

(No response.)

Mr. Minard. I offer now what we promised at the previous hearing, a copy of the petition filed by the City of Paterson originally. 10

Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-47.)

Mr. Minard. There is one other matter I would like to offer. Mr. Willis, our signal engineer, was at the hearing before. His statement he provided at that time showed improvements authorized, but the commission desired not the improvements authorized, but the amount actually expended should be shown. I have that statement revised. He is a man who travels all over our line; it is hard to locate him sometimes. If I may use him now I should like to do so. 20

Mr. Gourley. No objection.

WILLIAM H. WILLIS, re-called on behalf of Erie Railroad. 30

Direct examination by Mr. Minard.

Q You remember the hearing the last time; did you prepare a statement along the lines suggested at that time?

Mr. Merrey. What was that about?

Mr. Minard. This shows an expenditure for interlocking and automatic signals.

Mr. Merrey. Well, my objection is, of course, noted. 40

William H. Willis, direct.

Commissioner Donges. It is entitled statement of signal and interlocking expenditures. Was that compiled by you or under your supervision?

Witness. Compiled by my chief clerk under my direction.

Q Has that been corrected?

A It is corrected by lead pencil.

10 Q Those corrections in pencil are the actual figures?

A Yes, sir.

Q I understand that was made necessary by contemplated improvements left out, in setting the total.

A It wasn't understood by the chief clerk whether that should be included in the total or not; he didn't include it in there.

20 Q This shows the division on which the work is done in the first column?

A Yes.

Q Then it shows also whether the expenditure was for interlocking signal or automatic?

A Yes.

Q In the second column. The third column shows the expenditure for each at the end of the fiscal year 1911?

A Yes.

30 Q The next column, for the end of the fiscal year 1912?

A Yes.

Q The third column for the fiscal year ending 1913?

A Yes.

Q The next column, the sixth column it will be, shows the expenditure actually made for these proposed ~~sums~~ on June 30, 1912?

A Yes.

40 Q The seventh column shows the contemplated expenditures that are authorized and in the course of construction?

Frank Vance, direct.

A Shows the amount we contemplate spending in order to finish up the work that has been authorized.

Q This work is in the course of construction?

A Yes, sir.

Q And the next column shows the total of interlocking expenditures, is that right?

A Correct.

Q The next column shows the total of the automatic? 10

A Yes.

Q And then your recapitulation of that appears here (indicating); is that right?

A Correct.

Mr. Minard. I offer that statement.

Commissioner Donges. It will be admitted and marked as an exhibit.

(Same is marked Exhibit R-48.) 20

Mr. Merrey. No cross examination.

FRANK VANCE, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Q You are a representative of Armour & Company, Paterson?

A I am, yes, sir.

Q What is your office?

A Manager. 30

Q What is the nature of your business in Paterson?

A Beef and provisions, specialties.

Q Where is your place of business?

A Hamilton avenue and the Erie Railroad.

Q This is No. 25 on the list. What buildings have you there?

A Just one building; that is the beef and provision house facing on Hamilton avenue. 40

Frank Vance, direct.

Q What is the material of that building?

A Brick.

Q What is the size?

A It is about twenty-five by one hundred and fifty.

Q How many stories?

A Two stories and a basement.

Q Is it all used for your purposes?

10 A Yes.

Q What do you use the first story for?

A The first story is used as a beef and provision cooler.

Q And the second story?

A Ice bunkers and storage rooms.

Q Where do you get your meat from?

A Western points, Chicago, Kansas City, and western points particularly.

20 Q There is no killing done near Paterson?

A No killing there.

Q All your supply is shipped over the road?

A Yes.

Q Over the Erie Railroad?

A Yes.

Q How do you get it from the Erie Railroad to your property?

A A switch runs in there and we simply unload right on the first floor.

30 Q How close is your building to the switch coming in?

A About within three feet.

Q How do you handle your meat?

A Carry it out and have trucks that run right to the car.

Q How do you unload it, what is the process?

A Carry it out.

Q From the car?

A Yes.

40 Q Where do you store it?

Frank Vance, direct.

A Store it on the first floor.

Q How long do you usually keep it in the house?

A From three to four days.

Q Then how do you ship it out?

A Cart it out in trucks.

Q Suppose the tracks of the Erie Railroad were elevated say ten, twelve, fifteen or twenty feet, as the case may be, how would that affect the operation of your plant? 10

A Do away with our unloading altogether from there.

Q What could you do; how could you adapt your building to the new conditions?

A Practically no way we could adapt that building.

Q I suppose you could make it of some use, couldn't you; or not?

A We could; but considering the way we are hooked there with ice refrigeration, if we put in an elevator we would have to change two or three ice bunkers. 20

Q The upper part of your building is adapted entirely to refrigeration purposes?

A Refrigeration, with the exception of the front portion.

Q Couldn't you bring the meat in one part and use the other part for storage?

A No; we couldn't get a switch out to the other part at all. 30

Commissioner Donges. The front part?

Witness. Out to the front part at all.

Q I don't understand that.

A The rear end of the building is all ice, about ten, twelve feet in front they use for storage, on the second floor, with no ice. We couldn't get a switch, it is too far to take it away from the loading platform, and there is no place to load. 40

Frank Vance, direct.

Q What other disability, if any, would there be if you used the upper part for unloading; what is the lower floor for?

A There would be no place to put the beef, because you would have to have the refrigeration on the upper floor.

10 Q If you couldn't adapt it to that new purpose, or the old purpose to the new conditions, how would you get the beef there?

A There is only one way to get it there, cart it from the freight yard. That depreciates the value, outside the cost of hauling.

Q How do you prove that?

A Weather affects fresh beef. The more it is handled the more it depreciates.

20 Q That, I assume, would be a serious matter for you?

A Yes.

Q Do you know anything about the value of the property?

A There?

Q Yes.

A No, I couldn't say.

Commissioner Douglas. Who owns the property, if you know?

Q Do you own it?

20 A Armour & Company, yes, sir.

Q What shipments are made daily or weekly?

A We deliver from four to five cars a week, average about sixteen cars a month, probably about two hundred cars a year.

Q How long does a car remain on your siding from the time it arrives, as a rule, until it is unloaded?

A From one to forty-eight hours.

40 Q It depends on the season?

Frank Vance, cross.

A It depends on the conditions, the goods we have ahead of it.

Q Are these refrigerator cars?

A Refrigerator cars, yes.

Q They do nearly as well in the car as in your—

A Better.

Q Better in the cars?

Cross examination by Mr. Merrey.

10

Q Your building is situated a little above the tracks, is it not?

A How is that?

Q Your building is situated a little above the tracks?

A Back from the tracks.

Q Above the elevation?

A There is a slight elevation.

Q The street rises east and comes toward your building on a slope? 20

Commissioner Donges. Away from the track?

A A trifle, not much; most of it comes below the track.

Commissioner Donges. Where do you take your beef in?

Witness. At the rear end.

Commissioner Donges. To the first floor?

Witness. To the first floor, yes, sir.

30

Q Then what do you do with it?

A Simply distribute it on the tracks there, or it stays on that first floor.

Q When you speak of the refrigeration being on the floor above, that is the ice?

A That is the ice.

Q The cold air is brought down?

A It comes through the cold air chamber each side.

Q The beef doesn't go upstairs at all?

A Doesn't go upstairs at all.

40

Frank Vance, cross.

Q This part, I suppose, is partitioned off, where the beef is stored in front, or is the entire lower floor kept cold?

A Yes, sir, with the exception of the shipping room in front, ten or twelve feet back, maybe fifteen.

Q Is there no way that the beef could be lowered from the elevator about ten feet so you could get it in the rear?

10 A Not without breaking up the ice bunkers on the second floor. We have about two hundred tons of ice stored up there when we have it full.

Q Have you any room in the rear of your building?

A No, sir.

Q That would allow a runway of some kind so you would come on an elevated car to the second floor?

A No, right on the line in the rear.

20 Q No means by which you could drop the meat from a car up in the air down?

A No, not that I know of at the present time.

Q Couldn't you devise some simple means for that purpose?

A It would do away with the refrigeration we have got and then the plant would be no good to us.

Q Is it possible to devise a means without doing away with the refrigeration?

30 A Not without doing away with the ice refrigeration.

Q It is usual for your plants to have ice refrigeration or ice machines?

A We have both.

Q Do you know which is in the majority?

A At the present time, ice.

Q You are gradually doing away with ice?

A In the smaller houses. That sized house we have mostly ice.

Q Have you had some difficulty in getting ice?

40 A No, we haven't witnessed any great difficulty.

Frank Vance, cross.

Q Do you get it from local supply?

A We get ours sometimes from Paterson and sometimes from New York. It is in cars; that has to be unloaded.

Q Could you unload cars if a system of machine refrigeration was put in?

A That would be considerable expense.

Q Could you arrange it?

10

A We could arrange it.

Q You do put in machine refrigeration in various other plants?

A Not of this size.

Q You put it in larger plants?

A Larger plants.

Q Have you considered the question of taking care of the plant there if an elevation was made?

A We haven't as yet, no.

Q If there was an elevation of the tracks above their present level about five feet, would it be possible to arrange it there?

20

A That I couldn't say.

Q Well, could you say it would be possible if it were increased to a height of ten feet?

A Ten feet we couldn't get in there.

Q Well, at eight feet?

A Well, that I couldn't say. Getting up to that height, whether you could get into the first floor.

Q You really are not sure what could be done there?

30

A I know if we had the elevation there spoken of at first we can't get there.

Q Ten feet?

A You spoke of twelve to fourteen feet. That takes you up to the second story.

Commissioner Donges. May I ask how close your property is to the right of way of the railroad?

Witness. About fifteen feet.

40

Frank Vance, cross.

Q How much space have you in the rear of your lot and building?

A No space at all.

Q Your building runs to the rear line?

A Yes.

Q Is there any vacant property back of that?

A There is vacant property there, yes, sir.

10 *Mr. Minard.* I think, Mr. Commissioner, in your question you meant, building?

Commissioner Donges. I meant building. Please read my question.

(Question of Commissioner Donges read.)

Witness. That is what I meant.

Q Your plant is a little out of the business center of the city?

A Yes, sir.

20 *Re-direct examination by Mr. Gourley.*

Q What would it cost to put in a refrigerator plant?

A I am not familiar with that. That is all up to the engineering department.

Q Do you use part of this first story for an office?

A Yes, sir.

Q Do customers from the office go into the refrigerator and select their meat themselves?

A Yes.

30 Q Or do they take what you give them?

A They make a selection, generally.

Q Pick it from the hooks, what you give them?

A Yes.

Q That is used for that purpose.

William M. Decker, direct.

WILLIAM M. DECKER, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Q What is your business?

A Brewing business.

Q Representing what company?

A The Paterson Brewing & Malting Company. 10

Q There are three different branches of that company in Paterson?

A Yes.

Q What branches are served by the Erie?

A The Katz and Hinchcliffe branch.

Mr. Gourley. The Hinchcliffe is represented by twenty-six on the map.

Mr. Merrey. And the Graham?

Witness. Yes; Graham. I don't know whether that is on the company's property or the Erie's; 20 that I couldn't say.

Q James W. Graham & Company, No. 16, that is also part of your branch at Paterson?

A Yes.

Mr. Gourley. Katz is No. 27?

Q Those three branches are supplied by the Erie Railroad?

A Yes.

Q Where is the Graham property? 30

A By Cedar street.

Q Is that supplied by a switch from the Erie?

A Yes, sir.

Q That crosses a street, Ramapo avenue, that is right?

A No, I don't believe there is any street in between them.

Q It don't appear so on the ground. There is a street there?

A Yes. 40

William M. Decker, direct.

Q The Katz property is where?

A Corner of Straight street and Governor street.

Q Is that property adjoining the Erie Railroad?

A No, a street in between.

Q Has the Katz branch some real estate adjoining the railroad?

A Yes.

10 Q Where is that?

A Corner of Straight and Governor streets.

Q That property abuts on the Erie property?

A Yes.

Q What have you in that ground; how much ground is there?

A I don't know; about one hundred feet or so in length.

Q What do you use it for?

A Unloading purposes.

20 Q How do you connect with the railroad?

A With a switch.

Q What do you get over that road there?

A Brewing material and coal.

Q The Hinchcliffe branch the same?

A Yes.

Commissioner Donges. Do you mean you unload at the same point for Hinchcliffe?

Witness. No, a separate place.

30 Q The Hinchcliffe property abuts on the railroad property too?

A Yes.

Q Both of those branches get their supply over the Erie Railroad?

A Yes.

Q What supplies?

A Brewing supplies, barley, coal, supplies for use in the brewing property.

40 Q How frequent are the shipments to your company, either branch?

William M. Decker, direct.

A Quantities of cars per day or month?

Q Any way.

A Why, I should say, unloading and loading, possibly the two branches, seventy-five to eighty cars a month.

Q Has the Graham branch much to your knowledge?

A They haven't much. I should judge they handle possibly three or four cars a week. 10

Q If the tracks of the Erie Railroad were elevated at that point say ten to fifteen feet, what effect would it have upon this property?

A As far as the property is concerned it would mean—in the first place we couldn't unload there.

Q Why not?

A The only possible way of unloading would be by conveyer, which is an awful big expense, which we had in view previous to this; and it is a question of going to the lower or upper Erie to load or unload. The way we have it now we load on our switch and unload. 20

Q Do you store where you unload or do any carting from there?

A Yes.

Q From the Hinchcliffe branch or the Katz branch?

A They are a little handier than we are.

Q You distinguish between we and they. This is all one company, as far as the law is concerned. Does the Hinchcliffe store where they unload or not? 30

A They store on a platform on the property.

Commissioner Donges. The point of unloading?

Witness. Yes.

Q What change would it make in the Hinchcliffe branch if the tracks were elevated from ten to fifteen feet?

William M. Decker, direct.

A It would be a question of the height. I presume we could get along as far as unloading is concerned; that is, for their coal, we could drop the coal, drop it right down to the platform. As to loading malt and unloading barley, the question of the extra expense is the conveyer and so forth. Now it is shoveled out from the level of the car right there at the plant.

10 Q When you spoke of shipments to your company or shipments out—

A I spoke of the Katz branch. The Hinchcliffe is more receiving, but the Katz is both.

Q There is more malt at the Hinchcliffe house because the malt house is on their property?

A Yes.

Q What shipments do you use from your various branches?

A We ship to Jersey City and Littletown.

20 Q Did you say how many cars a week your three branches would ship?

A I should say possibly five or six a week.

Q How could that be handled if these tracks were elevated?

A It would be a question of loading it into the upper or lower Erie.

Q Could your property be adjusted to the new conditions without that? In other words, could you, in any way, use the property for the elevated service?

30 A It would be a question of height. If it was too high it would be a question of conveying it by hoist; in some way hoisting it to the level of the car. The way it is now it is level with the wagon. We can get the cars loaded and unloaded at the same level as our wagons. Our roadway is on the level.

Q I gather from your evidence there would be the initial cost of the reconstruction of the property to meet the new conditions and the added handling as well?

40 A Yes.

William M. Decker, cross.

Q And make the cost greater. Have you deeds of the property with you?

A Yes.

Mr. Gourley. I offer in evidence deeds of the Hinchcliffe Brewing & Malting Company to the Paterson Brewing & Malting Company, dated the first of July, 1899, recorded in Book U-13 of Deeds of Passaic County, page 483.

10

Commissioner Donges. It will be admitted and marked.

(Same is marked Exhibit 80-1.)

Mr. Gourley. Also deed from the Paterson Consolidated Brewing Company to the Paterson Brewing & Malting Company, bearing date of the first of July, 1899, and recorded in book U-13 of Deeds of Passaic County, page 407, and especially refer to the twelfth tract in the description in that deed.

20

Commissioner Donges. It will be admitted and marked.

(Same is marked Exhibit 80-2.)

Cross examination by Mr. Merrey.

Q You say you know very little about the Graham plant?

A That is, as far as their business is concerned, their daily business. I know where it is situated and so forth, and the condition of it.

30

Q Is that operated now to its capacity?

A As far as I know, yes, sir.

Q The other two plants which you refer to as the Katz branch and the Hinchcliffe plant are very close together?

A They are across the track.

Q One on one side of the track and the other on the other side of the track, is that right, opposite each other?

40

William M. Decker, cross.

A Yes.

Q The Katz plant is separated from the railroad by a street between?

A The brewing plant?

Q Yes.

A Yes.

Q The main Katz brewing plant does not abut on the railroad property at all?

10

A No, sir.

Q But a public and well-traveled city street is between it and the railroad company?

A Yes.

Q And then right opposite the plant is a small triangular plot containing less than one city lot, that you refer to as the place at which they unload?

A Yes.

Q The plot is quite a little above the Straight street level?

20

A Yes.

Q How far a distance from the railroad right of way?

A It abuts on the railroad right of way.

Q The small triangular plot lays between Straight street and the railroad and right opposite the brewing plant?

A Yes, sir.

Q The railroad itself has quite an elevation above Straight street at that point?

30

A Yes, sir.

Q On this little plot there is a switch?

A Yes, sir.

Q And a roadway leading up from Straight street?

A Yes.

Q You unload your coal at that point?

A Yes.

Q How do you unload it? By what means?

A The coal?

40 Q Yes.

William M. Decker, cross.

A By shoveling.

Q You must put men in the cars and shovel it out in the wagons?

A Yes.

Q Then you cross the street with it?

A Yes.

Q Do you know whether, if the tracks were elevated at this point, it would be cheaper for you to build some means of conveyance by which the coal could be taken over by a conveyer? 10

A It wouldn't offset—

Q Do you know?

A Yes.

Q Have you figured that out?

A Yes, I haven't figured it out, but it was figured out for the concern.

Q That is if the track was elevated?

A Not for elevation. 20

Q Do you know whether, if the tracks were elevated, it would be cheaper to handle that coal than it is at present or not? You don't know about it?

A No, I have never figured it.

Q That isn't in your line of business, calculating matters of that kind?

A No, sir.

Q What is your occupation with the company?

A Shipping clerk of Katz' brewery.

Q You ship out from this plot some goods? 30

A Yes.

Q You have already stated what?

A Beer.

Q Have you ever considered, with the elevation of the tracks, that could be taken across the street if permission were given to that property on some sort of elevated structure?

A No, sir.

Q You don't know whether it would add to the cost 40

William M. Decker, cross.

of conducting your business, whether it was elevated or not, with that plan?

A Yes, sir.

Q You haven't figured that out?

A No, sir.

Q You surmise it would?

A No, sir.

10 Q You haven't any figures on which to base that surmise?

A No, sir.

Q The Hinchcliffe plant is located quite a distance below the level of the railroad?

A Yes.

Q How much, would you say?

A Twenty to thirty feet.

Q How do they get their material up to the railroad for the purpose of loading?

20 A They only load malt.

Q How do they load that?

A They have a building that is on the level with the track. In fact, the floor where they load on is practically the same level as the track. That is conveyed through pipes of some kind and conveyed into the cars.

Q Are you familiar with the operation of that?

A I know a little about it, yes, sir.

30 Q You didn't design it or have anything to do with the designing of it?

A No, sir.

Q Do you know whether changes could be made on that if the tracks were raised?

A No, I do not.

Q Do you mean to say the Hinchcliffe plant does not ship barrels or casks?

A They cart them from the depot. They couldn't load them.

Q Why not?

40 A They couldn't without extra expense, putting in

William M. Decker, re-direct.

extra machinery, making changes or alterations to meet the demand; that is, the beer.

Q That is what I mean. They cart that from the freight station?

A No.

Q They don't bring it under the railroad track and on this little plot that belongs to the Katz branch?

A No, sir.

Q What street is that that crosses the railroad at the Hincheliffe plant?

A Crosses the railroad?

Q Goes under?

A Governor street.

Q That is an under crossing street?

A Yes, sir.

Q You state it would be very convenient for the Hincheliffe plant to go under there and unload on this switch you refer to?

A Yes.

Mr. Gourley. If the tracks were left as at present.

Q At the present time with the present conditions your company has a switch on which they can unload this Hincheliffe material if you desire?

A Yes, under present conditions.

Q Instead of doing that you take it to the freight depot?

A They do that, or we do, the same thing.

Re-direct examination by Mr. Gourley.

Q What effect would the depression of the tracks have on that property for the use which they now use it?

A What is that?

Q What effect would depressing the tracks have on that property—suppose they lowered the tracks five or ten or fifteen feet?

A Lowering it?

William M. Decker, re-direct.

Q Lowering the Erie Railroad.

Commissioner Donges. What property?

Mr. Gourley. I take it all. They are both opposite each other, Katz and Hinchcliffe plants.

A I should say, improve the property, make it easier for us.

Q Depressing?

10 A Yes.

Q Depressing it fifteen feet, how would you get your supplies in then?

A That would be better for us; we would still be on the level.

Q The Hinchcliffe or Katz branch?

A Both.

Q Would it be for the Hinchcliffe?

A Better for the Hinchcliffe and for us too.

Q Would it be for the Katz?

20 A Yes.

Q What difference would there be in the grade between the lot which is now on the street and the tracks of the Erie if they were fifteen feet lower than they are now?

A I don't know the height from the street up to our tracks at the present time; I haven't any idea. From the street up to the track we have a driveway from Straight street around to their tracks and on the same street again, but it is up grade.

30 *By Mr. Merrey.*

Q That little triangular plot is not occupied by your switch entirely?

A No, sir.

Q There is a saloon on that corner?

A Yes.

Q Quite a large building?

40 A I don't know, I never measured it. I presume it is a house of the ordinary size, a house of twenty-five feet, facing Straight street.

William M. Decker, re-direct.

Q Are you sure the switch is on your property or the railroad's?

A Katz, Paterson Brewing and Malting Company, that is, the triangular piece of property.

Q But is the switch entirely on that or partly on that and the land of the railroad?

A I am pretty sure it is on the property of the Paterson Brewing and Malting Company.

10

Q How long is the switch?

A The length of four cars, whatever that is. I never measured it. We can put four cars on it without interfering with the main line.

Q Some of that portion that the four cars would rest on would be on the property of the railroad?

A What is that?

Q Some of the switch on which these four cars would be, four cars on this switch at one time—

A Yes.

20

Q —part of that must be on the railroad company's property?

A I don't know just where the line runs.

Q You know the street length of your plot?

~~A About one hundred and twenty feet; that is on~~
Straight street as far as it goes.

Q That includes the house?

A Yes.

Q So you have something less than one hundred feet in the clear?

30

A Yes; that is the difference of the house; I don't know what it is.

Q Four cars couldn't rest on one hundred feet?

A I know we can put four cars on the switch. Whether it interferes with the railroad company's land or not I don't know. It holds four cars, that is the ordinary sized cars.

By Mr. Hobart.

Q In case of depression wouldn't you have to change the switch.

40

William M. Decker, re-direct.

A You mean if they lowered the bed?

Q If the bed of the railroad was lowered?

A We would have to lower the switch.

Q Lower everything, dig a hole in the property, or ditch, to run the tracks?

A Yes.

10 Q What effect would that have on your plant in the unloading of coal?

A If we had the ground fixed with the track, or level with the track, I don't see as it would make any difference.

Q Provided you changed your switch to correspond with the new level?

A Yes.

By Mr. Gourley.

Q How many feet is the railroad above you now?

20 A Above the switch we run now?

Q Yes.

A One foot or two feet. From the Paterson Main Line our switch runs down an incline.

Q Where you usually unload your material, at that point it is how much lower than the bed of the Erie Railroad property?

A I say again about two feet.

30 Q When I put the question, if the Erie tracks were dropped fifteen feet, you said it wouldn't interfere with you, do you mean that, or ten feet?

A I don't know the height of the level of the street to the Erie Railroad. Therefore, I can't actually say.

Commissioner Donges. Do I understand the point at which you do your unloading, that is to say the switch—

Witness. Yes.

Commissioner Donges. —is above the level of the street?

Witness. Yes.

40 *Commissioner Donges.* How much?

William M. Decker, re-direct.

Witness. I don't really know.

Commissioner Donges. But it is below the bed of the Erie Railroad?

Witness. At the lowest point it runs down. It goes from the main line; it is on the level and runs on an incline.

Commissioner Donges. At the extreme end of the switch, away from where it joins with the railroad tracks, it is how much below the roadbed of the Erie Railroad? 10

Witness. At that point I guess it is two feet, three or four feet; I couldn't just tell you; about.

Q When you said it wouldn't interfere with you, you meant if you adjusted your property to it?

A That would depend on how near it was to the grade of the next street.

By Mr. Hobart.

Q How do you unload coal at the present time at the Hinchcliffe plant? 20

A By opening the pockets under the cars and dropping it.

Q Is there a chute leading into the plant?

A There is at present a chute for sending coal right there. I think it is so arranged that you drop it in their boiler room.

Q Then the lowering of the switch to correspond with the lower level of the railroad company, you wouldn't be able to use that system? 30

A That doesn't affect the Hinchcliffe system.

Q Why not?

A Their switch is on the same level as the main line.

By Mr. Gourley.

Q How high is the Hinchcliffe switch

A From the ground?

Q Yes.

A I say about twenty feet. You spoke of the switch, I say that is on the same level. 40

Henry M. Post, direct.

HENRY M. POST, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Mr. Merrey. What is the number?

Mr. Gourley. Thirty-nine.

Q Mr. Post, you are a coal merchant in the City of Paterson?

10 A Yes.

Q Do you deal in any other supplies?

A Yes, all kinds of mason material.

Q You are a corporation?

A No.

Q You are carrying on business in the name of—

A Henry M. Post, only.

Q Where is your place of business?

A The property is situated on Leon, East Seventh and Wait streets.

20 Q What property have you there?

A I have twelve city lots.

Q Is there a street between your property and the Erie Railroad?

A Yes.

Q What street?

A Wait street.

Q How are supplies brought to your yard?

30 A After the switch leaves the Erie switch it comes in a semi-circle until it strikes my property, then it goes in my property—

Q The switch crosses the street?

A Crosses the street.

Q That switch runs to your property at grade?

A Yes, at grade. And then has a raise of about four feet running on a trestle.

Q What do you do with it then?

A We dump our coal under this trestle.

Q Have a drop of how much?

40 A From eight to twelve feet.

Henry M. Post, direct.

Q Have you adapted your property to that purpose?

A Yes; my property is situated from East Seventh to Wait street, there is a raise of about twelve feet. We start in on East Seventh street and come on a level one hundred and eighty feet, giving us a drop for the coal.

Q Suppose that track was depressed five to ten feet; what effect would that have on your property? 10

A It would have a great effect upon our storehouse, where we unload mason materials. The storehouse is now that much above the tracks.

Q That would seriously affect the value of your property?

A Yes, sir.

Q For your purpose?

A It would ruin it entirely for that purpose.

Q Suppose the tracks were elevated five to ten feet? 20

A Just as bad.

Q What would you have to do then?

A Have to dispose of the building, because this is very heavy material and is all handled at grade from the tracks to the building.

Q Suppose the tracks were only elevated five feet, how would you construct a switch across the five-foot grade?

A How do I understand that? 30

Q How would you get your supplies if the tracks were only elevated five feet?

A I don't know as that would harm so much on unloading of material and handling, hurt so much, or coal, five feet. When you talk about ten to fifteen feet, very much.

Q If it was only five feet at that point you would have to have some obstruction at the same grade?

A We would have to do away with these buildings, because the buildings are solid on the ground. This is 40

Henry M. Post, cross.

very heavy material—lime, cement, fire brick, and fire clay, and so the brick is piled out of the cars on the level.

Q What shipments do you get there by the week?

A One car a day, if not more. Sometimes more.

Q Outgoing shipments are by wagon?

A All carted by wagon.

10 Q All wagon?

A Yes.

Q How many wagons have you?

A We keep fourteen horses; that is seventeen wagons.

Q If these changes were made as suggested would your property be as valuable for your purpose as it is now?

Q Why, no. The way it looks to me it would ruin it so I don't know where I would be at.

20 *Cross examination by Mr. Merrey.*

Q Suppose the switch across Wait street, the switching privilege was revoked, what effect would that have on your property?

A I don't know why it should be revoked. The city gave us the privilege to go there.

Q "He that giveth may take away"? Suppose it was taken away, what would you do?

A We don't propose to let them take it away.

30 Q You will answer the question; rather, try to answer the question. What effect would it have on your property?

A We would be very much put out.

Q It would be probably a little more work than if the tracks were elevated or depressed?

A Well, I don't think that will happen, because a lot of others are being put in every day or every year.

40 Q That isn't the question I am asking you. We will not proceed very rapidly if you don't answer the questions. Have you had anybody examine your plant

Henry M. Post, cross.

to find out whether an elevation of ten feet or so of the railroad tracks would injure your property?

A No more than my own examination.

Q Have you got pockets on your property?

A We have got a trestle.

Q You have a trestle and then the coal is dropped through the bottom of the cars on the ground?

A Yes.

10

Q You load your wagons by shoveling the coal in the wagons?

A Yes.

Q Do you know whether or not it would be more economical if that trestle was raised ten feet so you could erect pockets and unload your wagons by gravity, letting the coal run out of the wagons?

A At very great cost.

Q Do you know whether, after going to that cost, it would pay in the saving of labor?

20

A I don't feel so, for me at my age.

Q At your age?

A Yes.

Q How about your plant, considered apart from yourself?

A That would be a big expense.

Q We understand that; the question is whether it would be a saving that would pay to going to that expense?

A I don't think it would for me.

30

Q Do you know?

A I feel it would.

Q You haven't examined the question or had any figures on it?

A No, nothing more than my own knowledge in the matter.

Q You know a great many people have pockets of that character?

A I know, at the present time.

40

Henry M. Post, re-direct.

Q They evidently did that because it would save them some money?

A Yes. In my case, how about coming across the street?

Q You would have to come across elevated.

A That would be a very big expense then.

Q You don't know whether the saving in labor and expense on your present situation would compensate you for that or not?

A I don't know.

Q You don't know?

A I don't feel so.

Re-direct examination by Mr. Gourley.

Q When did you buy your property?

A About twenty-two years ago.

Q Did you buy it for this purpose?

20 A Yes.

Q Did you buy it with the understanding that the city of Paterson granted the privilege to haul coal and merchandise at grade across the street?

A They granted me the privilege. I went to the Board of Aldermen and they granted me that privilege.

Q Is that a common or an uncommon thing to do in Paterson?

A It is a common thing.

30 *By Mr. Hobart.*

Q In case that railroad track was depressed, you would have to depress your switch to correspond with any lowering of the grade, would you not?

A Yes.

Q In order to do that how would you get across the street; dig a hole in the street?

A I would come on the level the street is now.

Q But if you had to lower your switch to correspond with the lower level of the railroad, how would you get across the street?

40

Henry M. Post, re-direct.

A Go under.

Q By a tunnel or ditch? If the tracks were elevated you would have to change your switch elevation?

A Everything would have to be changed.

Q Then you would have to build an abutment in the street for the elevated switch?

A Yes. We are too far away to make a change of that sort.

10

Commissioner Donges. How far away are you from the tracks?

Witness. From where it leaves their track and comes in a semi-circle, it must be a hundred and twenty-five feet before it strikes my property.

Commissioner Donges. It runs on the property of the railroad company before it reaches the street?

Witness. Yes. They have a switch lying there for public use; when I located there they extended that right around to my property.

20

Q You built the switch in the street; did you build it or the railroad?

A I built it across the street.

Q And on your own property?

A And keep it repaired every year.

Q How much of an investment have you there?

A Between twenty thousand dollars and twenty-five thousand dollars.

Q How long has the switch been in the street?

30

A Ever since I have been there.

George P. Carroll, direct.

GEORGE P. CARROLL, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Q What position do you hold with Fuller's Express Company?

A General manager.

10 **Q** What is the business of that company?

A Handling express and fast freight matter between New York and Jersey City, Paterson and Passaic.

Q How long has your company been in that business?

A Forty-two years last October.

Q Where is your place of business in Paterson?

A The corner of Erie Railroad and Ellison street.

Q What kind of a building have you?

20 **A** A frame structure, I judge, two hundred feet long, probably fifteen feet wide at one end and twenty feet at the other.

Q Have you a lease from the Erie Railroad?

A Yes.

Q What shipments do you ship weekly, how many cars?

A Between twenty and twenty-five carloads a day.

Q Of course, you have no outgoing shipments?

30 **A** Yes, we have them both ways. Twenty or twenty-five in and out of Paterson a day.

Q How is that handled?

A It is handled by truck to this freight house; just at the cars, and from there loaded into the cars. The siding we have runs parallel with the main line of the Erie Railroad. Our siding is between our freight house and the main line of the Erie.

Q What is the length of the track in there?

A The track, I should judge, is pretty near three hundred feet long.

George P. Carroll, direct.

Commissioner Donges. Is the freight house which you refer to fifteen feet wide and twenty feet at the other end?

Witness. Yes, and about two hundred feet long.

Q How far is that from the main line of the Erie, along your switch?

A It joins the main line, the building and the switch. 10

Q How far from the point it leaves the main line; how long is the switch?

A About three hundred feet.

Commissioner Donges. And is how far distant in its location from the tracks?

Witness. Runs parallel to the tracks.

Commissioner Donges. How far distant from the tracks?

Witness. The distance, I should say, is about five feet. 20

Q From the main line of the railroad?

A Yes, and the building is five feet from that. It is just an engineer's allowance between the track, both the building, main line and switch; they run parallel.

Commissioner Donges. Your freight house is five feet from the nearest rail of your switch?

Witness. That is the idea. Between the switch and the main line is about five feet. 30

Q Suppose the tracks of the Erie Railroad were depressed five or ten feet; what effect would that have on your business?

A In the first place that building couldn't be used. The building would have to be destroyed. The property is adapted to that; you can't drop the tracks too. There isn't enough ground to drop the tracks to be on the level, as the express company couldn't work only on a level with the platform.

Q Why? 40

George P. Carroll, direct.

A Because we have to work with a certain amount of speed in order to handle the quantity of freight we do.

Q Is there a limit to your carrying capacity in weight? Is the express company limited to weight?

A We handle anything, we do. Our rate into Paterson is less than one-third of the large companies. They are restricted to certain classes. We don't restrict ourselves. We would handle a brick house if necessary. All kinds of machinery, heavy freight.

Commissioner Donges. Do you handle anything other than express matter?

Witness. Other than express matter? Any kind of freight at all.

Q If it were elevated, what effect would that have?

A About the same effect. We had an experience some time ago in Jersey City.

20 Q I want you to tell us about that?

A The Erie Railroad, when they elevated the tracks in Jersey City, had what they called the old local station at Tenth and Grove streets. At that time I wasn't with the Fuller's Express Company, but I used to be with the United States Rendering Company. After the Erie elevated the tracks they got freight from the cars to the tracks and *vice versa* out on slides and hoists. They found it very slow, so much so that they had to give up the building and go elsewhere. Shortly after that I went with the building officer of Fuller's Express Company. I looked over the express office; I had the Chicago Conveyor Company's representative go with me to see what could be done. They had a chute there then to try handling the freight. We found we could not do it. Not only it costs twice as much but it could not be done in half the time as to handle it straight across from the car to the truck. If the track was elevated or depressed we would have to seek some other method.

40

George P. Carroll, cross.

Commissioner Donga. Have you all heavy freight?

Witacaz. We could not separate our freight. We work on such a small margin we couldn't separate it.

Q The cost on small articles would be higher?

A Yes; all our freight.

Cross examination by Mr. Merrey.

10

Q Your company is incorporated by a special act of the Legislature?

A I don't know whether it is a special act of incorporation; it is incorporated under the laws of New Jersey, a New Jersey corporation.

Q How long ago?

Mr. Merrey. Your answer shows that?

Mr. Gourley. No.

Mr. Merrey. I think we ought to have that information.

21

Mr. Gourley. What is wanted?

Mr. Merrey. The incorporation of this concern. I imagine it is limited.

Mr. Gourley. It may be in my office.

Mr. Merrey. I don't know, but I think at the time they got their charter, the Legislature was apt to limit them then.

Mr. Gourley. I will send you the lease.

Mr. Merrey. The information will be put in later as to that.

30

Mr. Gourley. Yes.

Q You operate under a lease from the Erie Railroad?

A Yes.

Q Have you a copy of that lease here?

Mr. Hobart. We have it, we will put it in.

Commissioner Donga. It is the purpose of the Erie Railroad to put in all the leases covering the switches.

40

George P. Carroll, cross.

Mr. Minard. All we can find. We haven't that.

Q Have you a copy of the lease with the Erie?

A I haven't it with me.

Q You have one?

A Yes, so has the Erie.

10 *Mr. Merrey.* We will ask you to produce it; that is agreed to?

Mr. Hobart. Yes.

Commissioner Donges. It is understood that lease will be produced?

Mr. Gourley. Yes.

Q Do you know how long it was to run?

A It is indefinite. You speak of a lease, it is a contract. It covers the entire arrangement with the Erie Railroad and has no terminating clause.

20 Q Is it such that your people can put an end to it?

A They have got to give us a year's notice and we them.

Q How long have you been located at your present place?

A Quite a considerable time before I came with the Fuller's Express Company.

Q How long have you been with them?

A Six years; between five and six years.

30 Q You don't know how long before they were at this place?

A I know they had been there over ten years.

Q It is probably ten years at the present location?

A It is more than that.

Q Have you any record to show when they moved there?

A I don't whether we have or not. I think Mr. Burdan, of Paterson, was with the company when I moved there. He would know about the time.

40 Q Do you know where they were located before the present location was taken up?

George P. Carroll, cross.

A No, sir.

Mr. Merrey. I think it is agreed it was south of Market street.

Mr. Gourley. Yes.

Mr. Merrey. On the west side of the road.

Mr. Gourley. Yes.

Q Do you know who built the building you now use? 10

A I don't know; I think the Erie did.

Q It is an old building?

A Yes.

Q On the property of the Erie?

A Yes.

Q Was it an old freight station?

A It was their local freight station years ago before they built the present freight station.

Q You get how many cars a day?

A We handle between twenty and twenty-five cars a day at this time of the year, but there are times of the year we handle more, when the perishable freight is running from the south. 20

Q The cars you get come up on the regular passenger service of the road?

A Some; and some by fast freight.

Q And during the day one of your cars is put on the passenger train that stops at the Market Street Station?

A There are a number of trains, one or two, sometimes four stop there during the day. 30

Q And then the passenger coaches remain at the station and the engine crosses Market street and Ellison street with the cars consigned to you?

A Yes; sometimes they are handled that way and other times they are handled by a switch engine.

Q And the engine must back up again, causing several crossings of Market street?

A Only some trains.

Q And that happens many times during the day? 40

George P. Carroll, cross.

A Not many times.

Q How many times?

A I should say it happens more than once a day.

Q What time does it happen?

A I don't know; one is on there at nine o'clock; I think the morning train is about eleven.

Q I think there is a train about three o'clock
10 where that happens?

A I am not sure. I know the yard engine handles some cars across there.

Q You do not know how often you get cars during the day on passenger trains?

A How often we get cars?

Q Yes?

A Four times; that is counting both ways.

Q What do you mean by "counting both ways?"

A Trains from Passaic as well as to Passaic.

20 Q Received at Passaic?

A Our receiving of the cars.

Q Then they are shipped across twice?

A No; ship cars once and twice into Paterson.

Q That shipment requires several movements across Market street, does it not?

A It wouldn't require more than one, the engine taking them up and going back to its train.

Q The switch engine comes back a distance over Market street on the other track?

30 A When the switch engine handles it, yes.

Q Under those conditions it would take three movements?

A That depends on where the engine would pick up the cars.

Q Two movements at that time would require the gates down three times?

Mr. Minard. Are you trying to qualify him as a railroad operating expert?

40 *Witness.* I was twenty years with the Erie.

George P. Carroll, cross.

Q You are not familiar with this?

A All in a general way.

Q Two movements across Market street requires the gates down three times; once when the train comes in the station and a second time when the engine goes across the street and the third time when the engine comes back?

A A number of times it would be only twice. 10
Trains that come—if the engine hasn't gone to the crossing it don't require the gates down.

Q It is the rule of the company that gates be lowered when a train comes into the station?

A No.

Q Is it your observation as to that; you have no office in New York?

A No; but I travel over the line.

Q Have you observed that?

A I have observed them put down; I have been 20
there at times getting off, when they didn't.

Q I said three times; it would be four times. You haven't noticed that?

A No.

Q The gates then are lowered four times —

Commissioner Donges. The witness said he hadn't noticed that.

Mr. Merrey. That is all.

Mr. Gourley. That concludes the testimony of our switch owners. I desire to put in some deeds 30
later, which I haven't here.

F. G. Hopper, Esq., represented by J. Kushner, Esq.

Frederick G. Hopper, direct.

FREDERICK G. HOPPER, sworn on behalf of siding owners.

Direct examination by Mr. Kushner.

Q You are connected with D. Fullerton & Company, Paterson?

A I am.

10 Q What is your business?

A Wholesale beef and provision.

Q What relation do you hold to that company?

A Acting secretary.

Mr. Minard. That is No. 33 on the list.

Q How long have you been connected with D. Fullerton & Company?

A Thirteen years.

Q You know the various business transactions of the company both coming and going?

20 A I do.

Q Does the D. Fullerton & Company act as agent for some other corporation?

A They do.

Q What corporation?

A Swift & Company.

Q Do you receive meats?

A Dressed beef only.

Q How many cars do you receive per week?

A Ten.

30 Q An average of ten; sometimes more?

A Sometimes more and sometimes less, depending on the season.

Q And your outgoing shipments?

A Most of it goes in wagons, about one.

Commissioner Donges. Ten cars coming in and one going out?

Witness. Yes; most of the shipments out are done by wagons.

Frederick G. Hopper, direct.

Q The main track of the Erie Railroad is how far from your building?

A It is within three feet, by the usual engineer's scale.

Q I mean the main track?

A The distance of one switch track, and our building is probably ten feet.

Commissioner Donges. One switch track and ten feet? 10

Witness. No; one switch is included.

Q In relation to the siding and switch track, how far is your building from that?

A Three feet; just enough to allow the cars to clear.

Q How long has the building been in there?

A To my knowledge, twenty years; personal knowledge. The firm has been in business thirty-five years. 20

Q On this spot?

A On this spot.

Q Do you know whether or not the firm has been using this switch continuously for that period?

A Continuously.

Q They built the building in conformance with the switch?

A Absolutely.

Q Has the building been remodelled in late years? 30

A Remodeled to conform to switch conditions.

Q How big a building have you?

A On the railroad, one hundred and eight feet.

Q How deep is the property away from the railroad?

A Away from the railroad?

Q Yes, sir.

A Three feet from the switch.

Q The property; how far does it run away from the railroad toward River street? 40

Frederick G. Hopper, direct.

A One hundred and twenty feet.

Q What streets bound it?

A Bounded on the north by Wayne street, on the east by the Erie Railroad, on the south by Franklin street and on the west by River street.

10 *Commissioner Donges.* It has a frontage of about one hundred and twenty feet on each street?

Witness. It runs to a kind of triangle; a hundred and thirty-four feet in front, one hundred and eight feet in back on the Erie Railroad.

Q Have you a copy of your deeds there?

A Yes.

Mr. Kushner. I offer this deed in evidence.

Commissioner Donges. It will be admitted and marked. You had better read the title.

20 *Mr. Kushner.* It is given by Emmet F. Fullerton and Annie H. Fullerton, his wife, and Albert G. Fullerton and Susan B. Fullerton, his wife, to D. Fullerton Corporation, by deed of April 9, 1904, recorded in the office of the clerk of Pascaic County in Book L-16 of Deeds, Page 297, and is the first tract mentioned in aforesaid deed.

(Same is marked Exhibit DF-1.)

Q Have you any idea as to the value of the buildings there?

30 A Over one hundred thousand dollars.

Q What is the first floor used for?

A The first floor is used for a beef cooler.

Q The front or the rear of the first floor?

A The rear. The front part is used—

Q A shipping department?

A And office.

Q What is situated on the second floor?

A Refrigerator pipes, cooler.

40 Q Have you a receiving platform on the rear of your building?

Frederick G. Hopper, direct.

A Yes.

Q Your platform is about three feet from the switch?

A Yes.

Q Does the building run parallel with the main line and switch?

A Yes.

Q If that switch was depressed say five or ten feet how would that affect the value of your building as well as business? 10

A As far as the building, absolutely worthless.

Q Why?

A Because you would have to build the switch conditions to conform to the depression of the tracks. Not only that, you would probably have to elevate, to raise the beef from the cars, which would be a continuous expense. The building, if that is done, would be worthless, if your track was depressed or elevated. 20

Q How would that affect the foundations of your building?

A Absolutely worthless, because it is permanent with the other switch; that would loose all the bearings.

Q Where D. Fullerton's plant is, of course, perfectly level?

A Yes.

Q Practically level?

A Yes. 30

Q No grade on that side?

A No.

Q If the tracks were depressed fifteen or twenty feet—

A It would make it just as ridiculous as if depressed five feet.

Q It would actually destroy the entire plant?

A Not the entire plant; the front wouldn't be, but the back.

Q Isn't it built the same size? 40

Frederick G. Hopper, direct.

A Yes.

Q The same cellar and basement?

A Yes.

Q Wouldn't all the foundation become weakened, all around?

A Yes.

10 Q Suppose the tracks were raised, elevated say ten or fifteen feet?

A Then the building would have to be changed to conform with the elevation and practically the same condition would exist as if depressed.

Q How would that interfere with the handling of the meat?

A By putting the cost of receiving it half again as much by changing, elevating and lowering the beef.

Q More expensive handling it that way?

A Yes.

20 Q What is the effect of too much handling of the meat?

A It would make too much expense.

Q As a matter of fact it is taken from the cars at the present time—how far is the store room from the freight cars?

A About ten feet.

Q From the refrigerator room?

A Yes.

30 Q What effect would delay in handling the meats have on the meats?

A Deteriorate in value, absolutely, yes.

Q Could you say in round figures the amount of business you do?

A Last year \$2,121,000.

Q In handling of meats?

A Yes.

Q Do you think you would handle that much meat if the tracks were lowered or raised?

A No.

40 Q You would find no market for it?

Frederick G. Hopper, direct.

A No.

Q I show you a map; it shows the lines of the Erie Railroad?

A Yes.

Q Is this the situation of your plant?

A Yes.

Q This is the section here (indicating)?

A Yes.

10

Q Is this the switch (indicating)?

A Yes.

Q Runs along here?

A Yes.

Q Parallel with the building?

A Parallel with the building.

Q How do you deliver your meat to the consumers?

A By wagon.

Q You don't ship much meat away?

20

A Occasionally, probably one car a week.

Q How many wagons have you in your business?

A Twenty.

Q I show you this mark on the map, what is that mark?

A That is the sewer that connects back of our building to allow the sewerage from the bologna kitchen to empty into the Summer street main sewer.

Q If the tracks were depressed say fifteen or ten feet, what effect would that have on the disposal of your sewer?

30

A That would make that sewer absolutely worthless.

Q If that track were raised?

A It wouldn't have any effect.

Q Would you have to have a pump to pump the sewerage?

A No, not if it was raised, because it would still be on the ground.

40

Frederick G. Hopper, cross.

Cross examination by Mr. Merrey.

Q You get all your beef from the west?

A Not all.

Q Where do you get the rest?

A We kill two loads of cattle a week. They come in live and we kill and dress them.

Q How many cars of live meat come in?

10 A Straight beef, probably eight cars.

Q Where do you put that beef?

A Right in the cooler.

Q What floor is the cooler on?

A The first floor.

Q What system of refrigeration have you?

A The ammonia.

Q That is machinery refrigeration?

A Yes, sir.

Q Is your plant larger than the Morris plant?

20 A Yes, sir.

Q How much larger in size and amount of beef you handle?

A I really couldn't say. I suppose our building is half again as large. I really do not know what they do.

Q Do you do anything else besides selling the beef and poultry?

A We do pork packing and general provision business.

30 Q You say you remodeled your plant a short time ago?

A Just the front.

Q You made various other changes at the request of the United States Government?

A Yes.

Q Or the commonly called Interstate Commerce Commission?

A Yes.

40 Q Have you had an architect advise you whether

Frederick G. Hopper, cross.

your building could be changed to conform with the change in the railroad tracks?

A Not to my knowledge.

Q You have had no architect?

A No, sir.

Q You have had no experience in building yourself?

A No, sir.

Q It is merely an expression of your own inexperienced opinion? 10

A To a certain extent.

Q Whether elevation or depression of these tracks would make your building worthless?

A No.

Q What sort of an opinion is it?

A More or less of common sense.

Q But you are not an expert on that question?

A No.

Q Do you know whether your feeding floor could be raised? 20

A I do.

Q You know it could?

A It could not, no.

Q Why not?

A The reason we have the ice bunkers or refrigeration pipes on the top floor is as cool air is heavier than warm air we would still have to have the cold air pipes above the beef.

Q What is it, a wooden or brick building? 30

A The beef building it.

Commissioner Donges. Is what?

Witness. Wooden.

Q The part adjacent to the railroad tracks is wood?

A With the exception of the engine room, probably twenty-five feet is wood.

Q Do you know whether or not it would be expensive or not to raise that building? 40

Frederick G. Hopper, cross.

A It would be expensive.

Q You don't know how much it would cost?

A I do not.

Q If that were raised would it interfere with the raising of the plant?

A It would.

Q In what way?

10 A In loading and shipping out.

Q From what part of the plant do you load or ship?

A We ship from the wagons, from the floor part.

Q Do you ship any into the cars?

A Yes.

Q What do you put into the cars?

A Lard.

Q How much?

20 A Probably one car a week. It is lard and sweet pickled goods.

Q How do you load that?

A That is loaded from the pickle cellar on trucks through our cooler into the cars.

Q It isn't necessary to put it through the cooler for refrigeration purposes?

A Not at that point, not the shipping point.

Q You have to elevate that stuff from the cellar to get it into the cars?

A Yes.

30 Q As far as that is concerned you could still elevate it ten or fifteen feet more if necessary?

A No, you could not.

Q Why not?

A Then it would throw the whole building out of conjunction. The receiving of the goods is far more important than the shipping of them, in that respect.

Q You could make no other arrangement for shipping that other kind of material?

A Possibly we could.

40 Q Do you receive any coal there?

Frederick G. Hopper, re-direct.

A Yes, we do.

Q From the railroad?

A From the railroad.

Q How is that handled?

A That is handled by a man throwing it on the trestle.

Q Most of your stuff is taken away from your plant by wagon? 10

A It is.

Q That could be arranged for some elevation of the tracks by elevating your driveway, it could be elevated?

A No. Our driveway is right on Lafayette street level.

Q There is some distance from there back to the building?

A Probably one hundred and twenty-five feet.

Q In that elevation you could probably elevate ten or fifteen feet? 20

A The whole building?

Q No, the driveway, if your building in back was raised?

A I don't know how that would work with the wagons standing; they would be constantly sliding.

Q You said you hadn't considered this question with a view of the construction or possibility of doing it at all?

A No. 30

Re-direct examination by Mr. Kushern.

Q You do know if the tracks were depressed it would mean interference with the foundations of your building at the railroad side?

A I do.

Q An entirely new wall put there?

A Yes.

Q If the tracks were raised there would be a new conveyer to convey your meat? 40

George R. Wheeler, direct.

A Absolutely.

Q And move your refrigerator back to the store?

A Yes.

Q The shipping room for the platform?

A Yes.

Q And the receiving room?

A Yes.

10 Q If the tracks were lowered you would have to raise the meat once and drop it?

A Yes.

Q Making two handlings of the meat rather than one?

A Yes.

Q If you lowered the tracks you would have to move the meat up by machinery?

A Yes.

20 Q Besides tearing out the foundations?

A Absolutely.

Q How would the meat be affected?

A It would depreciate in value. The more handling of meat the more it depreciates.

By Mr. Hobart.

Q This extra handling would cost something?

A It would, absolutely.

Q How much would it add to the beef for that?

A It depends on the quantity you get.

30

GEORGE R. WHEELER, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q Mr. Wheeler, what is your full name?

A George R. Wheeler.

Q What is your position?

A Division freight agent, Erie Railroad.

Q Your division covers Paterson?

40

A It does.

George R. Wheeler, direct.

Q I show you a paper entitled "Erie Railroad, Industrial Sidings in Paterson, N. J.," and ask you whether that list was prepared under your supervision?

A Yes, it was.

Q I understand that these siding owners are numbered as they appear in the plan in the answer filed by the company?

10

A I haven't seen that.

Mr. Minard. That will appear from the evidence.

Commissioner Donges. They are numbered in accordance with the map?

Witness. That was not put up with the map.

Mr. Minard. I put the numbers there myself.

Q The first column represents the names of the industries having loading or unloading facilities at the Erie Railroad?

20

A It does.

Q These initials along in the next column, V, XV, are illustrated in the legend at the bottom?

A Yes.

Q V is exclusive sidings, X not in use, Y yard tracks?

A Yes.

Q The letters B, F, C, D and A represent other sections of joint sidings?

30

A They do.

Q When you say exclusive siding, there is a single concern alone uses the siding exclusively?

A Yes, sir.

Q When you say joint siding, you mean all concerned opposite which that individual letter is given use that siding, is that right?

A Yes.

Q For instance, all A's use one siding, and all B's use another siding, and all F's, and so on, do they not?

40

George R. Wheeler, direct.

A Yes.

Q What is a yard track; what does that mean?

A Why a yard track is a track in the yard.

Q In this case it means that these particular industries have been assigned facilities on yard tracks on which all their goods will be received or shipped?

A Yes.

10 Q In many cases these arrangements are by agreement, are they not?

A Yes.

Q What is team delivery track?

A Team delivery is a public track which anyone can use.

Q Is or is there not arrangements with any of these concerns with facilities on team tracks for their use?

A Yes.

20 Q In many cases those arrangements are not covered by agreement?

A In many cases.

Q The next column, commodities, illustrates the material loaded or unloaded there principally?

A Yes. The industries, what they are doing, the manufacturers' output.

Q It doesn't include the names of the special materials they receive?

A No.

30 Q The length of the sidings?

A The length is estimated by the number of cars. It isn't actual measurement; an estimate; possibly it may be wrong; an estimate of the number of cars, estimated thirty-six to forty feet per car. This doesn't include what we call the lead. In other words, just the clearance, the number of cars that can be unloaded on the tracks exclusive of the lead from the siding or main track.

40 Q I understand, Mr. Wheeler, in the next column marked "Agreement" the date—those figures under

George R. Wheeler, direct.

agreement are the dates of the agreements of the concerns opposite whose names they appear?

A They are.

Q Wherever there is an agreement the length of the siding is taken from the agreement and those are the numbers which are not in brackets.

A Yes.

Q The legend down here says that figures in brackets represent the estimated length? 10

A Yes.

Q In the estimated length did you confer with anyone?

A No, sir.

Q Did you go over the length with Mr. Rigdon, agent at Paterson?

A After I had my list prepared.

Q It was also prepared by Mr. Palmer, the railroad engineer, who was there at the time you went over there? 20

A Yes.

Q Between you you took your estimates together in order to confirm those figures?

A Yes.

Q The next column marked "Average cars per month"; how did you arrive at that?

A With the exception of the Fullers Express Company's cars, this is taken from office records, Paterson office, or rather a report that he rendered me monthly, showing the number of cars handled by each concern. This was taken from a certain month, which we call an average month. 30

Q What month?

A The month of May.

Q That month was selected because it was a representative month?

A A representative month.

Q Fullers Express Company, where did you get that record? 40

George R. Wheeler, direct.

A The agent at Paterson gave me that. The four hundred and twenty cars, that wasn't embodied in this report; that comes to me. There was one hundred and seventy cars what we call eastbound, and I estimated two hundred and thirty cars westbound.

Q Per month?

A Per month, yes, sir.

10 *Mr. Minard.* I will offer this statement in evidence to show what it purports to show.

Commissioner Donges. If there is no objection it will be admitted and marked as an exhibit.)

(Same is marked Exhibit R-49.)

Q Mr. Wheeler, have you agreements with all these concerns?

A On the list?

20 Q Have we an agreement with all the concerns on that list?

A No, sir; I believe not.

Mr. Minard. There are siding agreements here for all so indicated under the word agreement.

Commissioner Donges. All those were the dates are given as being the date of the agreement?

Witness. Yes, sir.

Q Do you know whether we have an agreement with all the siding people in Paterson or not?

A No, we have not.

30 Q Can you say anything about why we haven't agreements with all these people? Can you give me that in a general way? I am free to admit that with some we haven't; I think Mr. Wheeler may state that.

Mr. Merrey. I don't care to object. It seems to be unnecessary.

40 *Mr. Minard.* It was only to explain to the commission why we haven't. This system of obtaining agreements is the modern method of handling the situation. Years ago sidings were put in at

George R. Wheeler, direct.

the request of people without agreements. Those people, of course, have been reluctant to sign an agreement to put any responsibility on them for accidents and so on. All these agreements contain a liability clause and some have never got an agreement. If changes and repairs are necessary, then we get an agreement. There are some we don't have. About Fuller Express Company, we have an agreement evidently there. We couldn't locate it. My conclusion is it was given out to an attorney when that litigation was on and never returned. We will try to look it up. I have produced here in each case the original agreement.

10

Commissioner Donges. Suppose you just read into the record and have each one marked and produce the copies.

(No. 1, Leslie Elliott Co., dated June 8, 1912, agreement marked Exhibit R-50.)

20

(No. 6, Commercial Lumber & Mill Wk. Co., dated Sept. 14, 1912, agreement marked Exhibit R-51.)

(No. 24, David G. Rogers, dated October 20, 1905, agreement marked Exhibit R. 52.)

(No. 28, P. S. Van Kirk, June 25, 1907, agreement marked Exhibit R-53.)

(No. 29, A. H. Smith, January 29, 1909, agreement marked Exhibit R-54.)

(No. 31, Armstrong Sons Co., February 21, 1909, agreement marked Exhibit R-55.)

30

(No. 36 (a), Public Service Gas Co., October 21, 1911, agreement marked Exhibit R-56.)

(No. 36 (b), Public Service Corporation, May 23, 1907, agreement marked Exhibit R-57.)

(No. 38, Swift & Co., October 9, 1912, agreement marked Exhibit R-58.)

(No. 40, Ashley Bailey Co., February 26, 1908, marked R-59.)

40

George R. Wheeler, direct.

(No. 41, National Silk Dyeing Co., December 20, 1911, agreement marked Exhibit R-60.)

(No. 43 (a), Weidman Silk Dyeing Company, June 20, 1905, agreement marked Exhibit R-61.)

(No. 43 (b), Weidman Silk Dyeing Company, July 12, 1911, agreement marked Exhibit R-62.)

10 (No. 43 (c), Weidman Silk Dyeing Company, May 11, 1910, agreement marked Exhibit R-63.)

(No. 43 (d), Weidman Silk Dyeing Company, May 11, 1910, agreement marked Exhibit R-64.)

(No. 44, L. Lapat, August 27, 1907, agreement marked Exhibit R-65.)

(No. 45, Southerland & Edwards, December 30, 1911, agreement marked Exhibit R-66.)

(No. 46, Nicholson File Co., December 21, 1904, agreement marked Exhibit R-67.)

20 (No. 47, Hygeia Ice Co., November 12, 1904, agreement marked Exhibit R-68.)

(No. 48, Puglia & Gramatica, July 8, 1908, agreement marked Exhibit R-69.)

(No. 49, Auger & Simon Silk Dyeing Co., February 14, 1906, agreement marked Exhibit R-70.)

(No. 50, Paterson Consolidated Ice Co., November 14, 1910, agreement marked Exhibit R-71.)

(No. 51, Van Winkle-Bromley Lumber Co.)—

30 *Mr. Merrey.* Is that switch on this road or on your Newark road?

Mr. Minard. I don't know. It is within the zone covered by the testimony.

(Van Winkle-Bromley Lumber Co., May 11, 1911, agreement marked Exhibit R-72.)

(No. 52, Gulf Refining Co., February 15, 1911, agreement marked Exhibit R-73.)

Q Now, Mr. Wheeler, what is the condition on which these sidings are used? Of course, those covered by the agreements, the agreements speak for them-

George R. Wheeler, direct.

selves. These agreements are standard forms of agreements used for this kind of work?

A They are.

Q Whether a concern is covered by an agreement or not, is there any difference in who pays for repairs or changes in the sidings?

A Not to my knowledge.

Q Who pays for them?

10

A The users of the sidings.

Q So that any change made by reason of depression or elevation of the tracks, the expense falls—

Mr. Merrey. I object to that question.

Commissioner Donges. That is a conclusion of law.

Mr. Merrey. You can't have any rule on this Paterson situation.

Commissioner Donges. I understand it is not intended to cover elimination under order of this board.

20

Mr. Minard. These agreements?

Commissioner Donges. Your question.

Mr. Minard. I am speaking generally.

Q If you found it necessary to change the grade of the railroad up or down whether ordered by the court or whether you did it for your own purposes, where would the expense of changing the sidings fall under your rules?

30

Mr. Merrey. I object.

Commissioner Donges. What is the objection?

Mr. Merrey. He is one party to the agreement. He can't say what the thing is, because it must be fought out between them.

Commissioner Donges. Might he not say what is the rule? If there is a common practice and this witness testifies, not regarding both parties, but the practice between them, what it is that one

40

George R. Wheeler, direct.

of the other parties pay for the changes, it seems to me he is competent to testify to it.

Mr. Merrey. There couldn't be any such procedure.

Commissioner Donges. I think he is competent to testify to it.

10 *Mr. Merrey.* The company itself insists on it as far as it is able.

Commissioner Donges. It may or not be the fact. We will take the testimony.

Witness. It is the custom for industries or siding owners to pay for any changes made in the sidings.

Commissioner Donges. Are there any exceptions to that?

Witness. Very few of late years.

20 Q How long has that been the rule of the company?

Commissioner Donges. He hasn't said it is the rule. He said it was the custom.

Q Is it the rule?

A It is the rule of the company.

Q If a siding owner asks for a change in a siding or repairing, what is the practice regarding payment?

A The siding owner pays the cost of maintenance.

30 Q Is it or is it not true that the operating department send out an engineer and make estimates on the cost of changes or repairs?

A Yes.

Q Is or is not the siding owner required to deposit the estimated cost of repairs before the work is undertaken?

A We customarily do so, yes, sir.

Q How long has that been the custom?

A I can't give you an exact date, I think over five or six years.

40 Q The conditions under which these agreements

George R. Wheeler, cross.

are made, where agreements exist, are they or not the same as those in practice where you have no agreement?

A Yes, sir.

Q They are the same.

A Yes, sir, the same.

Cross examination by Mr. Merrey.

Q Have you had any experience on the Erie with the changing of the grade of the road as far as sidings are concerned? What has been your experience in connection with the changes in grade of the railroad with respect to the owners of sidings?

10

A Any change that is made is submitted to me.

Commissioner Donges. No, the question is what experience you have had or the extent of your experience.

Witness. I am not an engineer.

20

Q You do not know of any instances where the grade of the Erie has been changed, coming under your observation and knowledge, where it affected a siding?

A I don't know any at the present time.

Q So you don't know what the rule of the company is in regard to that?

A Speaking of the ruling of the handling of sidings?

Q Yes.

A I do not know what that is.

30

Q So there is no practice concerning the change of a siding of private parties where the grade of the road is changed?

Mr. Minard. I don't think that is fair.

Commissioner Donges. He testified to a practice; this, I think, is admissible.

A I know of no case, but I would say the rule of the road would apply there too.

Q How do you know the rule of the road?

40

George R. Wheeler, cross.

A Because I am handling these weekly, monthly.

Q What propositions of this kind have you handled?

A Nothing of an elevation or depression of the tracks.

Q Then your experience has been with other changed, changes of another character?

10 A With construction of sidings for private industries.

Q You can't tell us what the result would be in this case of old sidings that have been there many years, whether the siding owners were charged or not?

Mr. Minard. The provisions of that act require this be placed on the siding owners.

A The contract—our contract with them, the siding owners, this agreement covers the repairs to sidings.

20 Q I am now referring to those cases we have no contract for, the older cases.

A I don't think we would go to the expense of putting them up, elevating or depressing.

Q You don't know about the thing?

A I am not the Erie Railroad.

30

Opening.

SIXTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Friday, January 29, 1914.

PATERSON GRADE CROSSING ELIMINATION, ERIE RAILROAD COMPANY. }

10

Before Commissioners Donges, Hillery and Daniels.
F. H. Sommer, Esq., Counsel.

For City of Paterson appears R. B. Lewis, Esq.

For Erie Railroad Company appear G. S. Hobart, Esq., and D. E. Minard, Esq.

Mr. Minard. We put in evidence before a financial statement, that was for four months of the fiscal year. This (handling commission paper) brings it down to the end of six months, income statement. It is compiled in the same way, with the same figures and has the comptroller's official stamp. I couldn't get Mr. Sorensen, to prove it formally as was done before. I thought there wouldn't be any objection.

20

Mr. Lewis. I am willing to take Mr. Minard's word that those are the facts.

Mr. Minard. The commission can investigate it and verify it at any time, or Mr. Merry.

30

Commissioner Donges. We don't want the burden put on us of verifying it.

Mr. Minard. What I meant, the commission has the same right and the opposition has the same right to examine the original figures from which this is compiled.

Commissioner Donges. Subject to verification, this, it is agreed, shall be admitted.

Mr. Lewis. Yes.

40

W. M. Dawley, direct.

Commissioner Donges. It may be marked as an exhibit.

(Same is marked Exhibit R-74.)

Mr. Minard. I offer that timetable, the same timetable that was offered in the Rutherford case.

Commissioner Donges. It will be admitted and marked.

10

(Same is marked Exhibit R-75.)

Mr. Minard. At the last time this statement, previously in evidence, and offered in evidence, I agreed to take it away and have copies made.

Commissioner Donges. This was marked?

Mr. Minard. I don't know. Mr. Willis made the statement. It refers to signals and interlocking.

20

W. M. DAWLEY, sworn on behalf of Erie Railroad Company.

Direct examination by Mr. Minard.

Q Where do you live, Mr. Dawley?

A Passaic, New Jersey.

Q What is your occupation?

A Civil engineer in the general land and tax department of the Erie Railroad.

30

Q Have you spent some time attempting to locate the original locations of the streets in Paterson?

A Yes.

Q Did you locate a map or maps on the subject?

A Yes.

Q What maps did you find?

A I found a map, 1850.

Q Where did you find the map?

A In the office of Michael Dunn, Paterson.

Q Did you obtain permission from him to produce this map?

40

A Yes, sir.

W. M. Daerleg, direct.

Q For the commission?

A I don't know as it was for the commission.

Q You borrowed it?

A I said I wanted to use it for grade crossings.

Q This is entitled, "Map of Paterson, New Jersey, from actual surveys by J. C. Sidney, published by M. Dripps, 103 Fulton Street, New York, J. C. Sidney."

Mr. Minard. I will offer this map in evidence. 10

Mr. Lewis. What is the value of it?

Mr. Minard. It shows the City of Paterson in 1850 and we are making the point in this case, as you know, to distinguish the streets that were opened before the railroad was built and those opened afterward. Our constitutional rights are different.

Mr. Sumner. Doing it under the opinion of Vice-Chancellor Leaming, I suppose? 20

Mr. Minard. We have tried to get the oldest maps we could find as a basis for a beginning, then follow it down from this to show the history of the streets.

Mr. Lewis. I don't want to interpose any frivolous objections; what proof is there of the authenticity of the map?

Mr. Minard. Mr. Lewis, the situation is that: In all antique matters we can't produce the man who made the map. In all maps of this sort it is necessary to have respect for the antiquities in some things to the extent of allowing them to go in evidence— 30

Mr. Lewis. Michael Dunn isn't antique?

Mr. Minard. I don't suppose Michael Dunn prepared the map or had anything to do with it. This really is the city's business. As far as the record shows now there isn't any evidence that any street in Paterson exists. They are called streets by name, there isn't anything in that rec- 40

W. M. Dawley, direct.

10 ord to show that any of the streets mentioned were officially laid out or existed legally. When we made that point in our answer, that certain streets were laid out after the railroad, the commission called upon us to prove it, a thing which was part of the city's proof. If we quit now and the commission were to find that Market street actually existed and would like to eliminate it, there isn't anything in the record. The commission asked us to undertake to prove that and we are endeavoring to do it the best we know how. If we can't satisfy the commission when the evidence is in, that is another thing. We are doing the best we can to fulfill what the commission asked us to do, and supply a defect in the testimony.

20 *Commissioner Donges.* Do you have any objection?

Mr. Lewis. No, I have no objection that it go in as an exhibit.

Mr. Minard. We can't leave it with the commission; we can produce it at any time, but we are required to bring it back to him.

Commissioner Donges. Have it marked as an exhibit.

30 *Mr. Minard.* We have a photograph of it. We have an exact reproduction, if that will serve for the purpose of the files, and we will take this away and give it to Mr. Dunn and produce it at any time you need it. If we leave it knocking around among the records, it is likely to get destroyed.

Commissioner Donges. Who was Mr. Dripps?

Witness. The publisher.

Commissioner Donges. It says on the map.

Mr. Minard. That was before my time.

40 *Commissioner Donges.* No effort has been

W. M. Darley, direct.

made to find out who published this or by whom made.

Mr. Minard. Yes, it was surveyed by J. C. Sidney.

Commissioner Donges. Who was Mr. Sidney?

Witness. Here are the copies.

Mr. Minard. It was so fine it was impossible to trace it. We have had it photographed and we thought it a good reproduction. It is photographed in pieces and pasted together. 10

Commissioner Donges. I presume there will be no objection to substituting for use the photograph, Mr. Lewis?

Mr. Lewis. Not on my part.

Commissioner Donges. With the right to have the original produced whenever required?

Mr. Minard. Whenever required.

Mr. Lewis. Have the original marked now. 20

Commissioner Donges. The original will be marked as an exhibit.

(Same is marked Exhibit R-76.)

Q Have you got another map?

A I have (produces map).

Q Read the legend.

A "Map of the City of Paterson, N. J."—

Mr. Minard. This is a map entitled, "Map of the City of Paterson, N. J., surveyed by order of Council; President, Philemon Dickerson, Jeremiah Stalter and Charles Inglis, Jr., S. Ward (I suppose that means South Ward), Andrew Derrom and Patrick MacEnnis, West Ward, Edward Clark and John Schoonmaker, East Ward." Date of the map is October 20, '52. J. W. Allen, City Surveyor, Date of ordinance, March 30, 1853. 30

Commissioner Donges. "Copied from the original map on file in the office of the city surveyor, December, 1881 (I think), W. Ferguson, C. E." 40

W. M. Dawley, direct.

10 *Commissioner Daniels.* "Starting point of levels, corner of Mill and Goudinot streets. Monument levels are designated by red figures. Distances, courses and angles by black figures; center lines of streets are designated by black (on map); side lines of streets are designated by red (on map). Meaument corner of River and Mulberry streets is 5.50 below grade. Monument at intersection of Wills and Market streets is 5.00 below grade. Monument at intersection of River and Lawrence streets is 200 (I presume they forgot the decimal there). Monument at intersection of Vine and Market streets 1.20. Elevation on Culvert; street is four feet below grade. Elevation on culvert in Market street, marked 11.04, is one foot below grade. Monument corner of Straight and Cedar streets is 3.43 above grade."

20 Q Where did you get that map?

A First, I would like to call attention to the fact that the colorings are fixed by Mr. Ferguson; the side line is black and the center lines red in his tracing.

Commissioner Hillery. The legend said that side lines were in red.

30 *Witness.* Yes; I mentioned that because the red of the road was made and filed in the county clerk's office in Paterson. The side lines there are red and the center lines black to agree with the original map. This map was presumably destroyed by the fire, the original. We have traced this map and have blueprints of the tracing.

Commissioner Donges. Your original map was made by Mr. Ferguson in 1851?

Mr. Minard. Yes; this is a copy of the original map, since destroyed by fire. I understand this is the only copy of the map in existence?

40 *Witness.* Yes.

W. M. Dawley, direct.

Q Just describe to the board how you got, or where you found this map, so as to establish its authenticity.

A I may get myself in trouble. I asked Mr. Ferguson, county engineer, if he knew of any such map. He said he had one, a copy of it, and he could get it over to his father's old office.

Q Who was his father? 10

A William Ferguson.

Q He was also city surveyor of Paterson?

A I presume so.

Mr. Lewis. I think he was at one time.

Witness. He traced this map, his father traced the map according to notation.

Q So the man you got it from was the son of the Ferguson signed on this map?

A No, sir. Mr. Ferguson said he was unable to locate it; after going over all the office files he could not locate the map and he must have loaned it to someone, he couldn't remember who. So I started around and inquired at the various engineer's offices in Paterson for a copy of the map spoken of by Mr. Ferguson; and I found it in the office of the city engineer, Mr. Harder. 20

Q Then did you take it from there?

A Mr. Harder loaned it to me.

Q This is it? (Indicating.) 30

A Yes.

Mr. Lewis. The city really furnished the information.

Q What is the arrangement about the return of the map?

A It is to be returned to Mr. Harder.

Mr. Minard. For that reason we have made a blueprint and would like to make the same ar-

40

George A. W. Achenback, direct.

rangement with this one as the other one. It is in the possession of the city and they can produce it at any time.

10 *Witness.* The understanding was we would re-trace this map and make blueprints from the tracing, the object being to have a tracing from which we could make additional blueprints in order to duplicate that tracing so as to maintain one in existence.

Q You made the same notation?

A The same notation, an exact copy.

Commissioner Donges. It is an exact copy of this?

Witness. It is an exact copy, compared.

Mr. Minard. I ask that this be marked and we may offer the blue print.

20 *Commissioner Donges.* It may be marked as an exhibit and the blueprint offered.

(Original tracing marked Exhibit R-77.)

Mr. Minard. Do you want to cross examine?

Mr. Lewis. No.

GEORGE A. W. ACHENBACK, sworn on behalf of
Erie Railroad Company.

Direct examination by Mr. Minard.

30 Q Mr. Achenback, what is your address?

A Newark, New Jersey.

Q What is your profession?

A Attorney at law.

Q A member of the bar of New Jersey?

A Yes.

Q And your official connection now is what?

A I am connected with the general land and tax department of the Erie Railroad, subsidiaries and leased lines.

George A. W. Achenback, direct.

Q You have been conducting, with the assistance of Mr. Dawley, a record as to the history of the streets in Paterson?

A I have.

Q Where do you conduct your investigation?

A In the clerk's and register's offices of Essex County and in the clerk's and register's offices of Passaic County.

10

Q Why did you conduct it in Essex County?

A Because Passaic County was at one time part of Essex County.

Q During the period over which this investigation covered?

A Yes.

Commissioner Donges. When was Passaic County set off?

Witness. Passaic County was set off from Essex County in 1837, I believe.

20

Q A map has been offered here in evidence and refers to an ordinance of the city of Paterson; did you find any ordinance to which this map refers?

A I did.

Q Where is it?

A It is recorded in miscellaneous records in the Passaic County register's office.

Q Have you a certified copy of that?

A I have.

30

Q And this is it? (Indicating.)

A This is it.

Mr. Minard. I offer this in evidence.

Commissioner Donges. This is an ordinance of the city of Paterson?

Mr. Minard. Paterson.

Witness. It covers all the streets as laid out by the Allen map, which is made under the direction of council.

40

George A. W. Achenback, direct.

Commissioner Donges. Is there any objection, Mr. Lewis?

Mr. Lewis. No.

(Same is marked Exhibit R-78.)

Q I understand this ordinance vacated in Section One, something like seventy or eighty streets in the city of Paterson, did it not?

10

A It did.

Q Including all the streets then existing which are mentioned in this petition?

A Yes.

Q And after it vacated all the streets it proceeded then to relocate and relay out those streets according to this map which has been offered here in evidence? Is that right?

A Yes, it did.

20

Q Have you prepared a statement of the history of each of the streets mentioned in this proceeding and based upon the map of 1850 and the map of 1852, which we have offered here this morning, embracing the facts which you ascertained in your investigation?

A I have.

30

Mr. Minard. This is prepared in what we considered a convenient form to offer. We can examine him on each of the streets separately and give you the data at any length that you may desire, and perhaps Mr. Lewis will have some suggestion to make, or agree to go ahead with that—or just hand in this statement.

Mr. Lewis. I would suggest if the witness will identify this as being his report, it be submitted subject to our investigation.

Mr. Minard. All right.

Commissioner Donges. Offer it, and if Mr. Lewis has no objection—

George A. W. Achenback, direct.

Q Is this your report on that investigation?

A It is.

Q All the facts set forth in this statement are true?

A Yes.

Q The dates shown have been checked up and verified have they not?

A They have. In the case of each street mentioned I have certified copies of the returns. 10

Q What is this other paper?

A It is a certified copy of an ordinance entitled, "An ordinance providing for the taking up, vacating and relaying of Clay street in the city of Paterson, passed July 24, 1886, and recorded in Miscellaneous Record, Book B, page 78, of the Register's Office.

Mr. Minard. I will offer that in evidence.

Mr. Lewis. No objection.

Commissioner Donges. It may be admitted and marked. 20

(Same is marked Exhibit R-79.)

Q I notice in this report you refer frequently to the 1850 map; for instance, at the beginning of the statement regarding Clay street, it appears on the 1850 map; by that map do you mean the old map which we have introduced here this morning?

A Yes.

Q When you refer to the Allen map, as you do in cases, you refer to the second map introduced here this morning? 30

A I do.

Commissioner Donges. The summary of witness may be marked as an exhibit subject to verification and cross examination.

(Same is marked Exhibit R-80.)

Q I have a batch of returns. These are returns which you found in the county clerk's office, relating 40

George A. W. Archenback, direct.

to this situation, affected by this ordinance, is that right?

A Not all in connection with that ordinance. These returns are official returns of the courses and distances of each street as I found it, official returns used, in the vicinity of the right of way of the railroad company.

10 Q And the date of recording?

A Yes, sir; most of them refer to the Allen map of 1852.

Q Will you just read the title of those returns? I don't suppose you need to read anything else into the record.

Commissioner Donges. Let each be marked separately.

20 *Witness.* Certified copies of the returns of courses and distances of Madison avenue in the vicinity of Paterson between Main street and Erie Railway.

Commissioner Donges. There is no objection?

Mr. Lewis. No objection.

Mr. Minard. Is there a date when it is recorded; put in the date of recording.

Commissioner Donges. Then all may be marked.

Mr. Lewis. All are certified copies.

30 *Witness.* The date is March 27, 1871.

(Same is marked Exhibit R-81.)

Witness. Certified copy of returns and courses and distances of Straight street in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-82.)

Witness. Certified copy of returns and courses and distances of Clay street in the city of Paterson, dated February 11, 1870.

40 (Same is marked Exhibit R-83.)

George A. W. Achenback, direct.

Witness. Certified copy of returns and courses and distances of Clay street in the city of Paterson, dated July 14, 1856.

(Same is marked Exhibit R-84.)

Witness. Certified copy of return of courses and distances of Cedar street in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-85.)

10

Q Is the date of return and date of recording different?

A Well, the date of recording is subsequent to the date of return. In several cases the date of recording doesn't appear, just the date of return is given.

Witness. Certified copy of return of courses and distances of Market street in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-86.)

20

Witness. Certified copy of return of courses and distances of Willis street, which is now Park avenue, in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-87.)

Witness. Certified copy of return of courses and distances of Ellison street in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-88.)

30

Witness. Certified copy of return of courses and distances of East Van Houten street in the city of Paterson, now Van Houten street, dated October 20, 1852.

(Same is marked Exhibit R-89.)

Witness. Certified copy of return of courses and distances of Broadway in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-90.)

40

George A. W. Achreback, direct.

Witness. Certified copy of return of courses and distances of Fair street in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-91.)

10 *Witness.* Certified copy of return of courses and distances of Fair street in the East Ward, city of Paterson, between Bridge street and Straight street, dated March 7, 1864.

(Same is marked Exhibit R-92.)

Witness. Certified copy of return of courses and distances of Division street, now Hamilton avenue, east of Bridge street in the East Ward, city of Paterson, dated December 19, 1859.

(Same is marked Exhibit R-93.)

20 *Witness.* Certified copy of return of courses and distances of Division street, now Hamilton avenue, dated October 20, 1852.

(Same is marked Exhibit R-94.)

Witness. Certified copy of return of courses and distances of Lafayette street in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-95.)

30 *Witness.* Certified copy of return of courses and distances of Franklin street in the city of Paterson, dated February 11, 1870.

(Same is marked Exhibit R-96.)

Witness. Certified copy of return of courses and distances of Keen street in the city of Paterson, dated February 11, 1870.

(Same is marked Exhibit R-97.)

Witness. Certified copy of return of courses and distances of Warren street in the city of Paterson, dated February 11, 1870.

(Same is marked Exhibit R-98.)

40 *Witness.* Certified copy of return of courses

George A. W. Achrauback, direct.

and distances of River street in the city of Paterson, dated October 20, 1852.

(Same is marked Exhibit R-99.)

Witness. Certified copy of return of courses and distances of Putnam street in the City of Paterson, dated February 11, 1870.

(Same is marked Exhibit R-100.)

Q What have you to say as to these returns being all the returns affecting the streets involved in this proceeding? 10

A The certified copy is the first return of the record covering the streets in the location of the right of way. There are subsequent layouts of these streets which change various courses and extend them.

Q Were there any that you were unable to find in checking these streets?

Mr. Sumner. Any original returns? 20

Mr. Minard. Yes.

Q Or if so, are they stated in there, any you weren't able to find?

A Any that I was unable to find are set forth in here (indicating).

Q Do you recall any now?

A No, I do not.

Mr. Minard. I ask permission to take the certified copies and have copies made for the different parties, for the city, and so on, which we haven't been able to get copied yet; the same as the ordinances. 30

Commissioner Donga. Very well.

Q When you speak of an ordinance in this resume of yours, or statement, do you refer to this ordinance here which we have offered in evidence, Exhibit R-78?

A I do.

Mr. Minard. Cross examine.

Mr. Lewis. No questions.

George A. W. Achenback, direct.

Q Wherever this statement of yours refers to maps other than the two maps offered in evidence to-day, is the statement based on your personal examination of those maps?

A It is. I have copies with me of two maps that are referred to in this statement.

Q They are on record?

10 A No, those two maps are not on record. Those are old maps that were found.

Q (*By Mr. Lewis.*) Do you refer to any maps except those maps in evidence now?

A With the exception of these two. These maps are entitled on the maps, property of John N. Terhune.

Q (*By Mr. Minard.*) Those maps haven't been recorded, and there is nothing to stamp them as official?

20 A No. They were maps I found in the office of the Erie Railroad Company.

Q Probably real estate sales maps?

A Yes.

Q (*By Mr. Lewis.*) Isn't the map of John N. Terhune on file in Passaic County?

A I couldn't find it, not this particular map.

Q (*By Mr. Minard.*) Your object in this matter was to get the earliest evidence of existing streets at their original laying out?

A It was.

30 *Mr. Minard.* That is all.

GEORGE A. W. ACHENBACK, recalled on behalf of Erie Railroad Company.

Q Mr. Achenback, on the 1850 map you found dotted lines?

A Yes.

Q What does that refer to?

40 A The dotted lines are merely proposed streets. I found from searching the title of the various properties through the Paterson & Hudson River Railroad

George A. W. Achenbach, direct.

and the Paterson & Ramapo Railroad rights of way, those streets shown by dotted lines did not exist; there was no record in the surrogate's office or the clerk's office of those dotted lines.

Q The property description did not refer to them?

A No; just proposed streets.

By Mr. Lewis.

Q You merely concluded the dotted lines did not indicate streets because there was no reference to it? 10

A No reference in the deeds.

Q That is the only reason?

A The streets I found referred to in the deeds were shown in solid lines.

Q That is the only way you did reach that conclusion?

A Yes.

Q There was no reference in the deeds. How many deeds did you look over? 20

A I couldn't tell you the number; an enormous amount.

Q A great number?

A A great number, yes. I tried to cover all the property along the right of way, straight through the City of Paterson and outside the City of Paterson in Acquackanonk Township, which was at one time a part of Paterson. Practically all that property, or a great part I mean to say, was part of the Society of Useful Manufacturers. It is an interesting fact, in running down these records, a great majority of these deeds were not recorded until 1879. 30

Q (*By Mr. Misard.*) That indicates there were no sales of that property in the meanwhile?

A Practically none.

Q How many deeds did you examine, Mr. Achenbach, approximately?

A I haven't any idea. I never counted them. I examined every deed. 40

George A. W. Achenback, direct.

Q Roughly speaking, ten or one hundred or fifty or sixty?

A I should say it was more like two hundred.

Q In all those cases you found you could rely on the 1850 maps where the solid lines were as showing streets, that description in the real estate deed referred to those as streets?

10 A I did.

Q All cases you noticed dotted lines in the 1850 map, the real estate abutted what would be those streets if they existed, did not mention it, is that right?

A I found in the 1850 map reference to descriptions as shown by the deeds very accurately.

Q In the solid lines?

A In the solid lines.

20 *Commissioner Donges.* Conveyances on those streets by name?

Witness. Yes.

Commissioner Donges. And you found no conveyances—no description in conveyances on streets marked by dotted lines?

Witness. I did not.

Mr. Minard. That is as far as we are prepared to go on to-day.

Commissioner Donges. There will be something further?

30 *Mr. Lewis.* The city now has a plan to submit, which isn't ready yet, of course. I think it would be agreeable to Mr. Hobart and Mr. Minard to meet some day in the future when we could tell about when we could submit the plan. Fix a day when you are ordinarily going to sit, and then we will appear and say when we will be ready to submit the plan.

40 *Mr. Hobart.* Mr. Merrey talked to me of that yesterday that he has some plan that was not

George A. W. Achenback, direct.

ready. I suggested to him, subject to the board's correction in the matter, that that might be done on the thirteenth of February. Just say what he would have to say, and they wouldn't have any testimony at that time.

Commissioner Donges. We could give your case a place now.

Mr. Lewis. We could say on February 13th.

Commissioner Donges. It is understood at that time that it will be necessary to take an adjournment.

Mr. Lewis. There will be no hearing?

Commissioner Donges. No hearing at that time.

Adjourned until Friday, February 13, 1914, at the Court House, Newark, N. J., at 10.30 o'clock A. M.

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Opening.

TENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Thursday, May 21, 1914.

10 PETITION—PATERSON FOR ALTERA-
TION OF GRADE CROSSING ON LINE
OF ERIE RAILROAD COMPANY. }

Before Commissioner Ralph W. E. Donges. F. H. Sommer, Esq., Counsel.

For the City of Paterson appears E. F. Merrey, Esq.

For the Erie Railroad appears George S. Hobart, Esq., and D. E. Minard, Esq.

20 For the Switch Owners Association appears W. B. Gourley, Esq.

30 *Mr. Merrey.* On behalf of the City of Paterson we intend to offer this morning a plan providing for the elimination of the grade crossings petitioned for by that city. We don't think it is our duty that we are obliged to submit a plan of this kind and we don't say it is the best plan that could be devised. However, it is a workable plan and it would be serviceable if the company desired to use it. If they can produce a better plan we would be delighted to have them do it and we only offer this as a suggestion to the commission as to what can be done.

Commissioner Donges. You offer it as a feasible and workable practical plan?

40 *Mr. Merrey.* Yes. We don't say the man who has prepared it has had the greatest experience in railroad work, we don't say the estimate we will give you as to the cost is an absolutely certain one. However, all these matters are open to criticism by the company, who have in their employ

Henry Ryon, direct.

a great number of engineers with long experience in this matter and also some experience probably as to the cost of doing the work, but we felt the hearing had come to a point where it would be well for us to offer such a plan as this as an assistance to the commission in solving this question and I make these remarks to show the character of plan we offer and the reason for which we offer it. 10

HENRY RYON, sworn on behalf of petitioner.

Direct examination by Mr. Merrey.

Mr. Merrey. A copy of the plan was furnished to counsel for the railroad company only a short time ago, within the last two or three days.

Mr. Hobart. Yesterday.

Mr. Gourley. I didn't get any at all.

Mr. Merrey. We will furnish Mr. Gourley with a blue print and will also furnish the commission with an extra copy, or if you say how many you desire— 20

Commissioner Donges. Two, I think, will be sufficient.

Q Mr. Ryon, what is your profession?

A Civil engineer.

Q How old are you?

A Thirty-four.

Q Have you graduated from any technical school or college? 30

A Cornell.

Q Have you a degree?

A A degree of C. E.

Q When did you get that?

A In 1905.

Q Have you had some experience in railroad work?

A I worked on the Erie for a short time. 40

Henry Ryon, direct.

Q Whereabouts?

A On the cut-off at Middletown.

Q What other work have you done?

A Principally municipal work, street paving, sewers and water works in different parts of the eastern section of the United States.

10 Q How long have you been engaged in that character of work?

A Since my graduation, about nine years.

Q Have you made a plan for the elevation of, or for the elimination of certain grade crossings in the City of Paterson on the line of the Erie?

A I made a survey of the present conditions and suggested the changes to eliminate the grade crossings.

Q Under whose supervision were you working?

20 A The supervision of the city engineer of Paterson, Mr. Harder.

Q What force did you have?

A There were three men working under me, an instrument man and two rod men.

Q Who was the instrument man?

A Mr. Fuller.

Q Is he a graduate of any school?

A I believe so.

30 Q I show you a series of blue prints fastened together and marked "Erie Railroad, Paterson, N. J., Present" and ask you what that is?

A That is a blue print map showing the present conditions of the Erie Railroad tracks through Paterson, New Jersey.

Mr. Merrey. I ask that be marked as an exhibit.

Commissioner Donges. It will be admitted and marked.

40 (Map marked Erie Railroad, Paterson, N. J., Present received and marked Exhibit P-45.)

Henry Ryon, direct.

Q I show you a second series, marked "Erie Railroad, Paterson, N. J., Proposed" and ask you what that is?

A That shows a proposed layout of the road to eliminate certain grade crossings.

Mr. Merrey. I ask that be marked.

Commissioner Donges. It will be admitted and marked.

10

(Map marked Erie Railroad, Paterson, N. J., Proposed, received and marked Exhibit P-46.)

Q I show you a third set of blue prints marked "Erie Railroad, Paterson, N. J., Profile"; what is that?

A That shows the profile of the present railroad as it is at present, also the proposed, on the same sheets.

Mr. Merrey. I ask that be marked.

20

Commissioner Donges. It will be admitted and marked.

(Map marked Erie Railroad, Paterson, N. J., Profile, received and marked Exhibit P-47.)

Q I ask you to explain the changes that you propose in these plans. Start at the south end of the city and proceed toward the northern end.

Mr. Gourley. May I ask how many plans there are?

Mr. Merrey. There is one plan.

30

Q I ask you if there are alternate plans included in this?

A There are alternate plans.

Q As I understand, there is a method by which the elevation could start nearer the center; instead of starting and taking in Madison avenue at the south end, it may just miss Madison avenue and start in where the Newark Line Railroad runs in?

A Yes.

40

Henry Ryon, direct.

Q And the larger plan includes running down to grade across the Passaic River at Hawthorne at the northern end?

A Yes.

Q The alternate plan running to grade in the vicinity of Fifth avenue?

A Yes.

10 Q (*By Commissioner Donges.*) Are the plans shown on separate sheets?

A On the same sheet.

Mr. Merrey. But it is cut into sections, I understand.

Q So each plan is easily distinguishable?

A The lines are made different, one in a dashed line and one in a dotted line.

20 Q (*By Mr. Merrey.*) Taking up the plan marked "Profile," since we start at the southern end of the city, Exhibit P-47; there is a line marked here "Profile," showing the present grade; it is a solid line with cross hatching; that is the present profile of the road as it now runs?

A Yes, sir.

Q That runs through, your line shows from the city line at Crooks avenue?

A Yes.

30 Q The first sheet runs down as far as the point where the Newark Branch of the railroad joins the main line, that is so?

A Yes.

Q At a point near Gould avenue, breaking away from the profile, is another line which is a long dash line, underneath shaded with pencil, what is that?

A That shows the proposed grade for the elimination of the Madison avenue grade crossing.

Q I notice another line, a siding?

40 A That one shows a possibility of a siding reaching the Leslie Elliott Company.

Henry Ryon, direct.

Q (*By Mr. Minard.*) That is indicated slightly west of Thomas street on the map?

A Yes.

Mr. Minard. The southern end is known as east and the northern end is known as west?

Commissioner Donges. They are the railroad directions?

Mr. Minard. Yes.

Q (*By Mr. Merrey.*) You have marked where each street of the City of Paterson crosses this profile, have you not? 10

A Yes, sir.

Q Showing Grove street, Goshen street, Gould avenue, George street and Thomas street?

A Those are not necessarily physical crossings.

Q But show the position of the map of the city?

A Yes.

Q These streets mentioned there run to the right of way? 20

A Run to the right of way.

Q And I think, in the case of one, Gould avenue—

A Gould avenue, and I think Grove street have actual physical crossings.

Q When we go west and reach Madison avenue shown on the map, you have an elevation there; what is that?

A In order to avoid cutting too deeply with the railroad, the plan shows the street itself elevated to some extent, about twelve feet, I should say, roughly. 30

Q Below this profile line you have shown several street crossings that shows the physical condition going away from the railroad?

A Those show the profiles of the street running to the railroad, and in the case of Madison avenue and Crooks avenue, across the railroad.

Q And showing the elevation proposed for Madison avenue to carry it across?

A Yes, sir.

Henry Ryan, direct.

Q The alternate plan for the eastern end of the right of way is shown on this first sheet, is it not, of this exhibit we are considering?

A This sheet shows the elimination of Madison avenue by a cut. This cut will run out somewhere near the Newark branch.

Q On the west, and on the east it would run out?

10 A Out about Gould avenue. That would be entirely independent of the other elimination.

Q So the plan as proposed by you might be carried through either by making a cut for the railroad crossing where Madison avenue now is or by raising Madison avenue entirely?

A Leaving Madison avenue as a grade crossing, not eliminating it.

Q Marked on this map you have proposed, with a per cent. sign after them, along the profile; what is
20 that?

A They give the per cent. of grade of the track.

Q It occurs on the present line, the present profile and the proposed one, does it not?

A Yes, sir.

Q So that under your plan the work may be done without making any change, on sheet 1, except on the western end of it?

A Yes, sir.

Q Taking up sheet two, proceeding there to the west; that shows on the west side of the sheet where
30 the Newark branch comes in to the main line, joins the main line?

A Beginning about where the Newark branch comes in.

Q And also shows Straight street; is that part of the alternate plan or the plan itself?

A This would be necessary to all the plans.

Q How does it show Straight street treated?

A Straight street, the street itself is cut down and
40 the railroad raised.

Henry Ryon, direct.

Q How deep, how much of a cut?

A The cut is about seven feet, I should say by looking at it. I can tell by scaling, the cut is about five and a half feet.

Q How much is the railroad raised at that point?

A About nine feet.

Q This sketch also shows the profile as at present and as proposed by you?

A Yes, sir. 10

Q And is indicated in the same way on all these sheets?

A Yes, sir.

Q Clay street; what is done at that point?

A Clay street is treated in the same manner as Straight, the street is cut about five or six feet and the track elevated about nine feet.

Q At Taylor street, I understand Taylor street is not now opened?

A No, sir. 20

Q You propose to open it, do you?

A I propose to open Taylor and close Cedar street.

Q Is that necessary for any reason?

A Not necessary, but convenient if the yard is to be kept where it is at present.

Q (*By Commissioner Donges.*) The railroad freight yard do you mean?

A The freight yard lies between Taylor and Market street. 30

Q (*By Mr. Merrey.*) That will appear more clearly, will it not, from the plan?

A It will show on the plan and shows here. We have got to come down from the main track elevated, to the yard at the present level, and if Cedar street is left where it is, it will give a shorter incline to come down.

Q How high would be the roadbed above the present grade at Taylor street?

A Eight feet. 40

Jerry Ryan, direct.

Q How much below the present grade of the street will it be cut?

A There is no street there, you cannot exactly give that.

Q Comparing it—it is open however to the line of the railroad, is it not, at present?

A Yes.

10 Q How far will it be below the present grade of the railroad?

A Eight feet approximately.

Q Going down to Essex street?

A Essex street is the present overhead crossing, that is, the railroad goes over the street.

Q What do you do there?

A Simply raise the bridge.

Q How high would the bridge be raised at that point?

20 A Eleven feet.

Q Would there be any change made in the street itself?

A The idea was to widen out the street there. Essex street at present is very narrow.

Q Market street; what do you do there?

A The street is cut down a little less than three feet and the railroad rails raised sixteen feet.

Q Ellison street?

30 A Ellison street is cut a little less than a foot and the rails raised about sixteen feet.

Q Van Houten street?

A Is treated in the same manner as Ellison.

Q Broadway?

A Broadway, the same manner as Ellison, except that the cut for the street is approximately two feet and the raise of the railroad about fifteen feet.

Q Fair street?

A Fair street, the street is cut a little less than a foot and the railroad raised fifteen feet, about.

40 Q Hamilton avenue?

Henry Ryan, direct.

A In the same manner as Fair street.

Q Governor street?

A Governor street is at present an overhead crossing, the railroad goes over the street.

Q Any change made in the street anywhere?

A The street is not changed, the grades are simply raised.

Q How much?

10

A Seventeen feet.

Q Fulton street?

A Fulton street, the same as Governor, at present an overhead crossing.

Q Go onto sheet three. Montgomery street?

A Montgomery street is not opened across the railroad at present.

Q Do you open that street?

A That street is shown to be opened, Franklin street being closed.

20

Q How high is the railroad raised at this point?

A Seventeen feet.

Q At Lafayette street?

A At Lafayette street, the railroad is raised about fifteen feet and the street cut about four and a half feet.

Q That street is now opened, is it not?

A That street is now opened.

Q You intend to close Franklin street?

A Franklin street is shown closed.

30

Q Why do you show that?

A It was a little more convenient there, the way the tracks were laid out, and also due to the fact it gave a better distribution of streets to open Montgomery street and close Franklin street. Franklin street, according to the census given in the testimony before this commission has the least number of people crossing of any street in the city.

Q Keen street?

40

Henry Ryan, direct.

A The street is cut about one foot and the track elevated sixteen feet.

Q Warren street?

A Warren street is treated in the same manner as Keen.

Q River street?

A River street is cut three and a half feet and the tracks elevated fourteen feet.

10 Q From this point on you have two plans going to the west, have you?

A Yes, sir.

Q Take up plan one first; what do you do at Sixth avenue?

A Plan one cuts the street at Sixth avenue about eight feet and raises the railroad about seven feet.

20 *Mr. Minard.* I will call to the attention of the commission that those streets up there are not in this proceeding at all.

Commissioner Donges. Very well.

Q Fifth avenue?

A Is treated in the same manner as Sixth avenue, the street is cut nine feet and the railroad raise, I think, eight.

30 *Mr. Herrey.* Sixth avenue, although opened by city ordinance, is not actually opened, because the commission refused to the city permission to put in a grade crossing at that point. Fifth avenue is actually opened and used.

Q Would that plan call for changing the bridge across the Passaic river?

A This plan would necessitate the raising of the bridge across the Passaic river.

Q How much?

A About seven feet.

Q Where would you run back to present grade?

40 A Strike present grade just a little east, you call it, of the New York and Susquehanna Railroad.

Henry Rogers, direct.

Q And the same distance west of the river?

A Yes, sir.

Q The second plan calls for what?

A The second plan runs from a little beyond River street directly down to present grade at Fifth avenue. It gives a grade on the railroad of almost one per cent.

Q Taking up the question of your plan, did you consider excavating, lowering below street levels?

10

A Not to any extent. It didn't seem to be feasible at reasonable expense. There is no way of lowering, for instance, the river bridge, and to go below grade in the main part of town would necessitate cutting out several of the intermediate streets.

Q And those are important streets, are they?

A Yes, sir.

Q Where does the road reach its highest elevation?

A Just east of Madison avenue at the Cooke Locomotive Works.

20

Q Where is it lowest?

A It is lowest, I think, at Keen street.

Q Probably lowest at the river, is it not?

A Lowest at the river, yes, sir.

Q Are there many hills below that, or is there a gradual slope from the river up to Madison avenue?

A Several breaks in grade.

Q What is about the average grade from the river to Madison avenue at the present time?

30

A About one-half of one per cent. I should say.

Q What is about the highest grade?

A The grade of 78/100%.

Q In your proposed plan, do you make a higher grade at any place than that?

A Yes, sir.

Q In the second plan you have I understand, you did not?

A In the second plan, in raising the bridge there is one grade of 95/100%.

40

Henry Ryon, direct.

Q If you were to lower the railroad considering the condition of things, you would strike level grades somewhere around Broadway, would you not?

A What do you mean by level grade?

Q You strike present grade again of the streets, about at Broadway?

10 A That would depend upon what method you took to depress.

Q You consider, you say, that it would be a very expensive proposition to cut instead of elevating the railroad?

A Yes, sir, practically impossible.

Q Take up the set of prints called present plan, Exhibit P-45; this shows a plan, does it, of the streets and railroad at present?

A Yes, sir.

Q Showing every switch and siding?

20 A To the best of my knowledge, yes, sir.

Q Where does it begin?

A Begins at Crooks avenue at the southern end of the city.

Q You have put a little insert on the sheet in order to show from Crooks avenue to Knickerbocker avenue?

A Yes, sir.

Q And then the main plan—

A The insert fits directly from the end of the main plan.

30 Q From Knickerbocker to about Iowa avenue?

A Yes, sir.

Q This is to the east of Madison avenue, is it not?

A Yes, sir.

Q Have you shown the outline of buildings near the right of way on this plan?

A Yes, sir.

Q Pass then to sheet two; that commences at Madison avenue does it, or Iowa avenue?

A A little below Madison avenue, yes, sir.

40 Q And runs on from there?

Henry Ryon, direct.

A Up to Clay street.

Q Or Straight street?

A Yes, sir.

Q That shows the Newark branch of the railroad coming in and joining the main line, does it not?

A Yes, sir.

Q It also shows a large yard?

A Yes, sir.

Q Do you interfere with that yard by your proposed plan in any way? 10

A We do to some extent at the northern end—at the western end, I believe, is the term used.

Q In what way do you interfere with it?

A Interfere with the ladder track at the north end of the classification yard.

Q The third sheet shows the right of way from Clay street at the west to Van Houten street in the east, does it not?

A Yes, sir. 20

Q And shows the present situation of buildings—

A Yes, sir.

Q Near the right of way, also the depot at Market street and the property marked Morris & Company, which I understand is owned by the railroad company?

A According to the right of way map,

Q And also the Fuller Express?

A Yes.

Q And the Hammond Beef Company?

A Yes. 30

Mr. Merrey. I understand it was testified, that was owned by the railroad.

Q Sheet four shows the present plan of the road from about at Van Houten street at the east to Warren street on the west?

A Yes, sir.

Q Showing the buildings in the vicinity outlined on the lots?

A Yes, sir. 40

Henry Ryon, direct.

Q Then passing to the next, sheet five shows the present condition from Warren street on the east to the Passaic River on the west?

A Yes, sir.

Q And the last sheet shows the Newark branch?

A Yes, sir.

10 Q And shows it there—you show there where it joins the main line on the west?

A It is actually the east end of the line, the west end is out at Hazel street.

Q (*By Commissioner Donges.*) For the purpose of your testimony you are following the railroad directions instead of actual directions?

Mr. Merrey. The last sheet is reversed, and what we have been calling the east is shown on the west side.

20 Q Taking up Exhibit P-46, does this show a plan of the road as it will be if the proposed changes are made?

A The suggested plan for eliminating certain grade crossings, yes, sir.

Q This begins the same as the old plan and each sheet corresponds to the same sheet in the old plan?

A Yes, sir.

30 Q Except in the alternate plan there is no change on sheet one of this exhibit, is there; the first alternate plan showing the elimination of Madison avenue?

A The only change on this plan is, that necessary for the elimination of the Madison avenue grade crossing.

Q Would there be any changes in switches or sidings?

A If the Madison avenue crossing were eliminated it would affect the Leslie Elliott Company's switch.

Q In what way?

40 A The cut at their building would be approximately nine and a half feet. They would either have

Henry Ryon, direct.

to abandon their siding or else lengthen it so as to come up to grade.

Q That can be done?

A That could be done by lengthening the switch.

Q Do you show the change on your plan?

A Yes, sir.

Q Where is that—that runs back to near Maryland avenue?

10

A Yes, sir.

Q Any other change made on this sheet?

A No, sir.

Q Take sheet two. Is there any change made on sheet two?

A On the plan eliminating Madison avenue it shows a cut up to the point marked cut-fill, about the centre of the sheet.

Q If you did not eliminate Madison avenue then there would be no change whatever east of that point?

20

A East of that line, no, sir.

Q The plan then contemplates the beginning of the elevation at that point?

A Yes, sir.

Q How much—do you elevate all the tracks, sidings and switches or principally the main track?

A Elevate the main tracks.

Q And your profile refers to the main tracks?

A Yes, sir; they also show some of the sidings, the principal sidings.

30

Q Is there any change made in this yard, shown on sheet two?

A One track is left out, one track on the side of the yard next to the main track, in order to get a back from the main track down to the present elevation.

Q Otherwise that yard is retained?

A No, the ladder at the north end is moved, so as to come up to the main track; it shortens the classification tracks.

40

Henry Ryon, direct.

Q Is there any change made in the Newark branch road?

A For a short distance in order to get down to grade. The Newark branch at present raises from the main tracks.

10 Q So it would be necessary to elevate it slightly to get it up to the contemplated grade of the main track?

A Yes, sir.

Q Is there any other change made in the vicinity of Clay street so far as it affects sidings?

A So far as it affects sidings; the siding of Robert McDonald is eliminated. That is necessary, because Straight street is cut down, no way of crossing the street.

Q The siding into the Commercial Lumber and Millwork Company?

20 A That could be gotten in. That would have to be depressed from the present elevation, on account of the cut in Clay street.

Q Any changes of sidings into the Passaic Steel Company?

A They are not affected; they come off the Newark branch.

Q Are there any other sidings on this map affected in any way, this sheet two?

A No, sir; I believe not.

30 Q Is there any service to the Dexter Lambert & Company, shown here?

A They have no siding I know of.

Q Going to sheet three, starting on the western line, are there any changes made there? I notice another siding of Robert McDonald, that is not the same as mentioned on sheet two?

A That is not the same siding. I believe that name is different on the Erie map.

Q What name is on there?

40 A I have taken the name of the siding, it is the

Henry Ryon, direct.

same building. The name on the building is Robert McDonald; marked Zabriskie on the railroad map.

Q That siding is not interfered with?

A That siding will be interfered with. It will be necessary to raise it and probably relocate it, the same as all other sidings in the same block.

Q Between Clay and Taylor streets?

A Yes, sir.

10

Q That will refer to the one running into the Standard Oil Co.?

A The Standard Oil Company, the National Wood Company, M. Goble and C. Kelley.

Q Are there other sidings there?

A The present tracks serve all the properties at grade. They would have to be raised and relocated.

Q Will it make any change in the switch that runs into their property?

A Yes, sir, they cannot get down to grade.

20

Q I notice here west of Taylor street some more service to the Standard Oil Company; is that interfered with?

A It will necessitate their going across the house tracks of the freight house.

Q Any change made in the freight house?

A No change made in the freight house, except the tracks must be approached on a zig-zag instead of direct from the main tracks.

Q I notice a switch running from Greene street; any change? 30

A Not affected.

Q The siding to Samuel Smith & Sons Company?

A Not affected.

Q I notice a dotted line showing a building apparently marked Morris & Company; what is that?

A That is simply a suggested location for Morris & Company. In laying out the new depot, it eliminates Morris & Company's building.

40

Henry Ryon, direct.

Q They will have to seek a new location, and that is the suggested location.

A That is simply the suggested location.

Q Are there any other sidings affected on that side of the right of way, between Greene street—

A No siding, except the tracks of the yard will have to be rearranged.

10 Q Will it interfere with the service of this yard?

A Not materially; it may shorten their trackage.

Q Does it elevate it?

A Elevate it about a foot.

Q What change is made as far as James Wilson & Son is concerned?

A James Wilson will not be affected.

Q There is no service now to the Watson Machine Company?

A No, sir.

20 Q Nor to the Barnett mills or the Dale mills?

A No, sir.

Q Taking the other side of the right of way, McNab & Harlan have some service?

A The switch leading from the main track to their tracks will have to be lengthened in order to get down from the new grade to the present grade.

Q They can be served at present grade?

A Yes, sir.

30 Q The Graham Brewing Company, the Bon Arbor Chemical Company, the National Biscuit Company and McNab & Harlan's second place?

A All on the same plan.

Q The Paterson Consolidated Ice Company?

A All on the same siding.

Q All will be served as at present?

A Yes, sir, except the lengthening of the switch.

Q They will be served at the present grade?

A Yes, sir.

40 Q Most all their switches are in Ramapo avenue, are they not?

Henry Ryon, direct.

A I don't know whether that is a public street or not. It would be Ramapo avenue according to the maps.

Q Would the Standard Oil Company be served at the same grade?

A No, sir, cannot be.

Q Will the freight house be served at the same grade?

A Yes, sir. 10

Q Eastward, the other places along Ramapo avenue from Essex street to Market, are not served at the present time?

A They have no sidings.

Q I notice near Market street at a point about where the present passenger station is, you have marked "Fullers Express"?

A That is the same as Morris & Company, a possible location for Fullers Express Company. They will necessarily have to move because no siding can be put in for them. 20

Q Do you think it is possible to maintain the present depot with this elevation?

A There is a difficulty in maintaining the present depot at that location on account of the fact that no platform can be obtained on the east side of the track. The street is only twenty-five feet wide, and there is no possible means of having a platform on each side of the track. It would mean that all the passengers for westbound trains would have to walk across the track, walk across the track of the eastbound train to get to the train. 30

Q Where do you suggest for the depot?

A We have therefore located the depot on what in railroad direction is the west side of Market street.

Q Just change it across the street?

A Just across the street. That allows a platform on each side of the track and allows a rail between the tracks. 40

Henry Ryon, direct.

Q That is right at the point where the New York, Susquehanna & Western Railroad touches the Erie?

A Yes, sir, practically.

Q Right at their station?

A Right near their station.

Q There might possibly be a combination of stations there, might there not?

10 A It is possible, yes, sir.

Q That would cause the elimination of Morris & Company's present building?

A It would, yes, sir.

Q The right of way then at the west of Market street is not any greater than it is east?

A The right of way, no, sir.

Q But there is more room at the side towards Ramapo avenue, west of Market street?

A Yes, sir.

20 Q Will there be an interference with the service to the Paterson Beef Company?

A Yes, sir, that siding will be eliminated entirely.

Q How about the service to the Herrman Company and the Daisy Canned Goods?

A They can be served but would have to be served about fourteen or fifteen feet higher than the present elevation.

Q There is a mill marked Rodgers Mill, how would that be served?

30 A It will have to be eliminated, unless the building is reconstructed. At present the siding comes under the building.

Mr. Merrey. It isn't used at all, it is a vacant building now.

Q Sulzberger & Sons Company?

A In the same condition; it would be necessary to raise the siding about fifteen feet.

40 Q Passing on then to west of Van Houten street; there is no service between Van Houten street and Broadway?

Henry Ryan, direct.

A No, sir.

Q And none between Broadway and Fair street?

A No, sir.

Q A little west of Fair street there seems to be a siding running off to John Agnew Company?

A Yes, sir.

Q Is that changed?

A It would have to be raised.

Q That can be done without difficulty, can it not? 10

A I don't know about the difficulty, it would be necessary to raise the coal trestle.

Q And give them room for larger pockets if they raised it?

A They have no pockets there now, possibly could put pockets under them.

Q How much would it be raised?

A About ten feet.

Q There is another switch running off, is that part of the Agnew switch running near Governor street? 20

A Yes, sir.

Q That would have to be raised?

A Yes, sir.

Q And now elevated?

A About twenty feet.

Q That would have to be raised how much?

A That depends on the grade they would run into it on; probably raised about ten feet.

Q Any interference with the Brewing & Malting Company? 30

A That siding would be raised fourteen feet.

Q Would that interfere with the service to them?

A I don't know exactly what their requirements are.

Q Armstrong & Son?

A Armstrong & Son would have to be raised and put on a trestle. They are a coal yard, at grade now. That would be raised about fifteen or sixteen feet.

Q Fullerton & Company?

Henry Kyon, direct.

A Would have to be raised about sixteen feet, a meat house.

Q Leydecker?

A A grain house, would have to be raised about fifteen feet.

Q You have gone over the testimony given in this case by the various switch owners, have you not?

10 A Yes, sir.

Q And tried to accommodate their wants as well as you could?

A When it was possible.

Q There is a siding here to Armour & Company near Hamilton avenue; any change made there?

A That will not be affected if a long siding is put in to serve all the sidings along there.

Q Katz Brothers Brewing Company?

A The siding will be moved nearer the street.
20 May make some difficulty in getting up there.

Q How high will it be raised?

A Not raised at all; pushed out thirteen feet nearer the street.

Q The Diamond Coal Company?

A The siding raised about five feet.

Q There is another one, the P. S. Van Kirk Company?

A The point of switch of that siding will be raised about two feet.

30 Q Will be served practically at the same level as they are now?

A Yes, sir.

Q One in to A. H. Smith?

A That will have to be raised, I think, about twelve feet.

Q Meyer & DeVogle?

A Meyer & DeVogle will be raised about fifteen feet.

Q That is a grain house?

40 A A grain house, yes, sir.

Henry Ryan, direct.

Q Is the Sipp Machine Company served at present?

A They have no siding.

Q Ashley & Bailey?

A No, sir.

Q Sheet five; I notice two switches into the Public Service Corporation between Putnam and Lyon street; are they interfered with?

A They will have to be altered somewhat in their line near the street. 10

Q There is a depot at River street, is it not?

A Yes, sir.

Q Called the River street depot?

A Yes, sir.

Q You make a change in that, do you?

A We simply raise the depot up and put a platform on each side of the tracks.

Q And one of those platforms interferes with the present freight station? 20

A Does not interfere with the present freight station, interferes with the siding running off to the Public Service Corporation.

Q That would have to be changed a little?

A Would have to change part of that siding.

Q They could be served at the same grade?

A Yes, sir.

Q The switch running into J. Van Den Hendel?

A Not affected at all. 30

Q Swift & Company?

A Not affected.

Q Henry M. Post?

A Not affected.

Q The National Silk Dyeing Company?

A The same as at present.

Q Ashley & Bailey?

A Not affected.

Q The Grasselli Chemical Company?

A The siding will be affected. It comes in at present. 40

Henry Ryan, direct.

ent from the west and runs along the south side of their building. To reach them at present, would have to come in from the east and run along the east side of the building, and would necessitate some changes in their construction.

Q One shown running into Auger & Simon?

10 A There was one but it must be eliminated on account of the depression of Sixth avenue.

Q It is not used at the present time?

A The switch stand is not there.

Q They are to be changed up to the National Silk Dyeing Company?

A I believe it is the same concern.

Q The same concern and getting ready to change. The present switch you spoke of, Auger & Simon, has been abandoned, has it not, the one near Sixth avenue?

20 A From appearances it seems to be abandoned, yes, sir.

Q One running in here below the Center Paper & Box Company?

A That will be raised about four feet.

Q The service to the Weidman Silk Dyeing Company?

A Left at the same line, raised about seven feet.

Q Is there a switch into LaPat?

A A switch to that property.

30 Q Is that affected?

A Not materially; shifted a little to the east.

Q The Nicholson File Company?

A The switch would have to come in from the west instead of the east and raised about two feet.

Q On the same side of the road there is some service into the Weidman Silk Dyeing Company; a coal yard?

A The coal yard, yes, sir.

Q Any change in that?

40 A The switch where it leaves the main track will

Henry Wiggin, direct.

be raised a little bit, the siding proper will not be affected.

Q West of Fifth avenue, there is one on the same side, to Weidman?

A Yes, sir.

Q Is that changed any?

A Raised about seven feet.

Q The Cooke Locomotive Company isn't changed any, is it? 10

A Not affected, they may have to rip-rap one of their banks to prevent it from sliding down.

Q The switch to Rogers Locomotive Company; is that affected in any way?

A No, sir.

Q That runs down Market street?

A That goes to the trolley tracks on Market street.

Q The National Biscuit Company, is that affected in any way? 20

A No, sir.

Q One marked E. M. Stiles on the company's map; is the one you had Commercial Lumber & Mill Work Company?

A Yes, sir.

Q There are two switches on the company's map, marked A. H. Smith. I think you only spoke of one; look at it and see if there is any change made in the second one?

A There is a switch to the north side of Franklin street, that will have to be raised about fourteen feet. 30

Q That is adjoining Fullerton Company?

A Next to Fullerton Company, marked on the Erie map as A. H. Smith.

Q Where is the switch of the Passaic Water Company?

A They are down near the storage yards.

Q Is that interfered with?

A No, sir.

Q The Hamilton Lumber Company? 40

Henry Ryon, direct.

A Down near the storage yard, not interfered with.

Q The one you referred to as Van Kirk?

A The point of junction with the main track is raised about two feet, gives them a little steeper grade.

10 Q The Paterson Vehicle Company, that is practically eliminated?

A Eliminated, yes, sir.

Q Did you refer to the switch of Swift & Company?

A Yes, sir; not affected.

Q The one referred to on the company's maps as Southerland & Edwards Company; is that affected?

A No, sir.

Q There is a switch into Puglia & Gramatica?

A Down near the storage yard, not affected.

20 Q The Paterson Consolidated Ice Company?

A On the same switch as McNab & Harlan, not affected.

Q Van Winkle, Bromley Lumber Company?

A That is on the Newark branch.

Q East of Main street?

A Near Main street.

Q Is that affected?

A The Newark branch is not affected, no, sir.

30 Q The Waldo Silk Ribbon Company, do you know where that is?

A I mentioned that before.

Q That is not affected, is it?

A It is raised about four feet.

Q Have you made up any estimate of the quantities of excavation and other work that would be necessary in connection with this change?

A Yes, sir, we took all the quantities of excavation, fill and concreting and other material.

40 Q That is a matter with which you are quite familiar?

Henry Ryon, direct.

A Yes, sir.

Q Did you attempt to get the cost of this work in any way?

A We used unit prices to figure out approximate cost.

Q Where did you get those unit prices?

A Most of the prices were taken from the city engineer's office, for similar work around the City of Paterson. 10

Q Mr. Harder?

A Yes, sir.

Q Any other unit prices taken from similar work of this kind?

A The prices for bridges were taken from reported contracts and the same with some of the track work.

Q Did you take the price for any similar work of this character?

A We compared them with the reported prices for the elevation of the P. & R. in Philadelphia. 20

Q How long ago was that done?

A About three or four years, if I remember rightly.

Q Have you made up an estimate as to the cost of this work?

A Yes, sir, on that basis.

Q Will you produce it for us? Have you a summary there of the cost of the work?

A Yes, sir. 30

Q How is it made up?

A Made up in sections, from street to street, giving the cost, that is the estimated cost approximately, of the railroad work and street work and the total.

Q For your complete plan, what is the estimate?

A A total of \$2,587,000.

Q That is made up for railroad work, how much?

A \$2,302,850, and the street work about \$284,000. 40

Henry Ryon, direct.

Q If you were to leave Fifth avenue at the present grade?

Commissioner Donges. Is this under plan one or plan two?

Witness. This is a complete summary, that includes the elimination of Madison and Fifth avenue and the raising of the bridge.

10 Q Have you made an estimate of the plan leaving Fifth avenue at grade?

A Yes, sir.

Q How much is that?

A The total is \$2,351,000.

Q Leaving both Fifth avenue and Madison avenue at grade, the total?

A \$2,038,000.

Q The plan leaving Madison avenue at grade but raising Fifth avenue?

20 A \$2,273,000. That is round numbers, does not include the smaller figures.

Q Does this include property damage or operating cost due to interference with present schedules?

A No, sir.

Q Under the plan, will there be much property damage?

A That is a thing I am not competent to state.

Q The change of grades of streets is very little?

30 A The streets are cut in some instances but to no large extent.

Q You have the summary there and the detail?

A I have a detailed estimate.

Mr. Merrey. I would like to offer this summary and also the detail, and as this one is in pencil, I would like to take it with me and furnish you and the other side with a copy of it.

Commissioner Donges. Very well.

Mr. Merrey. I offer them now in evidence.

H. J. Harder, direct.

(Summary, cost of elevation, Erie Railroad, Paterson, N. J., and detail, received and marked Exhibit P-48.)

Commissioner Donges. A typewritten copy will be substituted.

Mr. Merrey. Yes, we will furnish them with that.

Mr. Hobart. If the commission please, it is quite obvious this is a matter of great magnitude, costing over two million dollars at least. Mr. Merrey was good enough to furnish us with a copy of the plans but our engineers did not get them until four o'clock yesterday. They made a hurried examination in the short time they had. This is the first time we saw the estimates at all and a matter of such great importance to both the railroad and the city, I was going to make the suggestion that it would seem to be proper that we might delay the cross examination until our engineers have had an opportunity to make a study of this situation. It is a matter of vital importance, it is very important, and I make a somewhat unusual request for that reason. 10 20

Commissioner Donges. It seems as if it is a reasonable request, under the circumstances.

Mr. Gourley. I have not seen them until this morning. 30

H. J. HARDER, recalled on behalf of petitioner.

Direct examination by Mr. Merrey.

Q Mr. Harder, have you examined these estimates made by Mr. Ryon?

A Yes, sir.

Q The unit prices there, are they, what can you say about them?

A Do you mean how they were arrived at?

Q No, the unit price per yard and so on, for excavating; from your experience, are they fair prices? 40

H. J. Harder, cross.

A They are fair prices, in fact, they are a little larger than we have been paying for similar class of work.

Q You do a great deal of excavating, concreting and filling, do you not?

A Yes.

Q Building walls and so on?

10 A Yes.

Q Work of this character, outside of the bridge work?

A Yes.

Q You say these prices are high as compared with what the city has been paying for similar work?

A Yes, the prices were used in that way, so as to make the estimate on the safe side.

20 Q (*By Commissioner Donges.*) In your judgment they are higher generally than probably would be paid for the work?

A Yes.

Q (*By Mr. Merrey.*) For instance, I notice there we have on cut, \$2 a yard?

A That is a rock cut in that section.

Q A concrete wall, \$7.50?

A Yes, the last concrete wall we built was \$6.50, around the cemetery.

Q You have gone over all these prices submitted by Mr. Ryon?

30 A Yes, sir.

Q And you think they are high enough to be on the safe side in estimating the work?

A Yes, sir.

Cross examination by Mr. Hobart.

Q Mr. Harder, you have not included in the estimates, any allowance at all for property damage?

A No, sir.

Q Have you made any such estimate?

40 A No, sir.

H. J. Harder, cross.

Q Haven't gone into that feature of it at all?

A No, sir.

Q You have not included any allowance for operating cost by reason of interference; anything of that kind?

A No, sir, I didn't think we were competent to arrive at that.

Q You never had any experience in that particular line? 10

A No, not in that line of engineering.

Q (*By Mr. Merrey.*) As far as property damage is concerned, will that amount to much?

A What I was going to say—

Q You are familiar with the expense, the property damage, and grading of streets, are you not?

A You refer to the change of grade of streets? These grades of streets are not changed materially except in one or two cases. 20

Q The city is constantly engaged in changing grades of streets, grading and filling?

A Yes.

Q And you are very familiar with the amounts allowed for that, are you not?

A Yes, we have done a lot of that work.

Q You are familiar with this plan as to the amount of changes of grade. Is there any material damage done to property by the change of grade?

A As I said, only in one or two cases where the grade is changed. 30

Q So far as the grade of street is concerned, the amount of damage is very small?

A I think it would be slight from that source.

Q Can you imagine any other kind of property damage done here by this plan?

A No, I don't know of any other.

Q (*By Mr. Hobart.*) You said you had not made any estimate of the property damage, and I understand now from Mr. Merrey's examination, that you 40

H. J. Harder, cross.

referred particularly to property damage due to the grade of streets. May I ask if you have included in these estimates any allowance for damage to the property of sidings, and owners of sidings, due to necessary changes in the sidings?

10 A No, those figures show—the first column here shows, the cost of the work to be done on the railroad, the second column shows the cost of the work to be done on the street. What the damages would be to property facing on the streets where these changes were made, I don't know. I could not arrive at that.

Q You have not attempted to figure out at present, what the damage would be in case certain sidings were eliminated?

A No.

20 Q Such as damage to business by reason of the elimination of the sidings?

A No, I could not arrive at that.

Q And haven't attempted to figure how much it would cost to make the changes in the sidings to conform with the new change in the railroad?

A That is all in the statement, the cost of making the changes of sidings.

Q All charged to the railroad?

A The statement of what we estimated it would cost.

30 Q Is it separated from the cost of the main line tracks?

A Yes, sir.

Q That appears?

A Yes, sir, that will all appear in this statement.

Q (*By Commissioner Donges.*) In the detail?

A Yes, sir.

40 Q (*By Mr. Hobart.*) Have you included in that any allowance for any necessary changes that might have to be made in the buildings of the various owners of these sidings?

H. J. Harder, cross.

A No, it was the cost of the sidings.

Q Just the siding alone?

A Just the cost of the siding.

Q Whatever buildings of the railroad company are changed, there is an allowance made for?

A Yes. You mean buildings like the Rodgers building spoken of?

Q Yes?

10

A No, no allowance for that.

Q Have you a detail there of the necessary changes in the Market Street Station of the Erie Railroad Company?

A It is in a lump sum.

Q How much is it? On the summary it shows \$140,000 for depot? Mr. Harder, do I understand that this estimate of \$140,000 for the depot includes both the Market street and River street depot; is that your understanding?

20

A Mr. Ryon made those estimates. It does.

Mr. Hobart. We may want to ask Mr. Harder some further questions at the next hearing. With that understanding, I think we will not go any further at this time.

Adjourned until Thursday, June 18th, at Kinney Building, Newark, at 10.30 A. M.

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40

W. H. Brameld, direct.

ELEVENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

Newark, N. J., Thursday, July 9th, 1914.

PATERSON GRADE CROSSING ELIMINATION, ERIE RAILROAD. }

10

Before Commissioner R. W. E. Donges.

F. H. Sommer, Esq., Counsel.

For petitioner appears E. F. Merrey, Esq.

For respondent appears G. S. Hobart, Esq.

For switch owners appears W. R. Gourley, Esq.

20

Mr. Hobart. At the last hearing I believe it was understood that we might have an opportunity to cross examine the city's engineer if we so desired. We have considered that question further and have decided not to cross examine.

Mr. Gourley. I have no questions.

Commissioner Donges. Is there anything further you wish to offer?

Mr. Merrey. No, sir.

30

Mr. Gourley. I would say on behalf of the switch owners I understood from the attorney of the Erie Railroad that his witnesses would take the greater part of the day. I will ask a further time when I may be heard.

Commissioner Donges. Yes.

W. H. BRAMELD resumes the stand on behalf of respondent.

Mr. Hobart. He had been sworn in this case.

Direct examination by Mr. Hobart.

Q You have already been sworn in this case?

A Yes, sir.

40 Q I believe you have already given your experience in the line of grade crossing work?

W. H. Braumfeld, direct.

A Yes.

Q I will ask you whether or not you have examined the plans and the scheme of elimination of the grade crossings in the City of Paterson as proposed by the engineer of the city at the last hearing in this matter?

A I have.

Q When did you receive the detailed report of the estimates and plans?

10

A I can tell you exactly from my correspondence.

Mr. Merrey. I presume that don't make any difference.

Mr. Hobart. I want to show how much time was spent on it.

Mr. Merrey. I think the results would show the time taken.

Commissioner Donger. We will permit him to state.

20

A I received it on June 24th.

Q And since that time how much time have you spent in the examination of the plans and estimates?

A Considerable. All that I could possibly get in and keep my regular work going, which probably amounted to several hours a day.

Q Now, will you kindly examine the plans which you have before you and refer to them in the course of your further testimony? I will ask you first with special reference to the profile plans; have you examined the profile plans with special reference to see whether it was a completed plan or otherwise?

30

A I have.

Q With what result?

A There are various changes which I think will have to be made.

Q Will you kindly take those up in detail as you examined them?

A In the first place, the profile—in investigating the plan the profile doesn't indicate, I do not believe, 40

W. H. Brumfield, *direct.*

the base of rail or top of rail which the profile shows. Of course, that would vary the floor depth that they show on the bridges.

Q What difference would it make?

10 A Probably five or six inches in the floor depth and the plan scale and figures of three feet floor depth, which would be a proper floor depth in most instances if the figures were on the base of rail, the clearance line of three feet from top of rail would only leave two feet six inches; it would not be sufficient to give a solid waterproof floor bridge.

Q Three feet is the recognized standard length?

A Usual depth where no other complications we would adopt as a standard and we are putting them in at that.

20 Q With particular reference to the depression of the tracks at and near Madison avenue, what have you to say as to that?

A As to the profile, I believe that most of the excavation will be in solid rock. That being the case, it is rather expensive. I believe it is possible to eliminate Madison avenue at much less expense by leaving the tracks as they are and raising the street entirely over the railroad.

Q In other words, elevating the street instead of depressing the tracks?

30 A Yes. In doing that I believe it is more advisable to move the crossing further west. The land is undeveloped on both sides and using a five per cent. grade would probably land you out the same place with the approaches, as they do with two and three per cent. grade they show; but by moving it further west the traffic, where the trolley is now, would go along just the same and it wouldn't disturb the general trend of traffic, only across the railroad track, but I believe it could be moved further west and I believe it could be done at considerable less expense. Roughly, I figured
40 that several years ago, and according to my recollection

W. H. Braumfeld, direct.

tion I don't believe it would come to more than \$100,000 or \$110,000.

Q Which is much less than the method proposed by the city?

A Yes.

Mr. Merrey. There are two methods.

Witness. For Madison avenue?

Mr. Merrey. Yes.

10

Witness. Not on the plan.

Mr. Merrey. One lets it alone.

Mr. Hobart. We were speaking of depression.

Q Of course, if you leave the crossing there it wouldn't be any expense to anybody, would it?

A No, sir.

Q (*By Mr. Merrey.*) Did you say the property was undeveloped on both sides?

A Both sides west of the railroad; the west side where the new viaduct would go.

20

Q Both sides of the railroad or both sides of the avenue?

A No, both sides of the railroad; parallel to the avenue on the westerly side the property isn't built up, just vacant lots.

Q It is built on the easterly side?

A Easterly side, the locomotive works and a dwelling.

Q (*By Mr. Hobart.*) Is the five per cent. grade of the street anything unusual or out of the ordinary?

30

A No.

Q For the street purposes do you think the modified plan you propose would answer the same purpose as the city plan for depression?

A I believe so, yes.

Q Now, calling your attention further to Madison avenue, what distance, according to the plan, was provided from the centre of the track to the side of the wall?

40

W. H. Brameld, direct.

A The plan shows nine feet six inches.

Q That is for depression?

A For the depression.

Q What have you to say whether it is sufficient or not, and if not, why not?

10 A I do not consider it sufficient to accommodate the drainage; putting a track in a rock cut, naturally all the drainage will follow along the track and a cut the length of this will accumulate considerable water. I believe sufficient room should be left for a ditch, probably between eleven and twelve feet and also the track into the locomotive works, and also the approach of the track to the Leslie Elliott Company's property. The distance from the centre of the track to the outside wall is shown as seven feet; with the railing that would have to be erected on the wall to protect the switch-
20 man, it would probably take six inches from that; considering a car ten feet wide would only leave one foot six inches for the switchman to do work between the railing and the car, which I don't think is sufficient.

Q Why is that insufficient? Unsafe?

A Unsafe.

Q With further reference to Madison avenue, what is the clearance as indicated on the plan of depression?

30 A The clearance is indicated as twenty feet for the under side of the bridge, but I, on account of not knowing whether the profile shows the top of the rail or base of the rail—our standard is twenty-two feet above base of the rail, the under side of the bridge.

Q That is twenty-two feet of clear space between the base of the rail—

A Base of the rail and under side of the bridge, the clearance for steam territory, and twenty-four feet six inches for electrified territory.

Q So, if we ever have a trolley line at that point the clearance should be even more?

40 A If the railroad company should be electrified it should be more.

W. H. Brameld, direct.

Q Referring to the section on the Newark branch junction shown by these plans, what would be the effect of the carrying out of the plan as proposed with reference to the track of the Newark branch at the west of Clay street?

A That eliminates one track from Newark branch junction into the yard west of Clay street.

Q And about what would be the length of track that would thus be eliminated? Have you figured that? 10

A No, only between those two points. Probably twelve hundred or thirteen hundred feet.

Q Now, referring to the same neighborhood, I would like to ask, the property on the other side is Robert McDonald's?

A The property of Robert McDonald's, as testified by the city engineer, is eliminated.

Q Now, referring to the profile map again with reference to the sidings east of Straight street, what have you to say as to the clearance as shown on the profile map? 20

A Evidently the profile is drawn without any provision for a vertical curve; the grade being shown as starting at about the point of the frog on a change of grade of one per cent. for one track and two per cent. for another. It is absolutely necessary to provide room for a vertical curve.

Q Why is that necessary?

A On account of the cars uncoupling.

Q Well, on the map as it stands, could the cars be operated? 30

A No, they would break apart. This train would break apart just as you went over the joint.

Mr. Merrey. If the commission please, I make this objection at this time so we may save time. The witness is starting to criticize a preliminary set of plans as if they were working drawing plans for the construction. Little details of this kind are expected to be intelligently worked out in the 40

W. H. Brameld, direct.

working drawing. It seems to me we shouldn't go into inconsequential details. From the amount of notes the witness has before him, it will take several days. As the commission's time is limited, too, and this will be protracted over months, we object to that.

10 *Commissioner Donges.* If you mean that the objections or criticisms of this witness are directed to those things which occur to him as he found them in the plan submitted by the city, I don't see how very well, in view of the fact that the city submitted the plan in the first place as a workable preliminary plan at any rate, we should say to this witness he could not point out what appears to him as defects. Particularly as this commission outlined the plan to be adopted if the grades were to be separated at this point, it must have
20 the benefit of all suggestions it can get.

Suppose the commission should conclude the grades should be separated and should adopt the plan submitted by the City of Paterson—

Mr. Merrey. I don't pretend this is a working plan. It is a scheme that an architect who, wishing to make the plan of a house, would leave the details of the ornaments and so forth to be worked out. The witness says in going around a curve one track is a little higher than the other.

30 *Witness.* No.

Mr. Merrey. That isn't the fact.

Mr. Hobart. He says he can't operate over it.

Commissioner Donges. I think that proper examination, but we hope it won't be more extended than necessary and matters that would properly be taken up in working plans will not be covered more than necessary.

40 *Mr. Hobart.* That is the whole purpose of the examination. If we had more time we would find more criticisms. These occur at first blush.

W. H. Brameld, *direct.*

Q Now referring to the plan for the change of grade of the main tracks and side tracks at the west end of Clay street bridge, is there any difficulty there in regard to vertical curves?

A Yes.

Q What is the trouble?

A West end of Taylor street bridge?

Q Clay street?

A Yes; the main track there is a five-tenths grade, in fact a level grade across the bridge, without provision for a vertical curve. None is provided.

10

Q None is provided on the face of the map?

A No. In providing that vertical curve it would be necessary either to lower the street a little more or raise the tracks west of this point.

Q In regard to Taylor street, is there any similar difficulty there?

20

A Yes, on the siding to the yard there is very little—the break in grade doesn't start exactly at the bridge, but it does start sufficiently away to get a vertical curve. The easterly side of Taylor street, the siding profile to the warehouse shows it runs down a two per cent. grade and coming across the bridge the scale is approximately three-tenths on the siding there, which means a change of 2.7 per cent. grade and there is an approximate allowance of about forty feet. I think for a 2.7 per cent. change of grade a vertical curve of almost in the neighborhood of 400 feet on the vortex where the siding grade meets the warehouse grade would be 200 feet, from the point they show it, which would necessarily raise the siding to a considerable greater height than shown, probably three or four feet, which would keep the tracks up so high at Clay street they couldn't get across to the Commercial Lumber Company. It is practically cutting out the Commercial Lumber Company. That would show the necessity for considerable vertical

30

40

W. H. Brameld, direct.

curve on the grade on account of the complications that might arise with the siding.

Q You say the curve, as it is shown on the map, is only forty feet, where it should be four hundred.

A It is shown about forty feet and it should be almost four hundred.

10 Q Referring to the plan for Straight and Clay streets, have you any suggestions to make as to the elimination of those crossings?

20 A Why, as near as I can tell from scaling the map, using the profile—as the profile of Straight street and using the plan and scaling from that, working according to that profile would give an underclearance to the clearance line of the outside girder of only eleven feet five and one-eighth inches instead of thirteen feet, the clearance shown. The tracks must be raised to change the eleven feet five and one-eighth inches, or the street south of the tracks lowered the same amount to provide the thirteen-foot underclearance as shown; this would make the cut at the corner of Straight street and Clay street, instead of 1.8 feet between four and five feet, and the grades run out considerably further than shown on the plan.

30 Q Have you examined those plans and have you examined the ground also with a view to see whether it is practicable to combine those two streets, Straight and Clay streets, instead of having them separated?

A I haven't made a thorough examination. From my knowledge of the situation I believe the proper thing would be to combine Straight and Clay streets into one crossing.

Q Would that be less expensive?

A I haven't figured it out. In my opinion, yes.

40 Q Would it have any material effect, as far as you can tell from your examination on the ground, on the traffic of the street?

W. H. Brameld, *direct.*

A Not serious, no.

Q Turning to the siding that leads to McNab & Harlin, what have you to say about that?

A The vertical curve situation is the same here as at the other siding. There has been no provision made for the vertical curve; the grade showing a drop of two per cent. practically from the frog, which we couldn't operate, and to put in the proper vertical curve would raise the siding and move the present connection with the lower siding further east. 10

Q As it stands on the plan is it at all practicable or feasible?

A No. It could be made to operate by making allowance for a vertical curve, raising the grade and increasing the cost of the work. Also the same criticism would apply to this siding and also the approach from the main track to the yard, the present siding at Market street station. That is only allowing seven feet from the center of the track to the outside of the wall and leave, by putting a railing would take off six inches, leave about eighteen inches for the purposes of the man standing alongside the track for doing switching. 20

Q Is there room enough to build a siding and get the standard clearance?

A No, I don't believe so. You would have to give concessions. You couldn't get the standard, but it would be a tight squeeze to get it in. 30

Q What is the standard clearance?

A Our standard clearance is—that is, the width of the road is nine foot six inches from the center of the track. But if you take a car five feet from the center of the track to the outside of the car, and a man ought to have at least three feet to stand for switching, uncoupling and making switches, which would make eight feet, and six inches, then I don't think there ought to be less than eight feet six inches; 40

W. H. Brameld, direct.

there should be nine feet, if you could get it. The suggestion made that we have that same situation at other places; that is no reason why we should perpetuate and increase the number of dangerous spots on the railroad.

Q We are trying to get rid of those dangerous places as far as practicable.

10 A Wherever we do new work we try to make the work so it will be safe for the men to work in.

Q What did you say the standard clearance was?

A Our standard clearance is nine feet six inches from the center of the track.

Q Now, referring to Taylor street, I call your attention that according to the plan there appears to be a five-tenths grade on the approach to Taylor street on Railroad avenue. Is it necessary to have that kind of a grade for the street?

20 A The only reason for using it might be for the purpose of drainage, avoiding putting in a sewer. It seems to me it would damage the property more than if you put a five per cent. grade and had a short approach instead of a long approach.

Q (*By Mr. Merrey.*) You said five-tenths. It is five per cent., isn't it?

30 A No, this is on Railroad avenue. On Railroad avenue shown on the plan, not the profile. It is on Railroad avenue, the approach to Taylor street at Railroad avenue; it doesn't show on this profile; it is indicated on the plan.

Q (*By Mr. Hobart.*) Of course, if you use a heavier grade there is just that much less property affected?

A Yes, that much less work.

Q I see on your memoranda a reference to Rodgers Mill siding. Which siding is that?

40 A On Van Houten street.

W. H. Brameld, direct.

Q Is there any provision made for taking care of that siding?

A No.

Q As far as the plan indicates. I want to call your attention to the fact that there is no allowance for a vertical curve in the neighborhood of Ellison street; what have you to say about that?

A No allowance for a vertical curve in main tracks at Ellison street, the break in grade being shown at edge of bridge. 10

Q What you have already said in regard to the other vertical curves applies to this location?

A To get a vertical curve you must raise one grade or the other, or lower one grade. It will change the elevation of the tracks, or lower the streets, to get the proper vertical curve to operate.

Q You have testified that they haven't any allowance for a vertical curve at Lafayette street? 20

A No.

Q You didn't find any such?

A No, I find, in general, there has been no provision made for a vertical curve throughout.

Q Referring to Van Houten street, what is the clearance provided for according to the plan?

A Fourteen feet.

Q Is that more or less than is really necessary?

A I believe it is more. There is no trolley road that uses Van Houten street. Thirteen feet is used for Ellison street, I believe. Thirteen for Ellison street and fourteen for Van Houten. 30

Q Is there any difference in the cost if you used one or the other?

A Well, it would probably cheapen the city's work. It would increase our work on account of higher abutments and also on account of the amount of excavation that has to be taken out of the street. 40

W. H. Brammell, direct.

It would increase a little, lengthen the pavement and curve. It is not a serious matter.

Q That is a matter that could be obviated without much difficulty. Referring to the team track between Lafayette street and Franklin street?

A That used to be A. H. Smith's siding. I understand we use it as a public siding now. It is between
10 Lafayette street and the next street west.

Q Franklin street?

A Franklin street. We probably couldn't use it on any plan of elevation.

Q Do you know whether it is on the right of way?

A It is on the right of way.

Mr. Merrey. What is the number?

Witness. On A. H. Smith. I haven't the map.

Mr. Hobart. Twenty-nine, I think.

Q The plan apparently provides for raising that
20 a certain number of feet. Would it be practicable to make deliveries as you do now in case it was raised?

A No, they couldn't use it. The plan showing the siding runs off the property of Mr. Smith, but he doesn't use it very much now. We couldn't use it as a public siding as we do now. It depends on whether the owner wants to go back in the coal business or not whether he would want that siding put in.

Q Now, referring to the provision according to
30 the plan for the platform at River street, have you any suggestion to make as to the length of the platform at that point?

A The platform was about six hundred feet. I think we should have eight hundred feet.

Q Why?

A Practically the length of the train. We stop the same length at River street as Market street, twelve or thirteen cars in a train and the platform wouldn't be long enough. People would have to walk
40 through the train to get off at the platform.

W. H. Brameld, direct.

Q Or get off in the ditch?

A Yes.

Q Or climb on the wall. Now, referring particularly to the plan described as Plan No. 1, with reference to the locality west of River street; what have you to say of the provision for a vertical curve and siding?

A As I said before, there is practically no provision made for vertical curves at any of these sidings. The same applies, I believe, to all. 10

Mr. Merrey. We admit that. We say that is a detail to be worked out with the construction and it makes very little difference.

Mr. Hobart. It is a very important detail.

Mr. Merrey. We simply say there is no provision made for vertical curves. It may be an inconsequential thing even in your mind; it may mean a change of grade of half an inch or an inch, in some places it may mean more. 20

Mr. Hobart. You admit the plan in that respect at least is defective and impracticable?

Mr. Merrey. No, we say that is a matter of construction.

Commissioner Donges. You say the plan don't deal with that question?

Mr. Merrey. It is a matter that isn't dealt with in the plan in this case; a mere matter of working out. They will find when their own plans are drawn there are some little details to be worked out afterward. 30

Q For Mr. Merrey's benefit, won't you tell us just what a vertical curve is?

A A vertical curve is an easement curve where there is a change in the grade.

Q (*By Mr. Gourley.*) Will you please explain the explanation?

A If I had a diagram I could show you here. You 40

W. H. Brameld, direct.

- have a grade here and coming this way (indicating); you have a peak and summit. I think if you rode your automobile over that you would probably feel something if it was excessive. If we ride cars over that one box car is this way (indicating) and one box car that way (indicating). Naturally it has a tendency to pull off the couplings. There is a certain amount of play. I put in some vertical curves at Buffalo using a rate of change of three-tenths, a change of three-tenths grade in one hundred feet. The last time we went over there a freight conductor told me he pulled trains apart every day getting over.

Q (*By Mr. Hobart.*) You make the approach up and the descent down of each grade as easy as possible?

A If there is an excessive change at one point you break the train apart, the coupling.

- Q** Instead of a vertical angle you make a vertical curve, ease it off?

A Yes. You build them on the highway. They are more necessary on a highway than a railroad.

Q Now looking at the plan the other siding is the Waldo Silk Ribbon Company?

A That is a siding on the right of way.

Mr. Merrey. If you will refer to the number it will indicate it on the record better.

- Mr. Hobart.* Number 57.

Witness. Both 56 and 57. I believe the Center Paper & Box Company, they use the same mill. I don't know positively. They do drive now parallel to the railroad and up to this mill. I don't know whether the road is used as a public street or not. If it is laid out as a public street to raise it that way four feet you have to grade up and down both sides.

Mr. Merrey. It isn't a public street.

- Witness.* Then you have to raise on a full

W. H. Brumeld, direct.

about four feet high. If it is not a public street, you can do anything you want.

Mr. Merrey. It isn't a public street. Waite street stops just east, comes to that property.

Witness. If it isn't a public street you can do anything to the siding.

Q Now, then, there is another siding which you have indicated on your memorandum as being east of Fifth avenue. Do you know which one that is? 10

A The one into Nicholson's file works.

Q What have you to say of the proposed plan of that siding?

A Scaling from the map indicates a two per cent. grade starting down in the middle of the turnout. That is the same criticism of the vertical curve; they will have to change the elevation of those sidings to put in the proper vertical curve.

Q On Plan number two west of River street there is another siding which apparently has the same difficulty about the vertical curve? 20

A Yes, it is the same all the way through.

Commissioner Donger. Do you see any reason why those difficulties shouldn't be overcome?

Witness. No, absolutely not. I think they can be overcome. I haven't investigated each case. I believe it is possible to do it. It will change the elevation of the siding and probably add a little expense and may mean more difficult— 30

Commissioner Donger. To change the grade?

Witness. Yes. I think it can be changed and made right.

Q Now, will you kindly refer again to the plan in the neighborhood of Straight street with particular reference to the proposed bridge. What have you to say about that?

A I believe I explained that before.

Q As to the clearance line particularly. 40

W. H. Brumfield, direct.

A The break in grade is too close, is under the bridge and it doesn't give sufficient clearance to the outside girders.

Q Which bridge is this?

A The Straight street, which is the next one to Clay street.

10 Q Have you examined the plan in connection with the proposed bridge at Clay street?

A Yes, I find the same condition. The grade on the south side of the track hasn't started far enough from the track to give the clearance that it ought to of the outside girders. The track would have to be raised nine inches or the street south of the track lowered an additional nine inches to get the clearance. That is approximate.

20 Q How about River street bridge as shown on these plans; what have you to say about that?

A The River street bridge scales three feet floor depth, if the line shown is the base of rail.

Mr. Merrey. It is the top.

30 Witness. It is the top of rail. The engineer for the city makes a statement it is the top of rail. That being the case, there is only two and a half feet allowed for solid floor, which is not sufficient. We can put a bridge with that floor depth, but it wouldn't be a watertight, waterproof floor bridge. It is not a thing the company is putting in.

Q What is the purpose of a floor depth of that kind?

40 A Three foot ordinary bridge of that kind where the span isn't too long to give a clearance above track, probably for a fifty foot span, three feet would be sufficient; to get over that you would have to spread the girders or track. At River street they show the difference between the girder and the eastbound track as twenty feet. This provides a space for a platform.

W. H. Brumfield, *direct.*

A structure of this type requires a floor depth from base of rail to clearance line of about four feet three inches, therefore the track will have to be raised an additional one foot three inches or the street depressed an additional one foot three inches for the clearance of fourteen feet.

Q Why is it necessary to have a larger depth of this kind of bridge?

10

A The girders are twenty feet further apart. You have a deeper floor beam to carry the loading and outside girders.

Q The girders stronger?

A The girders stronger and the floor beams and I-beams stronger and deeper on account of the location of the track with reference to the girders; twenty foot span instead of fourteen foot span.

Q In view of the suggestion that has been made, perhaps off the record, by the city engineer that these measurements are from the top of rails instead of from the base, does that make any difference as to any of the other bridges?

20

A It makes a difference on all the bridges; of course, if they are willing to accept the type of flooring we could put it in two and a half feet.

Q Would it be good engineering?

A Not with the trouble we have afterwards in municipalities coming back and wanting us to spend more money to make waterproofing on a bridge where we can't make it waterproof. It is something I don't believe I should recommend doing.

30

Mr. Hobart. I might say here, Mr. Commissioner, that this is all we will have to present, at least in regard to their plan. We have considerable more testimony about the estimates put in. If Mr. Merrey cares to cross examine on this subject before I take up the further subject of the estimates.

40

W. H. Brameld, cross.

Commissioner Donges. Very well, we will adopt that course if Mr. Merrey is agreeable.

Mr. Merrey. Yes.

Cross examination by Mr. Merrey.

Q I might ask, Mr. Brameld, if you are familiar with the Reading elimination of grade crossings in Philadelphia?

10

A I am not.

Q Do you know all these figures there are two feet eight inches from the top of rail to the top of girder?

A I don't know they are. I am only judging the situation from the practice of the railroad—the trouble we have had.

Q You know the Reading is the latest to eliminate in Philadelphia?

20

A I didn't know it was. I thought the Big Four & Crescent was.

Q The criticism you made of the road under Straight street could be changed so as to obviate the difficulty you say is there?

A Yes, sir.

Q Without much trouble?

A Yes, sir.

Q As a matter of fact all the criticism you make can be corrected without a great expense or trouble?

30

A I haven't gone far enough to say whether they can be corrected without causing so much trouble. I have looked at the plans with an idea of what I would have to do if I was going to make a plan and a plan that we could work by. In other words, if I was going to work up the details of these things I would have to try to get out details. That is what occurred to me. Of course, I haven't worked up the detailed solution of everyone of them, but from my general knowledge of the situation I think they could be taken care of.

40

Q You referred in your testimony to certain

W. H. Brameld, cross.

standards of the road. I will ask you if the road is in all places up to those standards?

A No. We wish it was.

Q So when you speak of nine foot six inch clearance that would be an improvement on the present condition at these points?

A No. At some places; not all. McNab & Harlin I believe all the points I have pointed out we have no such condition of that kind, although there are places you might find them. It is no argument if there are places with them why we shouldn't do away with them.

10

Q You can get sufficient clearance if you widen out the fill at that point?

A I believe you can, all except McNab & Harlin, on account of lowering the siding you might have to spread one and a half to two feet. In the other tracks you can take care of it.

20

Q There is a public street between McNab & Harlin's and your right of way?

A There is.

Q So it would mean a slight encroachment on the street?

A I believe your plan shows the wall encroaches on the street.

Q A slight additional encroachment?

A Yes.

Q The street is used only by McNab & Harlin?

30

A Practically, and the brewery and the chemical company up there.

Q It is not a street used by the general public?

A It is not a public thoroughfare, I believe.

By Mr. Hobart.

Q Does this plan of the city with principal reference to McNab & Harlin, contemplate the use of the street as well as the right of way?

A It does. They use the street now.

Q Would it take practically the entire street?

40

W. H. Brameld, further direct.

A Why, yes. The siding is practically the entire street, up there. There is just about room enough to get by with a wheelbarrow in some places now, I believe.

Further direct examination by Mr. Hobart.

10 Q Now, Mr. Brameld, with reference to the estimates of the cost of this work: Have you examined the city's estimate as offered in evidence?

A I have.

Q I will ask you first if you have prepared an estimate covering the same items as the estimate of the city?

A Yes.

Q Have you it before you?

A I have.

20 Q Is this paper which you have before you a summary of your estimate?

A Yes. I estimate the same as they do, as the city's estimate, leaving out property damage and operating cost due to interference with regular schedules and rearranging industries on the railroad right of way.

Q On page two of your estimate have you put down comparative figures?

A I have.

30 Q In your estimate as compared with that of the city?

A I have.

Mr. Hobart. I would like to offer that in evidence.

Commissioner Donges. Is there any objection?

Mr. Mccrrey. No.

(Same is marked Exhibit R-101.)

Q Have you the details upon which this summary is based?

40 A Yes, the detailed estimate is attached to the

W. H. Brameld, further direct.

total estimate. This is a summary just of the items that were included in the city's as a comparison.

Q Please refer to that, I want to offer that in connection with the others.

A Here are copies of the total estimates.

Q Have you also prepared an estimate of the total cost of doing this work?

A I have.

Q Including the items omitted from the estimate of the city? 10

A Yes.

Q Is this paper I show you, dated July 8th, 1914, and headed "Summary, cost of elevation, Railroad Company's estimate of city's plan, dated 1914, estimate of total cost," is that the summary with the detail attached?

A It is.

Mr. Hobart. I offer that in evidence. 20

Commissioner Donges. It will be admitted and marked.

(Same is marked Exhibit R-102.)

Q Without going over all these figures, because this will be in evidence, and can be referred to; what is your estimate for the total cost of the complete plan as proposed by the city?

A Total cost, \$3,384,084.88.

Mr. Merrey. What page?

Witness. Second page of total estimate. 30

Commissioner Donges. The first two pages of the second exhibit just offered by the respondent are the same as the exhibit previously offered this morning?

Witness. No. Included in this summary is the items the city didn't figure on.

Commissioner Donges. I see you have included on the second page of the last exhibit some estimates which were not put on the first exhibit.

Witness. Yes. 40

W. H. Brameld, further direct.

Q (By Mr. Hobart.) You have tried to include in this second exhibit all possible costs including various items not in the city's estimate?

10 A Yes, that was what I tried to do. The total cost for the complete plan \$3,384,084.88. The railroad work amounting to \$2,881,417.63; street work amounting to \$356,120.25; rearranging industries on right of way amounting to \$146,547.

Q Now, have you made a study of these plans and of the situation on the ground in Paterson with a view of determining whether or not the work proposed by the city could be divided up into sections and part of it done at one time and part at another time without affecting the general scheme?

A Yes.

Q With what result?

A I believe it can be divided into five sections.

20 Q Can you point them out or describe them?

A In the profile I have shown in red the different sections. Section A would be the section that would eliminate the crossings at Market street, Ellison street, Van Houten street, Broadway, Fair street and Hamilton avenue; it would open up Montgomery street; eliminate Lafayette street.

Commissioner Donges. When you say eliminate what do you mean, separate the grades?

30 Witness. Yes, separate the grades. Open up Montgomery street, a new street, it would open it up and be an undergrade crossing, not at grade.

Commissioner Donges. And separate the grades.

40 Witness. In these other streets I have enumerated, on this section it would temporarily close Keen street, permanently close Franklin street, as was suggested by the city and would raise Warren street about three feet, still leaving it a grade crossing. This is accomplished by commencing just east of Essex street and rising on

W. H. Brameld, further direct.

a one per cent. grade to the end of the platform for the Market street station and then following the profile as shown by the city's plan to Hamilton avenue and then descending on a one per cent. grade that would intersect the present grades of the tracks in the neighborhood of River street.

Section B would raise the grade from Hamilton avenue to River street at the elevation shown on the city's plan. Included in this section would be the elimination of Keen street, Warren street and River street, using the city's plan Number two, west of River street, to grade at Fifth avenue.

10

Section C would eliminate Straight street, Clay street, also as an undergrade crossing Taylor street, close Cedar street, and the widening, as proposed by the city, of Essex street. This would make the profile the same as shown on the city's plan, but it would divide the work from Straight street to River street inclusive into three sections instead of one.

20

Section D would be the Madison avenue elimination as laid out by the city.

Section E would be the elimination of Fifth avenue, the opening under grade of Sixth avenue according to the city's plan.

Q Now, Mr. Brameld, have you given sufficient study to this subject to be able to state whether or not this division of the whole work for these sections would be practicable and possible without interfering substantially with the city's plan?

30

A Yes, sir. The only change in the city's plan would be the temporary closing of Keen street, and they have sufficient access to Keen street by using Lafayette street, and the raising of Warren street temporarily three feet. It does change the elimination of Lafayette street by depressing the street prob-

40

W. H. Brameld, further direct.

ably a foot and a half more, but the railroad is on a knoll there and it means just cutting the knoll down one and a half feet.

Q It disposes of the same crossings as the city's plan proposes to eliminate?

A It is the city's plan.

10 Q With regard to the sidings, does it have substantially the same effect on the sidings as the city's plan?

A Yes, temporarily they would have to make some slight changes to meet the temporary grade, but eventually the situation is the same as proposed by the city.

Q Now, have you prepared an estimate of the cost of each of these sections?

A I have.

20 Q Let me ask you first does your total of the entire work of the five sections amount to any more than the estimate you made of doing the entire work?

A Yes, sir, due to the necessity of duplication of trestle raising track and ballasting and surfacing track.

Q About how much more would it amount to?

A Roughly about \$115,000 to \$120,000.

Q Outside of that extra cost due to this temporary construction is the cost about the same?

A Yes.

30

Mr. Hobart. I would like now to offer in evidence a paper dated July 8th, 1914, giving the summary and the details from street to street of this sectional scheme.

Commissioner Donges. It will be admitted and marked.

(Same is marked Exhibit R-103.)

Q This paper which I have just offered, R-103, does that give an estimate of Sections A, B, C, D and
40 E, each on a separate paper?

W. H. Bramfeld, further direct.

A Yes.

Q And then a summary of the entire work at the end?

A Yes; of course, in arriving at the totals of these figures they are interpolated with the other estimates where they cover the same items.

Q Then you have added that extra cost of temporary construction?

A Increased cost. —

10

Mr. Hobart. Cross examine.

Mr. Merrey. Well, I think that on this part of the work I will have to have some time so as to get my engineer to make up a criticism of the suggestions so I can cross examine intelligently.

Commissioner Donges. How much time would you want?

Mr. Merrey. A week is plenty. To-morrow we would be ready if the commission was.

20

Mr. Hobart. How about this afternoon?

Mr. Merrey. We couldn't do that very well. In fact, I think it would be better to have the testimony gotten out.

Commissioner Donges. We could give you Monday afternoon or next Thursday.

Mr. Hobart. I might say that if there is to be another hearing, we might want to put in some further suggestions or criticisms, whichever you please to call them, on the proposed plan. We have been working very busily on this, as I think the commission can see. I don't want to say now we have covered everything; our engineers might suggest something in the meantime.

30

Mr. Merrey. The amount of time I expect to take is very small. We can clean it all up, what I want to do, in an hour. We may decide not to cross examine.

(After discussion.)

40

W. H. Brameld, further direct.

10 *Mr. Hobart.* I don't think our engineering details will take much time, we may not put in anything more. I was about to say, in answer to the commissioner's question whether we will have very much more. There is one feature of the case in which we may decide to put in some testimony, that is the question of whether the company can afford to do that.

Mr. Merrey. Haven't you put in enough about that?

Mr. Hobart. We haven't put in all we are capable of putting in. We don't want to be foreclosed of the opportunity to present that consideration to the board if we should decide to do so. I only mention it so as to have that understood.

20 *Commissioner Donges.* Suppose, Mr. Gourley, you have your witnesses here on Monday; I think it very likely from present appearances you will be able to go on with them.

Mr. Hobart. Cross examination is reserved, I suppose?

Mr. Merrey. Yes.

30 *Commissioner Donges.* There was some reference to Mr. Brameld's having made certain marks on this plan. I was wondering whether it might not be well to have either the plan—I was just suggesting to Mr. Hobart that Mr. Brameld, in his testimony, referred to having marked a map indicating his suggestions as to doing this work by sections. That map is not before the commission in its marked form.

Mr. Hobart. Can't we put the same marks on the city's map?

Mr. Merrey. I was going to let you have that map and file it with the commission when it is cleared up.

40 *Commissioner Donges.* Any way, so it is not overlooked. It is agreed then that the map now

Robert Falconer, direct.

filed as an exhibit offered by you may be marked in accordance with this suggestion?

Mr. Merrey. Yes.

Commissioner Donges. Then, Mr. Brameld, when we suspend, will go in Mr. Mead's office and mark it.

ROBERT FALCONER, sworn on behalf of respondent.

10

Direct examination by Mr. Hobart.

Q Mr. Falconer, you are a civil engineer and surveyor?

A Yes, sir.

Q And have been some years?

A Yes, sir.

Q What experience have you had in grade crossing work and track changes and elimination and so on?

20

A I have had a number of years experience in railroad engineering work in general, which included considerable grade crossing elimination work; that is, the designs, the estimates, and latterly, the building of the work.

Q Have you examined these plans of the City of Paterson?

A Yes.

Commissioner Donges. Would you have him state a little more definitely his experience?

20

Q State a little more fully how many years experience you have had as an engineer?

A I graduated from the University of Wisconsin in 1895, course in civil engineering. I spent since that time—let me see—about six years all told in structural and bridge work with the firm of Hardin & Anderson, American Bridge Company, McClintic Marshall, Waldron Iron Company, Cincinnati and Cambria Steel Company, but I have had two and a

40

Robert Falconer, direct.

half years' experience with the Pennsylvania lines west of Pittsburg in charge of construction acting as resident engineer, and nine years, nearly nine years' experience with the Erie as assistant engineer in charge of surveys and construction, as division engineer on the New York division, as principal assistant engineer on the lines east and as supervising construction, with duties as chief engineer.

10 Q The last is your present position with the Erie Railroad?

 A That is my present position.

 Q Have you made an examination of the city's plan with particular reference to the bridges?

 A I have made such an examination, perhaps not as thoroughly as it should be done before detailed plans are made, but sufficiently carefully to say that if the line which is shown on this profile is the top
20 of rail, the floor depth for the bridges in general is insufficient. There should be, in general, about six inches more and on two streets at least, namely, Market and River, there should be more than six inches additional floor depth.

 Q Why the necessity or propriety of this additional floor depth?

 A Let me answer that other question first. I want to make it a little plainer. Unless the design
30 of the bridge is changed, the floor depth will have to be greater, unless the floor design is changed.

 Q Why would it be necessary to have the floor depth greater?

 A In order to secure a stiff strong floor that can be waterproofed satisfactorily. It is possible to build a bridge with a shallower floor but it is not practical to waterproof such a floor in a manner that will be satisfactory and will have continued to be so as time goes on.

40 Q You said that it would be necessary to have

Robert Falconer, direct.

even greater depth at those two streets you mentioned. Why the occasion or necessity for that?

A Mr. Brameld pointed out in his testimony a greater depth at River street was necessary on account of the spending girders for the platform.

Q You agree with him in regard to that?

A Yes, sir.

Q Is there anything further you would like to add? 10

A As I understand the plans, the same situation exists at Market street.

Q Is that due to the proposed new stations at those points?

A Yes.

Q Now referring again to Market street, have you any further suggestion or criticism to make as to the proper construction at that point?

A Why, I would like to suggest that consideration 20
be given to the plan of placing columns in about the center of the street. This would have two advantages, perhaps more; two important advantages. The first is, it would reduce the depth of the floor of the bridge so it wouldn't be necessary to depress Market street so much or raise the railroad so high. The second one, it would give a stiffer and better bridge. At Market street the span is pretty long from curb line to curb line and it would be a pretty heavy bridge. 30
The street could be widened on the west side by taking some of our property so that the resulting available width for travel would be greater than it would be as shown on the city's plan. Now, at this street there is a peculiar condition; Park avenue and Market street join, intersect about on the railroad tracks; those columns in the center of the street to my mind, would not be in any way interfere with the traffic. Traffic would separate south of the bridge instead of north of the bridge, as it does now. 40

Robert Falconer, direct.

Q Would that have any bearing on the construction cost?

A Yes, I think it would reduce the cost some. I haven't had time to figure it out, to estimate the cost, but I should judge it would slightly reduce the cost. In my opinion it would give a more satisfactory structure.

10 Q Is there anything further you have to suggest in addition to what Mr. Brameld has mentioned?

A I would like to suggest that a similar construction be considered at River street, somewhat similar. As the plans are drawn by the city Putnam street and River street intersect practically on the right of way. In my opinion a line of columns in the center of the street in line with the west curb of Putnam street north of the tracks, would in no way interfere with the traffic, would cheapen the bridge and result
20 in better construction, would require less headroom—floor depth supplied.

Q And give more headroom or at least require less change of grade?

A Yes. As the plan is drawn now if this is not done it apparently will be necessary to spread the girders farther than shown on the plan and spread the track centers and this would encroach on the available space left for River street both north and south of the tracks. This available space now is as
30 narrow as it should be and if the girders and tracks are spread farther apart, it will be a serious loss to the city.

Q You said it would be necessary to have a greater depth of the bridges at Market street and River street than at these other points; what was the reason for that?

A The reason is, as the structures are planned, the girders have to be spaced far apart to take care
40 of the platform. That is true of River street; appar-

Robert Falconer, direct.

ently it is true of Market street, although the plan doesn't show the girders at Market street. I can't say where they intend to put them.

Q When you spoke of platform, you mean passenger platform, for people to get on and off the trains?

A Yes.

Q Anything you want to explain a little more in detail, how a change such as you propose by the erection of columns would have a bearing upon the depth of the floor bridge? 10

A By putting columns in the center of the street and on the curb lines the length of the girders would be very materially reduced and the girders could then be placed so that their tops would be close to the tracks and just covered by the top of the passenger platform. The girders could then be spaced the standard distance apart, thirteen feet or fourteen feet, as the case might be. 20

Q Would that reduce the floor depth?

A That would reduce the floor depth because the girders would be shorter and of course naturally be shallower.

Mr. Hobart. Cross examine, or do you want the same right of cross examination reserved?

Mr. Hervey. Yes.

Commissioner Dougan. You desire to reserve cross examination? 30

Mr. Hervey. Yes.

Witness. There is one more thing I would like to say, if you will let me say it.

Mr. Hobart. Yes, go ahead.

Witness. I think this plan, in the neighborhood of River street, is worthy of more study than we have been able to give it. I think it is possible that a plan may be developed, a modification of the city's plan, quite an important—quite different from the city's plan, which may 40

Robert Falconer, direct.

be cheaper and may be better or equally as good. I am simply calling attention at this time because I think the commission ought to know we haven't had time to study these things and really testify on them. They are pretty big questions involved and they require a good deal of time and study.

10 *Mr. Merrey.* You had a year to get ready before this.

Mr. Hobart. This is in line with my suggestion that we might have something further.

Commissioner Donges. If there is anything further, opportunity will be afforded for the presentation of anything material.

20 Adjourned until Monday, July 13, 1914, at the Kinney building, Newark, N. J., at 1.00 o'clock P. M.

30

40

W. H. Brameld, direct.

TWELFTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Monday, July 13th, 1914.

PATERSON GRADE CROSSING ELIMINATION, }
ERIE RAILROAD COMPANY. }

10

Before Commissioner R. W. E. Donges.

F. H. Sommer, Esq., Counsel.

For petitioner appears E. F. Merrey, Esq.

For respondent appears G. S. Hobart, Esq.

For switch owners appears W. B. Gourley, Esq.

Commissioner Donges. I think Mr. Merrey was to cross examine Mr. Brameld and Mr. Falconer.

Mr. Hobart. I ask permission to submit further examination of the plan. The company's suggestions have been made a little more in detail. With your permission I will recall Mr. Brameld.

20

Commissioner Donges. You may continue your direct examination of Mr. Brameld.

W. H. BRAMELD, re-called for further direct examination.

Direct examination by Mr. Hobart.

30

Q At the last hearing there was a suggested method as to a modification of the city's plan in the neighborhood of Madison avenue?

A Yes, sir.

Q Have you been working on that further since that time and developed it more in detail?

A I have.

Q Have you prepared estimates of that plan?

A I have.

40

W. H. Brameld, direct.

Q Have you prepared any drawings of it?

A I have.

Q Will you please produce them? First, let us have the estimates.

A (Complies.)

10 *Mr. Hobart.* I would like to offer in evidence this estimate dated July 11th and headed Madison avenue.

Commissioner Donges. Is there any objection?

Mr. Merrey. No.

Commissioner Donges. It will be admitted.

(Same is marked Exhibit R-104.)

Q That estimate shows a difference in favor of the railroad company's plan, does it not, Mr. Brameld?

A Yes, sir.

20 Q Will you state whether the plan as proposed by you for the Madison avenue section of the work would accomplish the same purpose as far as the elimination of the crossing is concerned as the plan proposed by the city?

A Yes, sir.

Q And the saving to the company would be about \$192,000?

30 A The total saving would be \$151,566, and I believe the city's portion of the work would be practically the same on this scheme as the other.

Commissioner Donges. I didn't quite get what you meant by your last answer.

Witness. I believe under the law that the city pays a certain proportion of the work, such as streets and curbs and the payment of those items will be practically the same in this scheme as in the other.

W. H. Brameld, direct.

Commissioner Donges. So that the net saving of \$150,000 some odd dollars is all on the railroad's part of the work.

Witness. Practically on the railroad's part of the work.

Q Have you a sketch that shows that?

A Yes. (Produces sketch.)

Q Is this it, headed scheme for elimination of grade crossing, Madison avenue, July 10th, 1914? 10

A Yes, sir.

Mr. Hobart. I will offer that in evidence.

Commissioner Donges. It will be admitted and marked.

(Same is marked Exhibit R-105.)

Q Does that change the grade of the railroad?

A It does not.

Q It leaves the railroad tracks and sidings the same as they are now? 20

A As they are at the present time. The railroad grade at the present time will not be changed.

Commissioner Donges. By your last answer you mean to say it will leave them at the present grade?

Witness. The present elevation. The street is carried entirely over the railroad.

Q With that method of elimination of the Madison avenue section would affect to that extent the elimination of the other crossings in the city's plan? 30

A Yes.

Q Including in that, of course, that they be carried out substantially as proposed?

A Yes.

Q There was also suggested at the last hearing a modification of the city's plan of River street and vicinity. Have you developed that further?

A I have. 40

W. H. Brameld, direct.

Q Have you prepared an estimate of it and a plan of it?

A I have.

Q Will you produce the estimate first?

Commissioner Donges. Are you going to examine any further on this plan?

Mr. Hobart. No.

10 *Commissioner Donges.* The scheme proposed on this plan, Mr. Brameld, is carrying the street over the railroad?

Witness. Yes, sir.

Commissioner Donges. At Madison avenue. You say that doesn't interfere in any way with the other changes contemplated by the city's plan?

Witness. No.

20 *Commissioner Donges.* That is the elevation of the tracks—

Witness. The elevation of the tracks to the next street east—west, is Straight street crossing, and that can be eliminated on the city's plan without interfering with this scheme at Madison avenue, because they come to grade—Straight street the tracks were raised and came to the present elevation of the railroad and the Newark Branch junction and then depress the railroad tracks under Madison avenue; the railroad
30 tracks at Madison avenue were depressed about ten feet and made a level grade from Newark branch junction to Madison avenue on the railroad. Whereas now we have an upgrade and it would leave the railroad between Newark branch junction and Madison avenue just as it is at the present time.

Commissioner Donges. That provided for a five per cent. grade on the elimination of the
40 street?

W. H. Brameld, direct.

Witness. Yes.

Commissioner Donges. And then carries the street on the through girder construction?

Witness. Yes; the girders are placed on the outside of the roadway and the sidewalks are on brackets attached to the girders. The girders are on the roadline and the girders between the sidewalk and the roadway. I believe that is the same construction contemplated by the city. 10

Commissioner Donges. In this plan would it be necessary to have any support or columns in the street?

Witness. No, a span from abutment to abutment.

Q I want the estimate of the change of plan in River street and vicinity; have you that?

A The change in plan at River street involves the elimination of Keen street, Warren street, and Fifth and Sixth avenues, and I have prepared estimates for each one of them and have summarized them, including in that summary the railroad's method of eliminating Madison avenue as well. 20

Q Will you state generally what the difference is between the River street section as now proposed by you, as compared with the city's plan?

A The elimination of Keen, Warren and River streets by first eliminating the crossings to Market street to Keen street according to the city's plan, and the modification suggested by me is called Section A. If that work is done then the work will be done to River street and mean an undergrade crossing at Keen street, depressing the street more than the city contemplated; a pedestrian subway at Warren street with a twenty-foot driveway from Warren street to River street and from Warren street to Keen street, for vehicle traffic from Warren street. River street would be eliminated by diverting River street, run- 30 40

W. H. Brameld, direct.

ning parallel to the railroad on the southerly side and going across the railroad on a viaduct approximately at the west end of the River street freight house.

Q Have you prepared an estimate which shows the cost of eliminating the crossings in that matter?

A I have.

Q Have you that before you?

10 A Yes, sir.

Q Is this paper which you have dated July 11th, comprising four sheets, headed River street, Warren street, Keen and Summer, is that the estimate of this proposed change?

A Of that section, yes, sir.

Mr. Hobart. I wish to offer that in evidence.

Commissioner Donges. It will be admitted.

(Same is marked Exhibit R-106.)

20 Q Does this change accomplish the same purpose as the city's plan, as far as the elimination of the crossing?

A It would eliminate the present crossing across the railroad, yes.

Q Does it produce any saving in the cost?

A It does.

Q How much?

A It shows a saving of \$151,566.

30 *Commissioner Donges.* How much of this saving is in favor of the railroad and how much in favor of the municipality, Mr. Brameld?

Witness. I haven't figured it, but I believe it would be slightly more expensive for the municipality.

Commissioner Donges. Slightly more expensive?

40 *Witness.* Yes; on account of a little more paving of the sidewalks; but it is a small item of the total cost.

W. H. Brameld, cross.

Commissioner Donges. I understand this Exhibit, R-106, is based on a suggestion made by you at the last hearing?

Witness. A suggestion made by Mr. Falconer.

Commissioner Donges. Mr. Falconer suggested the elimination piece-meal?

Witness. Yes. I made the suggestion for the elimination piece-meal, but Mr. Falconer thought the treatment could be changed at River street.

10

Q And this plan you now suggest is a development of that scheme of Mr. Falconer's, is it not?

A It is.

Q Have you prepared a sketch which shows the outline for this modification?

A I have. (Produces sketch.)

Mr. Hobart. I offer that in evidence.

Commissioner Donges. It will be admitted.

20

(Same is marked Exhibit R-107.)

Witness. On the Madison avenue. When giving the figures for Madison avenue saving I started there were \$151,000. That was the River street item. I was wrong. The saving at Madison avenue is \$192,133.92. It is correct on the exhibit, the estimate, but I got it wrong in the testimony.

Cross examination by Mr. Merrey.

30

Q Mr. Brameld, in the plan which you propose for the elimination of the crossing at Madison avenue, how would the travel along East Railway avenue be accommodated?

A From my knowledge of the traffic, I believe the traffic along East Railway avenue is mainly into Patterson by way of Madison avenue, and I believe that the larger proportion of traffic would not be affected. The only traffic that would be affected would be the

40

W. H. Brameld, cross.

people going to the south side of the tracks. For the pedestrians I have a stairway leading to the bridge; for the team traffic they would have to go down Madison avenue to get onto the elevated structure.

Q They would have to go down how far?

A About four hundred and twenty-five feet.

Q And then return and come back on the grade
10 the same amount?

A Yes, sir, but I believe a very small proportion of the traffic would be affected by that.

Q You don't know anything about that traffic?

A I have been familiar with the Madison avenue crossing more or less for the last fifteen or sixteen years.

Q East Railway avenue is rapidly developing, isn't it?

A I haven't seen much development at East Rail-
20 way avenue in the last ten or fifteen years.

Q There are several new mills built there?

A Just east of Madison avenue, yes; two factories put up, the silk mills and Leslie Elliott Boiler Works.

Q On the scheme which you propose for the vicinity of River street, is closes Warren street and Putnam street, is that right?

A Putnam street will be closed as a thoroughfare across the tracks.

Q Warren street also, except for a pedestrian sub-
30 way?

A Except for the pedestrian subway. To enable vehicles to travel between Putnam and Warren street there is a twenty-foot driveway parallel to the railroad from Putnam street to Warren street.

Q What becomes of Franklin street?

A Franklin street is closed as proposed by the city.

Q How about Lafayette?

40 A Lafayette street is according to the city's plan.

W. H. Bramfeld, cross.

Slightly depressed, about one foot lower to conform to the grade on Section A as proposed to be divided by the railroad company, but I do not believe it would affect Lafayette street.

Q Does it close any street east of Lafayette street?

A It does not.

Commissioner Donges. It doesn't close Lafayette street then?

10

Witness. No.

Q Does it close Lyon street?

A Lyon street does not run across at this time.

Q Is there any means provided for getting out of Lyon street into Waite street?

A Yes, between Putnam street and Lyon street, Waite street is moved over onto the Public Service property and the Van Den Hendel property, providing a thirty-foot driveway and one ten-foot sidewalk.

20

Q Then River street is elevated?

A River street will be elevated. Waite street is developed providing for through traffic just as at present.

Q How do you get out of Waite street and Putnam street so as to get onto River street?

A By using Putnam street.

Q Can you get out of Putnam street into River street?

30

A Yes. The grade of the viaduct ends at the easterly side of Putnam street. There will be a slight raise, probably six or eight inches.

Q How is the railroad tracks on the Public Service which runs off the street line into this line, divided?

A Just as it is at present; working over to the center of the new location of River street.

Q It has to be raised a little and then dropped back again?

40

W. H. Brameld, cross.

A No—yes, there will be a slight raise in Waite street to accommodate that track.

Q This switch into the Public Service Corporation is changed?

A Entirely re-located, yes.

Q And you have to take Van Den Hendel's property?

10 A A portion of it.

Q And the property between your railroad and River street must be acquired?

A Yes, for the approach of the north side of the track.

Q You only allow thirty feet at that point?

A Thirty foot roadway and two ten-foot sidewalks, the same as River street now.

Q You think that sufficient with two turns?

20 A It may not, but it could be widened a slight extent. There is an alternate location provided which I think would not increase the expense very much, if any, which reduces the right angle turn.

Q That cuts diagonally through some property?

A It does.

Q Then the traffic goes down Lyon street going to River street, and have to turn to the west on River street and go up River street and across the viaduct?

30 A Turn either west or east, using the twenty-foot driveway provided between Putnam and Keen streets.

Q The twenty-foot driveway would cut into some large mills?

A It would not; no, sir; entirely on the railroad right of way.

Q And you place no pedestrian subway at Putnam street?

A No.

40 Q Would it be possible to put in such a passageway?

W. H. Brameld, cross.

A Yes, but it would use some of the sidewalk on River street to get the stairways into it.

Q Does that provide for the changing of the depot?

A The depot remains as at present. There is a pedestrian subway, passenger subway built from the westbound track to the eastbound track to enable passengers leaving a train not to have to cross the track. 10

Q The depot would be in a very inconvenient place, would it not?

A I have provided stairways down to the westbound platform from the bridge. There is also a stairway at Warren street right adjacent to the pedestrian subway so that the platform can be reached at both ends and the middle. On the eastbound platform there is a stairway provided at Warren street, adjacent to the pedestrian subway; stairs down from the viaduct and also a walk underneath the viaduct from Waite street. 20

Q How long is the platform?

A The platforms are a little over seven hundred feet long.

Q How long is the present platform.

A I don't believe it is as long as that. I couldn't say definitely just how long it is.

Q Now, Keen street: How much of a cut is there in Keen street? 30

A It will be depressed approximately seven feet below the tracks.

Q And how much below what it is at present?

A About seven feet.

Q How are you going to drain it?

A By a sewer from the subway to the river directly down Keen street, four hundred feet long.

Q How much above the river will be the bottom 40

W. H. Beardseld, further direct.

of this cut? What will be its level as compared with the river?

A I haven't taken any direct measurements, but I believe it will be above the river.

Q Will it be flooded at high water?

A That I couldn't say.

Q Do you know anything about the river level?

10 A I have no data concerning the high water, but I have seen it when there was high water.

Q You know it has been out on Keen street?

A At the lower end.

Q Comes out to River street. Not at Keen street, below Keen street?

A It came to Straight street; at River street it was about one foot over the street.

Q You don't know whether it will be possible to keep this cut dry at flood time?

20 A Not absolutely. I think it is just about safe.

Mr. Merreg. That is all.

By Mr. Gourley.

Q How do these changes suggested affect the switch owners?

A It only affects the Public Service siding. I think they can be taken care of practically as they are now. Their change will be practically the same as provided for on the city's plan. The estimated cost
30 of that is all included in this estimate.

Mr. Hobart. Anything further?

Mr. Merreg. No.

Further direct examination by Mr. Hobart.

Q Witness reminds me, in this plan there is a change in Fifth avenue and Sixth avenue.

A The change is only in the grade of the railroad and I find that not having raised the tracks at River street, that we could eliminate Fifth avenue independ-
40 ently of Sixth avenue. It would raise the grade.

W. H. Brauweld, further direct.

would raise Sixth avenue about a foot and it could be used as a grade crossing while eliminating Fifth avenue crossing; after Fifth avenue crossing, Sixth avenue could be eliminated. The street work is the same on the city's plan. I have used their elevation for the streets.

Q Both streets?

A Both streets, but changed the grade. I figured the estimate on the change of grade. I haven't a plan of that. I have prepared an estimate and total saving in the railroad company's plan is \$321,000.

10

Q For both Fifth and Sixth avenues?

A That is both Fifth and Sixth avenues included. Commissioner Dongra. Involving a saving? Witness. A saving of \$22,602.49.

Q That is accomplished how?

A Due to not having to raise the tracks of Sixth avenue all the way to Riverside.

20

Q It is involved in the other, the modification of River street?

A The modification of River street. There would be no necessity for the other expenditure.

Q If the River street modification were carried out as you suggest to-day, rather than the city's plan. Fifth and Sixth avenue modified accordingly would make a saving of \$192,000?

A Yes; without changing the city's plan of the situation.

30

Q You have no plan of Fifth and Sixth avenue?

A The plan is the same as the city's, merely the grade runs to the elimination of Sixth avenue, that would be the present grade of the tracks east of River street.

Q You have an estimate showing the details?

A I have an estimate of the details.

Mr. Hobart. I offer that.

Commissioner Dongra. It will be admitted.
(Same is marked Exhibit R-108.)

40

W. H. Brameld, further cross.

Q You have still one other summary which shows what?

A The city's plan modified according to the suggestions I have just made, giving descriptions of the way the crossings will be eliminated and giving an estimate according to the railroad's plan and railroad's estimate of the city's plan, and the total saving in favor of the railroad company's plan, \$376,302.41.

Q This summary which we now have before us is taken from the other estimates already offered in evidence?

A Yes.

Mr. Hobart. I will offer, for convenience, this summary of the modification.

Commissioner Donges. It will be admitted.

(Same is marked Exhibit R-109.)

Cross examination by Mr. Merrey.

Q Mr. Brameld, if you put in that plan at River street, that would make permanent the temporary arrangement from River street into the center of the city, Market street?

A Yes, only for that change at Lafayette street, because it is considerably higher than all the other streets.

Q That would give a pretty stiff grade into the city?

A One per cent.

Q That is pretty high, isn't it?

A It all depends on how much money you want to spend to reduce that.

Q It is a plan which would make the hauling very difficult?

A According to the traffic, the class of traffic that we handle. I am not an operating man; I believe a one per cent. grade is feasible at that point.

V. H. Brameld, further cross.

Q Do you know enough about it to say it is feasible?

A It is feasible, yes.

Q There is a very heavy curve about Agnew's coal yard?

A There is.

Q That adds to the difficulty?

A Slightly. 10

Q Considerably?

A It all depends on the kind of trains which you operate.

Q That is what I want to get at. What kind of trains do you operate?

A Operate passenger trains and freight trains.

Q But you do not send the heaviest trains over this route, do you?

A We send our heaviest passenger trains over that railroad, yes. 20

Q They are not your heavy freight trains?

A They are not heavy freight trains.

Q They can take a heavy grade?

A They can.

Q So the ruling grade is lower here—or higher than in other portions of the road?

A The ruling grade may be higher here than other portions of the road?

Q Yes.

A It all depends on what kind of traffic runs over it. This is not a low grade freight line. 30

Q It is a line which doesn't require as low a grade as other portions of the road where you send heavy freight?

A No.

Q It would permit of steeper grades than other portions of your road?

A I believe if we continue to operate the class of trains we are operating now, while I am not an operating man and have no official sanction for what I am 40

Henry Ryon, direct.

saying from the operating people of the company, it is my personal opinion that we could use heavier grades through Paterson than we can on other portions of the road while we are operating this class of traffic.

Q (By Mr. Hobart.) The heavy freight trains as a rule run over the Bergen County short cut?

Mr. Merrey. I object.

10 Commissioner Donges. The witness has already answered in regard to that.

Mr. Hobart. That is all.

Commissioner Donges. Mr. Merrey, anything further?

Mr. Merrey. Is Mr. Falconer to testify for the company?

Commissioner Donges. I think you reserved the right to cross examine Mr. Falconer.

Mr. Merrey. I waive that.

20 Commissioner Donges. Very well.

HENRY RYON, recalled on behalf of petitioner in rebuttal.

Direct examination by Mr. Merrey.

Q On last Thursday Mr. Brameld, testifying, said, concerning the sidings east of Straight street, "evidently the profile is drawn without any provision for a vertical curve, the grade being shown as started at
30 about point of frog on a change of grade of one per cent. for one track and two per cent. for another. It is absolutely necessary to provide room for a vertical curve." Will you please explain that situation for us?

A It would be better to put a vertical curve, if possible, to get it at that point. You couldn't put in a vertical curve without a high degree of change, one per cent. degree of change. One side particularly it changes two per cent. in fifteen feet, which is practically no vertical curve at all, it takes on the point of
40

Henry Ryon, direct.

frog and goes two per cent. In working this out I presume to use the same kind of grades they have at present on the Erie.

Q This is on a siding on which freight trains are not run and very few cars?

A This siding runs to the Commonwealth Warehouse Company where only a few cars go.

Q Is there one point of change from one per cent. one way to two per cent. the other way, is that a common thing? 10

A It is the support of the bridge. There is a one per cent. grade one side of the bridge and two per cent. it goes down on the other.

Q How long is that bridge?

A I don't know, about fifty feet; it is the width of the street.

Q Have you gone over the other places where criticism was made of your plan because of vertical angles? 20

A Yes, sir, I looked at them.

Q Have you figured how much the bridges would be raised or the streets lowered to provide vertical curves?

A On the main line it wouldn't vary the bridge more than two per cent., to put in a vertical curve, two-tenths of one per cent. Rather have the grade on the siding a little greater, but in those cases there is room to put them in. 30

Q What have you to say about the depth of the bridges, there was some criticism that you only provided two feet six inches whereas it should be three feet?

A I provide three feet from the top of rail to bottom of girder. The bridges in Paterson there now, three of them, the Davidson bridge has a depth of two feet nine inches, a depth from bottom of girder to top of rail. The Essex bridge is also two feet nine inches from bottom of girder to top of rail. The one 40

Henry Ryon, cross.

west of Paterson; that cannot be more than two feet nine inches between top of rail and bottom of girder.

Q Are there any other suggestions you have to make of criticisms made of your plan, or the new plans offered here to-day?

A Nothing material.

10 Q Do you know anything about the ability to properly drain Keen street under the plan proposed?

A I can't say offhand without figuring that out. I know it is pretty low. They may be able to drain it. I am not sure.

Q Did you give some consideration to a new plan at River street somewhat similar to the plan offered?

20 A A plan of that kind was suggested and I considered it. The objection was carrying the street sharply across and the change and steep grade of the main line of the Erie. A grade of one per cent. with a four degree curve, approximately a four degree curve, making about 1.4 compensated.

Q This plan at River street would be a serious injury where the street takes off, the viaduct, and where it crosses the tracks now?

A I am not competent to say as to that. I believe it would.

Q It would cut down the amount of traffic?

A Cut down the amount of traffic undoubtedly.

Q There are a number of stores there?

30 A A number of stores, yes.

Cross examination by Mr. Hobart.

Q The Madison avenue modification suggested by Mr. Brameld, you have examined the sketch which indicates that?

A Yes.

Q It is entirely practicable and feasible?

40 A Entirely. The only objection, I think, is people coming up East Railway avenue and also California avenue after going back nearly to Madison avenue and

Henry Ryon, cross.

returning parallel to Madison avenue, that is the only objection I see.

Q And it saves practically half a mile of rock excavation?

A Quite a little rock excavation.

Q That is what accounts for most of the difference in the cost?

A Undoubtedly.

10

By Mr. Merrey.

Q But the rock excavation would give the railroad a much better grade?

A Give the railroad a better grade.

Q As it is now it climbs a hill beginning at Madison avenue?

A There is an up grade.

Q And comes down at Crooks avenue?

A At Crooks avenue, the city line toward New York.

20

Mr. Merrey. That is all we have.

Commissioner Donges. Mr. Gourley has something.

Mr. Gourley. Our objections have already been put in to the elevation of the tracks. This plan which has been offered, since the switch owners have been on the stand, doesn't materially change the situation as I had in mind and as put on the record. There are one or two features that ought to be specifically heard. I will take them up in the order they come on the list. Leslie Elliott Company.

30

William Elliott, Jr., direct.

WILLIAM ELLIOTT, JR., recalled on behalf of switch owners.

Mr. Gourley. This is number one on the list.

Direct examination by Mr. Gourley.

10 **Q** You have seen the city's plan, I think, in regard to the switch supplying the Leslie Elliott Company shown on sheet number one of the proposed plan of the city. This is the situation of Leslie Elliott, with the switch running in. Will you say, shortly, to the commission what objection you have to that switch in that form?

A I am not an engineer, but from my point of view, I have one of the books and this plan, it would be impossible to get in the way it is on this plan.

Q Why?

20 **A** Coming in here with a thirty-eight degree curve, we just miss our neighbor's gutter. We are within a foot of his gutter now.

Q Have you a plan showing that?

A (Produces plan.)

Q This blue print before you now shows in red the line of the switch as it is now?

A As it is now.

Q Explain it.

A It comes in here (indicating).

30 *Commissioner Donges.* Don't say in here. In the record it doesn't indicate a point.

Witness. Comit here is the curve (indicating).

Q Is there any property line at the curve?

A The property line is at the curve; we are probably a foot or two feet away.

Commissioner Donges. From what?

Witness. If we went any further toward the curb we would be on the other man's property.

40 **Q** Mr. Van Den Hendel's?

William Elliott, Jr., direct.

A Mr. Van Den Hendel's, yes. Over here, before we come from the main line, when we come we run on the main line across the street, we own the street from Kentucky avenue to Iowa, which is twenty feet. If the track is moved further back we will be on this other side of Kentucky avenue that we don't own.

Q The city's suggestion was carrying the point of this switch how many feet? 10

A About 1,000 feet.

Q To the south. Why can't this curve be made sharp and still reach your place?

A If it was made any sharper the Erie couldn't operate their engines over any degree curve over fourteen degrees; on account of this property line running so near this man's property we have to stop the engines on the sidewalk and push the cars from the sidewalk into our works. 20

Q That is what you do now?

A That is what we do now. But a curve greater we would have to push them from the main line, which is quite expensive.

Q Do you know who owns the line south of you on this tract?

A No, I do not.

Q Have you estimated the cost of putting in the present track?

A No. I could tell you what it would cost to put in the whole switch on the other. 30

Q That is the present one?

A \$5,912.07.

Commissioner Donges. That is the cost of the present installation?

Witness. Yes, sir, \$5,912.

Q (*By Mr. Hobart.*) When was that built?

A I guess that is a little over two years ago close on to two years ago.

Q (*By Mr. Gourley.*) What kind of a business have you there, I think you stated before? 40

William Elliott, Jr., cross.

A Boiler shop.

Q Is it essential for your success that this switch privilege be maintained?

A Yes; if I didn't have it there I might as well go out of business. It is also essential that I don't have to spend a lot of money to operate.

Cross examination by Mr. Merrey.

10 Q How long have you been in business?

A Ten years.

Q How long did you do without a switch?

A I think seven or eight years.

Q You had permission for a switch six or seven years?

A Well, let us say about six years before we put it in.

20 Q Certainly it wasn't for lack of capital you didn't put it in?

A I tell you, it was lack of finding out who owned this property. We couldn't find that out. We had Mike Dunn on it for a year.

Q You didn't know anybody owned it?

A Not until we went to the Erie, then we found they owned only so many feet alongside of the track and then we couldn't find out who owned this.

30 Q When did you first get permission to put in the switch from the Board of Aldermen of the City of Paterson?

A I couldn't tell you in years. You know, don't you, about that? It was a month or two months before the Board of Aldermen were legislated out of business.

Q That was in 1907?

A Yes.

Q You had permission at that time and didn't put it in until two years ago?

A Yes.

William Elliott, Jr., cross.

Q You don't know anything about, as an engineer, how the track is coming in?

A No.

Q There isn't a plan showing it cutting into your neighbor's property? The city's plan doesn't show it cutting into the other man's property?

A No. Mr. Merrey, going back one thousand feet and moving the track anywhere, that distance at all, we would be on this man's property line. 10

Q (*By Mr. Gourley.*) Were you on the ground with an expert and myself?

A No; Mr. Leslie was.

Commissioner Donges. You offer this plan?

Mr. Gourley. Yes.

Commissioner Donges. It will be admitted.

(Same is marked Exhibit 80-3.)

Mr. Gourley. The next is McNab & Harlin, number fifteen; their objection is already on the record. I don't think it necessary to call them. 20

The next is James A. Graham Brewing Company, number six. The siding is taking care of that property.

John Agnew Company, the upper part marked 11-A; there is no change there.

Samuel Smith & Son Company, number two; no change.

James Wilson & Son, number fourteen; no change. 30

Morris & Company.

Abraham A. Beckman, direct.

ABRAHAM A. BEEKMAN, sworn on behalf of switch owners.

Direct examination by Mr. Gourley.

Q You represent Morris & Company?

A I do.

Q You have looked at these plans?

10 A I have.

Q What have you to say about the facts?

A According to the blue print, that takes us off the map entirely.

Q They put the station down there?

A They put us down in the woods. There is Green street (indicating).

20 Q Just point out here where you are. This is the southeast corner of Market street and the railroad—northwest, rather; on the present situation on the northwest corner; where on the city's plan they are using is as a public station, depot. On this suggested plan they have put you where?

A Somewhere around here (indicating).

Q Between Green and Slater streets on the side of the railroad. State your objections shortly.

A All the objections there is, we are taken off entirely.

30 *Commissioner Donges.* In other words, the property you are now occupying there is used as station property and it is contemplated to move you three, four or five blocks?

Witness. Yes. Besides we have the situation at Ellison street, moved from the switch entirely.

Q The Paterson Reef Company?

A The Paterson Reef Company.

Commissioner Donges. What happens to that?

40 *Witness.* Less than two years ago we got that at considerable expense to have a place in case the depot would ever come and take our present

Abraham A. Beckman, cross.

location. According to the plan there is no switch even there.

Q How does this affect your business?

A It is out of the world up here (indicating).

Q What do you mean by that?

A No trade coming up there. We might just as well back out entirely.

Q I think you explained before now how people
come to you? 10

A Yes, the majority of people come by train. We are right by the station, a good location. We can't have the house down the other way, locate up that way; it is going away from the trade.

Q What is your volume of business, if I may ask?

A That is a personal question. Over one million and a half dollars a year. We have over eight thousand dollars at present in the Market street building
and undoubtedly in the Paterson beef building it cost 20
at least twenty-five thousand dollars. We employ thirty men.

Cross examination by Mr. Merrey.

Q How many men do you employ in the Ellison street building?

A None.

Q What do you use it for?

A We hold it as reserved, if anything comes in
the market. 30

Q It was purchased from a competitor?

A No, sir; it was ours.

Q Weren't you competitors?

A No, sir.

Q What were they?

A Part of the National Beef Company.

Q Is that any part of Nelson Morris Company?

A The National Beef Company was dissolved by 40

Abraham A. Beckman, cross.

the government and the different houses were bought by the different people.

Q Did Nelson Morris Company have any interest in the Paterson Beef Company when you bought it?

A None whatever.

Q You bought it as a reserve?

A They bought it to have a place.

10 Q You felt that you were likely to be driven out of your present location shortly?

A We expected, some time or other. They wanted a place of their own.

Q Who did?

A Morris & Company.

Q Now it simply leases from the Erie?

A Yes.

Q The building is owned by the Erie Railroad and all its property?

20 A It is.

Q You only rent a portion of it?

A We rent practically all of it.

Q They use part of it as a signal station?

A We have a storeroom upstairs and a storeroom in the rear. We occupy 130 feet of floor space all the way back. And also a shed of the building adjacent on the west side we built ourselves.

30 Q There are a great many places in the center of Paterson where you could obtain a location for your business?

A None that I know of.

Q How about along the Susquehanna Railroad?

A It is the switching on the Susquehanna that has driven one concern to go off the road. I don't think I want to go back on that.

Q The switching?

A The switching of cars.

Q What is the matter with it?

40 A They don't have a switch engine; only once in

Abraham A. Beckman, cross.

awhile; you only get cars switched once a day, at night, something like that.

Commissioner Donges. You mean lack of switching facilities?

Witness. Yes.

Commissioner Donges. How long a lease has Morris & Company on the Erie Railroad now occupied by Morris & Company, how long to run? 10

Witness. I couldn't tell you that. It is indefinite.

Commissioner Donges. A lease from year to year.

Witness. I think in ten-year periods.

Mr. Merrey. The lease is in evidence, I understand.

Mr. Hobart. I think so.

Mr. Merrey. All the leases are in evidence. 20

Mr. Hobart. We put in all we could find. I think this is included. I am not certain.

Commissioner Donges. The switching agreement.

Mr. Merrey. They promised to put in the Nelson Morris lease.

Mr. Hobart. If it is found, I will put it in there.

Mr. Merrey. I think you said you couldn't find it. It was understood that be put in. I think I have a printed copy where it was renewed since 1901. 30

Q (By Mr. Merrey.) I just call your attention to a piece of property between Ellison and Crushy Place and ask you why that wouldn't be a suitable location for your business?

A Between—where is it?

Q Right near the back of the Daisy can place.

A I don't know there is any property there. 40

Frank Vance, direct.

Q A long vacant lot.

A I didn't know it was for sale.

Q There is a property there, a vacant property.

A A vacant property next the Susquehanna depot.

Q That is right adjoining the tracks of the Erie; right across from your present ground.

A I know the property you have reference to.

10 Q It is big enough to accommodate a dozen beef houses such as yours.

A Hardly.

Q Have you gone along the line of the railroad to see if there were any places suitable for your business?

A I have not.

20 *Mr. Gourley.* The Armour & Company. The objections, such as they are, were put in the last time. They can accommodate themselves, I think.

Mr. Merrey. What was the statement? You think they can; because when they were here before I think they made strenuous objection to the raising.

Mr. Gourley. Going on the second floor would be some convenience; whether it accommodates all the others, I cannot say.

Mr. Merrey. That is what we said before.

30 *Mr. Gourley.* That is the only instance you are right among all these people.

FRANK VANCE, called on behalf of switch owners.

Direct examination by Mr. Gourley.

Q Mr. Vance, you represent Armour & Company, Paterson?

A Armour & Company.

Q Have you looked at the plan as far as it affects you?

40 A Yes.

Frank Vance, direct.

Q Where are you in Paterson?

A 107 Hamilton avenue, Hamilton avenue and the Erie Railroad.

Q Northeast corner of Hamilton avenue and the railroad, are you?

A Yes, sir.

Q What have you to say about the switching privileges there?

10

A This switch as shown on here, if there isn't any other switches running off this, this won't affect us very much. That is, if they leave the switch at the same level. That is our unloading platform (indicating). The principal objection is cutting this street here (indicating).

Commissioner Donges. What street?

Witness. Hamilton avenue as the plan shows it. What is the cut at Hamilton avenue across the railroad?

20

Q One foot five inches.

A That is our principal objection in getting up to the loading platform.

Q Explain about the loading platform operation?

A The wagons back up to the front of the building; as it is now the ground in front of the platform is considerably higher than the street and we load out to the sidewalk.

30

Commissioner Donges. Would one foot five inches make any appreciable difference?

Witness. Make some difference, yes.

Q Have you a switch yourself, or are you on with some others?

A We have a switch by ourselves.

Q How many people are on this contemplated switch?

A Nobody on it, according to the way this plan is shown here.

40

Frank Vance, cross.

Q So you will have the same switching privileges, except the difficulty in unloading?

A The difficulty in unloading.

Q You are not put at the end of a long switch?

A This switch doesn't call for any change of grade directly in front of the depot.

Q Doesn't that switch serve a number of people?

10 A No.

Mr. Gourley. I understand there are a number, where at present they have one to themselves.

Mr. Merrey. Cars wouldn't stand on the line.

Mr. Gourley. No; they are the end of a long switch; while now they have the opportunity to take them from the track at once.

Mr. Merrey. No cars stop.

Mr. Gourley. While they are using it, of course, we can't use it.

20

Mr. Merrey. No, you can use it.

Mr. Gourley. You get that off as soon as you can, you mean?

Mr. Merrey. They don't stay there.

Cross examination by Mr. Merrey.

Q Would the drop of one foot in front of the beef house make any material difference?

A As it is at present, two feet two inches above the street now. That makes a difference of almost
30 three feet.

Q (*By Mr. Gourley.*) Would that have a serious effect, or some effect upon your handling of this material?

A It would give us some difficulty.

Q Just tell us how.

A It would be a hard place to come with a load. You couldn't pull a big load out. Now there is a two and a half or three foot drop.

40 Q (*By Mr. Merrey.*) It isn't hard to go down?

Jacob Meyer, direct.

A Not to go down.

Q You come back empty?

A Sometimes we haul stuff in and out.

Mr. Gourley. I can't hear.

Witness. We haul a great deal of goods in from the freight station.

Q You use the office for that?

A Yes, but we have some come locally from New York. 10

Mr. Gourley. The objection of John Agnew Company, they have two switches, the switch south, of which I have spoken, no objection to that. But this change, according to Mr. Agnew, and his testimony, is that it is a serious thing to them. Their coal, it makes it so high, as to make it practically unworkable, was Mr. Agnew's statement before. 20

The next one is Meyer & DeVogel, very seriously affected.

JACOB MEYER, called on behalf of switch owners.

Direct examination by Mr. Gourley.

Q Have you looked at this plan of the city?

A Yes.

Q As far as it affects your property. It is at the corner of? 30

A Franklin and Summer streets.

Q You are on the northwesterly corner of Franklin and Summer streets and facing the railroad as well?

A Yes, sir.

Q The elevation of the track there is how much?

A Fifteen feet.

Commissioner Donges. This is a grain establishment?

Mr. Gourley. Yes. 40

Jacob Meyer, direct.

Q How much is that there?

A Fifteen feet.

Q How does that affect you? Have you a photograph?

A Yes, sir. That would throw the switch—that is ten feet high (indicating)—that would bring—

10 *Commissioner Donges.* Wait a minute. When you say this and that, when it gets in the record and we are reading it over, we don't know exactly what you mean to indicate. When you say "this," read into the record what it means.

Witness. I brought this so you could see.

Commissioner Donges. Just explain from the photograph, without pointing your finger and saying "this," so many feet to the second floor.

Witness. From the main line fifteen feet they are going to raise it.

20 *Commissioner Donges.* Going to raise the switch fifteen feet?

Witness. From the main line we have a switch, which is raised two feet from the main line.

Q At the present time?

30 A At the present time. Now we have got a floor on the bottom of the first floor we don't own that comes on the back, back of the building, that is on Summer street. We had to raise our switch two feet higher than the main track to have headway on the first bottom floor where we keep our wagons and horses. That you can see in here, bottom floor on the Summer street side is not shown on here; this shows the railroad side. That is the Summer street side (indicating).

Mr. Gourley. Suppose we mark these.

Commissioner Donges. Yes.

(Photographs marked Exhibit SO-4 and Exhibit SO-5.)

40 *Witness.* If it is raised fifteen feet it would bring us in the middle of the first and second story.

Jacob Meyer, direct.

There is one floor on the bottom, I don't count that, on the railroad side. We have to raise to the middle of the second and third floor.

Commissioner Donges. Second or third floor?

Witness. Second or third floor.

Commissioner Donges. The floor of this second story is how many feet above the level of this present switch?

Witness. The first floor is ten feet and so is the next. They are all ten feet, and three floors.

Q What effect does the closing of Franklin street have on your business?

A That would bring—our loading is on Summer street and we do most of our business on Franklin street across the railroad there and go over the Straight street bridge. Now they closed that up, they take all heavy loading, it is quite something to fetch it up Lafayette street or King street.

Q To go back?

A Yes, to get over Straight street bridge. We have a traveling trade that would be cut off altogether.

Q Explain that?

A People coming after feed themselves and take the shortest cut and we make it the long cut, they go past Atchison in River street and that cuts off trade in that.

Q This elevation of which you spoke would be above your second floor?

A Above the second floor.

Mr. Gourley. I think that is the main objection.

Commissioner Donges. Anything of this witness?

Mr. Merrey. No.

Mr. Gourley. The brewing company, that is, James A. Graham, Katz Brewery, Hinchliffe Brewing & Malting Company, put in their testimony and have shown their objections to it.

Discussion.

H. M. Post is not affected if the switches are placed as they are here.

The National Silk Dyeing Company, their objection is on the record; so is the P. S. Van Kirk Company.

10 *Mr. Merrey.* The National Silk Dyeing Company's objection is to leaving it as it is. They want us to raise the tracks.

Mr. Gourley. Elevate it only for coal purposes, we would be glad to agree. You heard the testimony.

Commissioner Donges. Is there anything further to-day?

Mr. Gourley. No.

Commissioner Donges. All parties rest?

Mr. Merrey. I think so.

20 *Mr. Hobart.* I should like to have an opportunity to make an application, if I do desire, to put in evidence on the financial question. I am not at liberty to say at this time whether I will put in anything. If I do I want to let the commission know at an early time.

Commissioner Donges. We are anxious to get the matter closed.

Mr. Hobart. There are reasons why I can't take any positive action at this time.

30 *Commissioner Donges.* We don't want to embarrass you in doing it. Your present position is you don't know whether you desire to?

Mr. Hobart. That is just the trouble, we don't know either way.

Commissioner Donges. You are now simply closing your testimony and giving notice at the same time you may ask leave to submit something further?

40 *Mr. Hobart.* Yes, on that one subject, the question of the financial difficulty and whether I will

Discussion.

do that depends on circumstances which are in the future.

Commissioner Donges. Well, the point is we would like to take these grade crossing cases up and dispose of them.

Mr. Merrey. I think this case ought to be disposed of, if the commission please. I don't see how the financial question has anything to do with this case. The railroad company is in exactly the same position as any manufacturer would be, a man who didn't comply with the fire regulations, if he should have a big mortgage on the mill, the factory inspector don't say for that reason he escapes putting in fire escapes or safety machinery.

10

Commissioner Donges. That is not entirely the situation, the financial condition of the company as to the total bonded indebtedness, I think that all parties having closed we will take the matter into conference and we would be glad to have briefs of counsel. Within what time would counsel submit briefs?

20

Mr. Hobart. Might we have oral argument on the subject?

Mr. Merrey. Just as you see fit.

Commissioner Donges. We would be glad to have counsel discuss it orally if they desire.

Mr. Hobart. I think there ought to be some discussion.

30

Mr. Merrey. The trouble is the commission is going away during August.

Commissioner Donges. The commission thought of disposing of some of these matters during their vacation.

Mr. Merrey. There isn't so much to be argued as far as I can see. There is bound to be a certain amount of hardship on owners and there has to be a certain amount of expense. Fortunately in this case there is very little dispute as to the character

40

Discussion.

of the plan submitted and the amount of injury to the switch owners seems to be brought down to the minimum. There isn't much to be said.

10 This is probably one of the most important cases in this line the commission has had. A great many people are looking forward to see something done in the grade crossing line, and it is a question of what ought to be done to take care of it. I had hoped we would be in a position where the company and the city could agree. It doesn't look as if that were possible. I hoped by concessions on the part of the city, only asking a portion of the work to be done, which I was able to do by concessions, and doing a little more on the street work than called on to do by the act, that it would be greatly to the advantage of the company to meet us. I am afraid they don't want to do that.

20 *Mr. Hobart.* I will only say on that subject, I am not prepared to say anything definite one way or the other at this time. But I told Mr. Merrey, when we had a little conference before the hearing began, the situation might change in three or four months, it depends on conditions which we hope will improve; that is in the future, I am not in a position to promise.

30 *Mr. Merrey.* We have been waiting for this so long. Paterson has tried to get rid of Market street and other crossings in the vicinity near it more than any other community. It is probably the worst community in the State, used more than any other. We have been before the legislature; we started out trying to get an agreement out of the company to do it. At one time we nearly settled the question; at one time we would pay a considerable portion of the cost. The company wanted us to pay more and lend them the money, which we couldn't do under the act of the Legislature. We have been down to the Legislature when

40

Discussion.

all the communities wanted the railroad to pay everything. We have communities in this vicinity berating Paterson because Paterson would pay a portion of the cost. Not because we didn't feel it should be paid by the railroad, but we felt we would concede something to have the thing done. We were willing to give a large sum of money to have this thing changed, no matter at whose cost it should be. We have never been able to do it; the result has been public opinion throughout the State has been shifting the amount of cost the community ought to pay until they got this act. If the railroad agreed with us five years ago they would have been paid twenty-five per cent. without question. The people of Paterson are so anxious to get this thing they are willing to make concessions to get it started rather than have delay. We would be willing to take Section A; that is the main section, the one which would take out the centre of the city, take out from Market street down to River street, it doesn't take out River street; we would be glad to meet them on that. They don't have to pay quite a few things they have in that. In their expense they have about \$1,600,000; they have added the whole cost of the streets, which the city takes up; they have added those changes that are charged to the switch owners. There are a number of things in there; probably the fact that their estimate is most liberal, they add thirteen per cent. The portion of what we figure, what I figure the cost to the railroad, would be in the neighborhood of one million dollars; it might be slightly more, but their \$1,600,000 would be scaled down—

Commissioner Donges. The estimate of the railroad paying \$1,442,000?

Mr. Hervey. \$1,442,000; well, they have got \$60,000 street damages in there. They have a

Discussion.

number of things in there; they have got a \$140,000 depot. If they were going to put in a depot worth that we would be willing they do that; I would say when they built it it won't cost anything like that; more like \$40,000 than \$140,000. Counting the best time it would be \$1,000,000 or one million and a couple of hundred thousand dollars. We have worked six months preparing a plan; if they did that work they would be on it for the next couple of years. They would have three years to raise the money; there wouldn't be any great hardship in that. I want to meet them on some such line as that; reach an agreement so the commission can make a perfunctory order if it don't look as though we can do that. If we can't meet them, it is our duty to insist on the whole work being done without making any concessions at all. That is what we are asking the commission to do. There isn't so much as I can see that requires argument. As I say, the objections to the plan are practically nothing. There is really no objection to the plan that is presented by the city; that plan is practically accepted.

Commissioner Dongra. Suppose we put the matter down as closed and take it into conference and give you leave to submit oral argument here on July 24th?

Mr. Hervey. That isn't sufficient adjournment. I think all that can be said July 24th. I think it all can come before the commission; there isn't so much.

Mr. Hobart. This is the most important case of this kind, I suppose, in the whole country at this time. It does seem to me that the suggestion I have made as to the possible change in the situation, that we ought to have a little leeway in view of the somewhat unusual condition of affairs.

Discussion.

Commissioner Donges. I don't recall just when these hearings started.

Mr. Merrey. A year and a half, I think, since we filed our petition; right after the law passed last year.

Mr. Hobart. We have always been ready.

Commissioner Donges. We have probably been taking testimony covering at least twelve months. 10

Mr. Merrey. It seems a question that ought to be settled and settled promptly. I say it is the first big one of this kind attempted in the State. I would like to know whether it is possible that something can be done.

Mr. Hobart. I really feel if there is an adjournment, after the adjournment season I might be in a position to say more definitely than I can now. That is the position I am in now.

Mr. Merrey. Perhaps you can say quicker if you had an order? 20

Mr. Hobart. No, I can't say on that. There may be a contest on the validity of the law and if there is any possibility of avoiding that I want to do it. I can't state anything positively on it. That is my position at this time.

Commissioner Donges. What objection would there be to taking it into conference and in the meantime, before the announcement is made, you could make application to reopen? 30

Mr. Hobart. I am perfectly willing to do that, if there is some understanding of the time limit when I may make such application.

Commissioner Donges. Of course I don't know what circumstances may arise. It may be the commission will find it impossible to dispose of it as speedily as it hopes. It will take some time to go over this case and work it out. It is a matter at best that couldn't be disposed of in a few days. 40

Discussion.

That may take one month or two months; we can't tell how long it will take.

Mr. Herreg. Would you require any great length of time to discuss the question?

Mr. Hobart. Discuss it orally?

Mr. Herreg. Yes.

10 *Mr. Hobart.* I don't insist on that; I just made the suggestion.

Mr. Herreg. I don't think it will require any great length of time.

Commissioner Donges. Why can't we take argument on the 24th?

Mr. Hobart. I am willing to waive argument as far as that is concerned.

Mr. Herreg. I will waive it too. Let it go to conference now.

20 *Mr. Hobart.* With the understanding if we decide to apply to reopen on the one ground suggested, we may have an opportunity to do so?

Commissioner Donges. Do you desire to argue?

Mr. Gourley. No; not if the gentlemen primarily concerned do not.

Commissioner Donges. We would be very glad to have the views of counsel expressed in briefs or orally.

Mr. Gourley. I will do what is agreed.

30 *Mr. Hobart.* Let it go to conference with the understanding if the railroad desires afterward they may apply to reopen on the single question of the financial situation.

Commissioner Donges. And do that any time before the board announces its conclusion.

Mr. Gourley. I ask the indulgence of the commission to have Mr. Agnew, a switch owner, testify.

40 *Mr. Hobart.* Is any time mentioned as to that, or will the secretary send us word ten days in advance of the decision?

John Agnew, direct.

Commissioner Donges. It is pretty hard to do that. It will be a matter of several weeks.

JOHN AGNEW, recalled on behalf of switch owners.

Direct examination by Mr. Gourley.

Q You have looked at these plans as far as they affect you, as far as Ann street?

A Yes.

10

Q Will you state briefly what your objections are and how they affect you?

A Those plans carried out that way it would demoralize our entire plant, rebuild everything and reconstruct the entire plant. The cost, I don't know what it would run to, but it would be enormous.

Q You don't dump on the level? The pockets are below the level?

A Yes.

Q What is the drop now from the track?

20

A It will dump—the trestle varies from about sixteen feet, I should say, to twenty feet.

Q Sixteen or twenty foot drop now?

A Yes.

Q With this elevation what will the elevation be?

A I understand this is about sixteen or seventeen feet raise at our point.

Q With that contemplated change what effect will that have on your pockets?

A Have to tear them out, rebuild; going to the additional height so much heavier material.

30

Commissioner Donges. How much is the height of the switch increased by the city's plan?

Witness. Sixteen or seventeen feet.

Commissioner Donges. Sixteen feet?

Witness. It would leave it thirty-five or thirty-six feet all told, so it would destroy all our plant, our present plant; have to go to very great expense; concrete and iron, I guess, I don't know.

40

John Agnew, cross.

Q What would you construct that with, do it with timber or concrete or iron?

A No, you couldn't get timber heavy enough.

Mr. Merrey. The witness don't know.

Witness. It couldn't be done with timber, I know that. It would be a case of concrete and iron or steel.

10 Q I suppose you know nothing about, in general, the probable cost?

A I never had an estimate. I should say it would probably cost \$100,000 in our plant.

Q As much as that?

A I should say at least that.

Cross examination by Mr. Merrey.

Q This plant is a very large one?

A Yes, sir.

20 Q You haven't any pockets?

A No.

Q You dump on the ground and shovel into your wagons?

A Elevate it.

Q You have none of the latest apparatus for loading your wagons?

A Yes.

Q Wouldn't you save money if you had pockets for loading the coal into the wagons?

30 A No; a system of pockets under the new plan here, it would mean concrete and steel and this expanded metal, reinforced, which is very costly.

Q All the big concerns in your line of business have pockets and means of loading where they don't have to shovel?

A No; the modern method to-day of handling coal is by machinery, elevators and elevating it. The majority of the plants in the country handle it that way.

Q You have to elevate that?

40 A Conveyors and elevators.

John Agnew, cross.

Q These companies can't get a drop you have here?

A I can't say as to that.

Q What is the biggest plant for delivering coal in Paterson?

A Well, I don't know, I should say Mr. Wilson's.

Q How about the Delaware plant?

A I don't consider them to be compared with Mr. Wilson's. That plant has the same objections ours would have. With that high elevation the coal dropped from the cars to the pockets breaks a lot of it, making a lot of waste, which is a loss to any dealer. So a high fall for the coal is very objectionable. It means a large amount of waste and loss to the dealer. It isn't the same as soft coal; bituminous; this is broken to sizes, and dropping eighteen or twenty feet the waste is something awful.

10

Q There is no doubt about the capital in making the change as far as your company is concerned?

20

A Yes, there would be.

Q There will be no difficulty in getting the capital necessary?

A I don't know how many good friends we have. I think I can safely say it would mean an expenditure of \$100,000 to us. I think I am within bounds in that.

Q (*By Mr. Gourley.*) The city's objection is that you could easily stand that?

A That is what makes us poor, that impression.

Commissioner Donges. We will take this case into conference.

30

Newark, N. J., Friday, October 9th, 1914.

PATERSON GRADE CROSSING ELIMINATION—
ERIE RAILROAD.

R. W. E. Donges, Esq., T. J. Hillery, Esq., J. J. Reacy, Esq.

For Public Service Companies appears L. D. H. Gilmour.

Commissioner Donges. Let me direct your attention, Mr. Gilmour, to the correspondence that has passed between the Public Service Gas Company and the board in the matter of the proceedings for the elimination of grade crossings in the City of Paterson.

Mr. Gilmour. Yes, sir.

Commissioner Donges. And your request for the submission of an estimate of the cost to the Public Service Gas Company in connection with the proposed plan.

Mr. Gilmour. Yes.

Commissioner Donges. The situation is, as you know the proof has been closed and the matter has gone to conference. Unless notice was given to all parties and the matter opened so that the proof could be taken by the stipulation of all parties leave was given to make part of the record the estimate submitted. I don't see how—

Mr. Gilmour. Such leave was given in public in one of the hearings. I have got the transcription from the record and it shows that. I am not particular about the gas company or the electric

Discussion.

company. I don't care about that; but the railroad has got to submit its figures to show the total cost. A part of the cost may be imposed on the railroad company up to ten per cent. of the cost. I don't see how you can get out the total cost unless you know the railroad's figures.

Commissioner Donges. I confess the record does seem to give some ground to your interpretation that an opportunity would be afforded you, but the opinion of the board at the time was such opportunity would be afforded before testimony was closed. Now the testimony has been closed. 10

Mr. Gilmour. As the board will remember, these hearings were held from time to time, week after week, and there didn't seem to be anything of interest to the street railway until some plan was adopted. I made this statement before the board; the board said after we have before us for consideration some tentative plan on which the cost can be figured, then we will give you an opportunity to put in your cost figures. From time to time I made inquiries and since I found this tentative plan was in the possession of your engineer. I had our engineer go over it and examine it and make up the cost predicated on that. 20

Commissioner Donges. The thought was such testimony would be submitted before the proof was closed. The suggestion now is, if you desire an opportunity that notice be given to all the parties of application on your part to submit this proof and then we will fix a short day, because the board is anxious to dispose of the matter. If you will give notice, for example, of application next Tuesday or next Friday—next Friday perhaps would be better. 30

Discussion.

Mr. Gilmour. I will send the notices if you will give me the names of the parties.

Commissioner Donges. I imagine the situation will develop when you make your application no objection to the submission of your application will be made.

10

Mr. Gilmour. All I am particular about is the railroad's figures and the other figures don't cut so much ice as we see it; but the railroad is important because if the cost of the railroad, which is more than ten per cent. of the total cost, the railroad has got to contribute to the cost. That is the reason I expect why notice ought to be sent to the railroad company. I don't know anybody but the railroad company interested in it.

20

Commissioner Donges. I think every person in interest should be notified. That doesn't involve giving notice to each individual. I would say give notice to the counsel of the parties would be sufficient.

Mr. Gilmour. If Mr. Barber will give me the list.

Commissioner Donges. Mr. Gilmour refers to the number of switch owners and Mr. Minard and Collins & Corbin.

30

Mr. Sommer. Not only Collins & Corbin, they represent the Erie, but the railroad companies were represented singly; Mr. Lewis represented one.

Commissioner Donges. Mr. Barber will give you the list.

40

Mr. Barber. I can give a list of the parties notified of the hearing held heretofore. A great many were given notices; the property owners were not represented by counsel at any of the hearings and the question is whether those people

Discussion.

should be given notice. It can't be assumed that the counsel who represented some of the property owners will represent all the property owners.

Commissioner Donges. Certainly not. Those not represented should be given individual notice.

Mr. Barber. That is the point; to do that will require going back over our record in order to send out notices to a hundred or more names. I can't very well get over that to-morrow and he get his notices out so people will have reasonable notice. 10

Commissioner Donges. I think Friday would be the shortest day. I think it ought to be done Friday so there would be no delay in the consideration.

Mr. Gilmour. Friday the board sits in Jersey City, all right. 20

30

Discussion.

THIRTEENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Jersey City, N. J., Friday, October 16, 1914.

PATERSON GRADE CROSSING CASE, }
ERIE RAILROAD CO. }

10

Before Commissioners: R. W. E. Donges, Esq.,
T. J. Hillery, Esq. and J. J. Treacy, Esq.

For the City of Paterson appears Randal B. Lewis,
Esq.

For the Erie Railroad Company appear G. S. Ho-
bart and D. E. Minard, Esq.

For the Public Service Railway Company appears
L. D. H. Gilmour, Esq.

20

For various switch owners appears W. B. Gourley,
Esq.

Mr. Gilmour. I am ready with the engineer
of the Public Service Railway Company to show
what the cost will be to them.

Mr. Merrey telephoned me and I told him what
we intended to do and I suppose Mr. Lewis is
here—

Mr. Lewis. Yes, we would like to have that
put in.

30

Mr. Minard. The board, I believe, has a letter
by this time that was written, that we sent out
a telegraphic notice to Mr. Merrey about that
we would ask for to-day. He has gotten it by
this time.

Commissioner Donges. Has any further no-
tice been given of your desire to submit further
testimony, other than the letter to Mr. Barber,
secretary of the board and your telegram to Mr.
Merrey?

40

L. D. H. Gilmour, direct.

Mr. Minard. No, sir. That was sent out as soon as we got a notice of this hearing to-day and we thought the board probably would want the motions heard to-day rather than later.

Commissioner Donges. First, Mr. Gilmour, your motion is?

Mr. Gilmour. For a chance to put in the cost to the Public Service Railway Company entailed by making the change in accordance with what I understand is the tentative plan now being considered by the board; those maps in the possession of Mr. Mead I had examined by engineers of the street railway company and we have figures of estimated cost predicated on the changes suggested by those plans. 10

Commissioner Donges. And you have given notice?

Mr. Gilmour. I have given notice to the people whose names appear on the list furnished me by the secretary. 20

Commissioner Donges. Suppose then you make proof of such service.

L. D. H. GILMOUR, sworn on behalf of Public Service Railway Company.

Pursuant to understanding had with the commission, I caused a notice, of which copy is here submitted, to be placed in envelope, with postage prepaid addressed to the following persons, addresses of which were received from the secretary of the commission. 30

Erie Railroad Company, David Bosman, secretary, 50 Church street, New York City; Public Service Electric Company; Public Service Gas Company; Public Service Railway Company; Western Union Telegraph Company, George H. Fearsons, general attorney, 195 Broadway, New York City; New York 40

L. D. H. Gilmour, direct.

Telephone Company, J. L. Swayze, 15 Dey street, New York City; Paterson and Hudson River Railroad, Paterson and Ramapo Railroad, William I. Lewis, Attorney, Paterson, N. J.; Paterson, Passaic & Suburban Telephone Company, 437 Chestnut street, Philadelphia, Pennsylvania; City of Paterson, E. F. Merrey, Esq., Paterson, N. J.; Hon. E. A. Stevens, State Road Commission, Trenton, N. J.; Leslie Elliott Company, John Agnew Company, Samuel Smith & Son Co., James Wilson & Son, McNab & Harlin Mfg. Co., Morris & Co., P. S. Van Kirk Company, Meyer & DeVogle, H. M. Post, National Silk Dyeing Company, Paterson Brewing & Malting Company, Herman Company, Fuller's Express, sent to W. B. Gourley, Paterson, New Jersey.

Q (*By Commissioner Douges.*) As attorney for—
 A As attorney for those addresses. D. Fullerton
 20 & Company to Hudson & Joelson, 150 Market street, Paterson, N. J.; Cooke Locomotive Works, Paterson, New Jersey; Passaic Steel Company, Paterson, New Jersey; R. H. McDonald, Paterson, New Jersey; G. A. Zabriskie, the note here was, "letter returned by postal authorities," but that letter was addressed to Paterson, New Jersey, as I had no other address given. Commercial Lumber & Mill Work Company,
 Paterson, New Jersey; C. Kelly, Paterson, New Jersey;
 30 M. Goble, Paterson, New Jersey; National Wood Company, Paterson, New Jersey; Standard Oil Company, Paterson, New Jersey; Rogers Locomotive Works, Paterson, New Jersey; James A. Graham Brewing Company, Paterson, New Jersey; National Biscuit Company, Paterson, New Jersey; Paterson Vehicle Company, Paterson, New Jersey. The following are all addressed to Paterson; Paterson Beef Company, E. M. Stiles, Laffray & Herman Company, Schwarzschild & Sulzberger Company, David G.
 40 Rodgers Company, Armour & Company, Hinchliffe

Discussion.

Brewery, Katz Brewery, A. H. Smith, Armstrong & Sons Company, Atherton Grain Company, J. A. Leydecker, J. Vanden Handel, Swift & Company, Ashley & Bailey Company, Grasselli Chemical Company, Weidman Silk Dyeing Company, L. Lapat, Sutherland & Edwards Company, Nicholson File Company, Pugila & Gramatica, Auger & Simon Silk Dye Company, Van Winkle-Bromley Lumber Company, Gulf Refining Company, Diamond Coal Company, William Dunklee, Bon Arbor Chemical Company, Centre Paper & Box Co., Waldo Silk Ribbon Company, Hamilton Lumber Company, Olive Oil Soap Company. Those were all mailed to Paterson, New Jersey.

Q Haven't come back?

A Haven't come back yet, not until this morning. I think the postal authorities hold them for five days, something like that. These were sent on Tuesday.

Q Tuesday of this week?

A Mailed on Tuesday.

Mr. Hobart. Before testimony is offered on behalf of the Public Service Railway, I would like to inquire if the board will hear our application at this time.

Commissioner Donges. I don't see how it is possible in view of the fact that the testimony was closed with the understanding that if you desired to submit anything further an application would be made.

Mr. Hobart. Yes, sir.

Commissioner Donges. And the same practice would be followed in the case of the Erie Railroad as the Public Service Railway Company; notice should be given.

Mr. Hobart. To all parties?

Commissioner Donges. To all parties in interest, of the application. You make your application now and in accordance with the under-

Discussion.

standing, which the tentative motion might be called, the board will afford you an opportunity to put in additional testimony.

10 *Mr. Hobart.* That is all we want to understand, but of course, we could not give notice to everybody because we did not hear of this until Wednesday. We at once notified Mr. Merrey, because we felt he was the one most interested. We are perfectly willing to give such further notice, if the board thinks we ought to do that.

Mr. Lewis. Would your board at this time pass upon the admissibility of this line of testimony. As I understand, the Erie wishes to put in a statement of its financial condition. I cannot see of any possible way that would be material to the issue which is before your board.

20 *Commissioner Donges.* The board at the last hearing in Newark, at the time the board announced that the testimony was closed and the matter would be taken into conference—Mr. Hobart in the hearing suggested that it was possible that he might desire to make an application to submit some testimony as to the financial condition of the Erie Railroad which would bear upon the character of order which the board should make, as to whether for example, all of
30 the work shall be ordered done at one time or whether the suggestion it might be done, piecemeal, or whether it should be done at all; anyone of those questions might be affected by the additional testimony which is submitted and in that view, the board thought that such testimony would be relevant. It might be material as to the character of order the board should make.

Mr. Hobart. Or whether any order should be made at this time or when it should be made.

40 *Commissioner Donges.* Or any order should be made and the board thought that an oppor-

Discussion.

tunity, if desired, should be afforded to submit such testimony.

Mr. Lewis. Your present ruling is, as I understand, if the railroad complies with the formalities as to notice you will give them another time—

Commissioner Donges. Such opportunity will be afforded, and the board will now fix the time, if counsel desire. Have you any suggestion, Mr. Lewis, as to any date which might not be agreeable for this purpose? 10

Mr. Lewis. I have no date in mind at all.

Mr. Sommer. May I ask Mr. Hobart whether a part of his testimony is to take the form of tabulations? 20

Mr. Hobart. A very considerable part of it will, but there is another section of it which cannot be very well tabulated.

Mr. Sommer. The reason for my question was this; if part of the testimony is going to take the form of tabulated statements, I think they ought to be furnished to counsel for the board and to Mr. Lewis in advance, in order to expedite the taking of testimony.

Mr. Hobart. Perfectly willing.

Commissioner Donges. So that counsel may know what is likely to be met. 30

Mr. Minard. There is one thing about that, Mr. Chairman, these tabulations are ready. I have gone over them, and the superintendent, in the preparation of them and if they are presented in that way, in order to make them intelligible to even the most enlightened accountant, they would have to have a good deal of explanation. They were prepared with the idea that the master mind of the company who handles these things, the comptroller himself was going to be 40

Discussion.

here and use them as a basis for his discussion and while I might give a bunch of figures, they would not mean a great deal in their present form. They would have to be very much illuminated.

10

Commissioner Dongen. That might be, but certainly some idea as to the character of the testimony and certainly of the figures themselves would be gained by having them in possession and the studying of them would assist the cross examiner in expediting the hearings—

Mr. Minard. There is no objection to furnishing them.

Commissioner Dongen. —and perhaps avoid a further continuance.

20

Mr. Minard. What I have said does not amount to an objection to furnishing them; only an explanation. One more point—

Commissioner Dongen. Then they will be furnished?

Mr. Minard. Yes, we will furnish the statement. Of course I cannot furnish all of the figures that are going to be offered at that time, but I will furnish all those tabulated.

Commissioner Dongen. All tabulations will be submitted?

30

Mr. Minard. Yes. We have a lot ready to-day.

Mr. Lewis. And the question of the admissibility is still arguable, I understand.

Commissioner Dongen. No, I understood you had made your suggestion to that.

Mr. Lewis. They are to be submitted subject—

40

Commissioner Dongen. The board has ruled that an opportunity will be afforded to the railroad company to put in such testimony as regards its financial condition as is material to the

settlement of this question. That does not of course, affect the admissibility of any particular piece of testimony but simply deals in general with the scope that the testimony is to take.

Mr. Minard. One of the things which entered into the considerations sometime back as to whether we would offer the financial conditions, was stating to the board certain prospects of the company and the delicacy about publishing financial conditions at that time. Those conditions have to some extent been removed but the board will recognize the reluctance of the company to lay its heart, so to speak, on the table, and I wondered whether some arrangement could not be made to prevent their being published. 10

Commissioner Dungen. Any matter that is submitted to counsel, I assume for Paterson, and certainly the board, will not be made the subject of advertising. 20

Mr. Minard. I know, but when the thing is in evidence, it is susceptible of being published unless the board makes a rule to the contrary. If we issue statistics to-day to counsel and something develops to-morrow that makes it—our own affairs make it impossible for that to be given in evidence, I would not want any of the statements to be published in advance of the testimony. 30

Commissioner Dungen. They would not be.

Mr. Minard. They would not be through the board, I know, but unless some mention was made counsel for some of these would not realize the necessity of not giving information, if called upon by some newspaper for the information.

Commissioner Dungen. Until the matter is submitted, the board would not be in the record.

Mr. Minard. The board would not do it or the 40

Discussion.

counsel for the board; they are in the habit of handling these figures.

Commissioner Donges. After once the figures are put into testimony—

Mr. Minard. Then of course, they are public, I understand that.

10 *Mr. Sommer.* They were to be furnished, I understood, simply to myself and to Mr. Lewis.

Mr. Minard. That is satisfactory.

Commissioners Donges. Simply to better prepare the cross examiner to complete his cross examination.

Mr. Lewis. I will give Mr. Minard a pledge of secrecy.

Commissioner Donges. After the information is put into the record, then it becomes public.

20 *Mr. Minard.* I understand that, unless some arrangement is made to the contrary.

Commissioner Donges. It is understood then that the Erie Railroad Company will be afforded an opportunity to put that in.

Mr. Minard. Was there any date to be fixed about that now?

Commissioner Donges. Yes, we can now fix a date. There is no question about the testimony being submitted on the date fixed?

30 *Mr. Minard.* I have all my witnesses on the telephone now, ready to come right here in case we were to put it in to-day. The information is ready, working nights and Sundays for a few days, in order to get it done—not Sundays exactly—but since we got this notice, we have been working constantly, men working half the night, so as to get the thing run out, so we would be ready if the board wanted it to-day.

40 *Commissioner Donges.* I see no reason why

Walter L. Bartholomew, *direct.*

we could not take this testimony one week from to-day at Newark.

Mr. Minard. I will send out the notices right off.

Commissioner Donges. You can get a list now and can get the notices out to-day, to-morrow at the latest.

Mr. Minard. I think the trouble before by using the secretary's name on the notice—I would like to know how the board would like to have that signed. I am willing to do it any way. Mr. Gilmour did the same thing I did. 10

Commissioner Donges. By permission of the board.

Mr. Minard. Then I have permission of the board?

Commissioner Donges. Yes, you may send out notices similar to this. 20

Mr. Minard. I have a list but haven't perhaps all of them.

Mr. Gilmour. He can use the list I had.

WALTER L. BARTHOLOMEW, sworn on behalf of Public Service Railway Company.

Direct examination by Mr. Gilmour.

Q Mr. Bartholomew, what is your business or profession? 30

A Engineer.

Q And with whom are you connected?

A Public Service Railway Company.

Q Have you under the direction of anyone examined the proposed plans in the office of the inspector of bridges and grade crossings of the Board of Public Utility Commissioners, relating to the change of grade of the Erie Railroad through Paterson?

A I have.

Q Have you made an estimate or caused to be 40

Walter L. Bartholomew, direct.

made an estimate of the cost of the streets to the Public Service Railway Company, involved by such changes at its crossings, of such streets on which the Public Service Railway Company have tracks?

A I have.

10 Q Will you give to the board in detail the cost to Public Service Railway Company of changing its construction at each crossing, distributable?

20 A I have a description here of each grade crossing at each location. That I will read. Park avenue and Market street; this location involves 1,895 lineal feet of single track street railway. The present plans call for elevating the railroad tracks fifteen feet and depressing the street three feet, giving approximately fourteen feet clearance under the bridge girders. The grade of the street on the easterly side of the railroad will be run out at Straight street and that on the
20 westerly side will be run out at Railroad avenue. The total estimated cost to the railway company on account of the improvement at this point is \$18,816.12, which includes excavation under our tracks. In addition, the change will result in a decrease in our capital account of \$1,858.54.

Q (*By Commissioner Donges.*) What do you mean by that, exactly?

30 A By the decrease in our capital account? We have special work installed there now at very heavy expense to us.

Q What would happen?

A That would have to be removed, discarded. The alignment of our tracks will not be affected. That is for Park avenue and Market street.

Q (*By Mr. Gilmour.*) How do you arrive at that difference in capital investment, Mr. Bartholomew?

40 A We have special work installed there now at a value of \$5,850, and that which will be replaced will be \$2,475. Then there are two sets of derail levers,

Walter L. Bartholomew, direct.

switch operating mechanism at \$4,060, which will account for—

Q Which will not be replaced at all?

A Will not be replaced.

Q So the value of the property which is there now is approximately \$9,000?

A The total value according to our detail estimate, including every item there now, is \$20,029.66. 10

Q The cost of the improvement is a total of what; \$18,816.12?

A Yes.

Q And the difference is approximately one thousand, which will be the difference in investment when this change is made?

A Yes.

Q (*By Commissioner Donges.*) Would you have to scrap this?

A Some of it, yes. We have allowed for scrap on this. 20

Q (*By Mr. Gilmour.*) In these figures of cost, have you allowed the scrap value of the material which is to be scrapped?

A You mean in the detailed cost of construction?

Q Yes?

A No, not taken from that.

Q The scrap value is not deducted?

A No, it is not.

Q Is that all as to the Park avenue crossing? 30

A That is. I have a detailed estimate for each item down there if you wish it.

Mr. Gilmour. I think the board does not care for that.

Mr. Minard. Shouldn't we have the detailed estimate? We are interested; we have to pay the difference, what they don't.

Commissioner Donges. If he has it in tabulated form I should think it would be— 40

Walter L. Bartholomew, direct.

Mr. Minard. Our engineers would want to look at it.

Mr. Gilmour. Then all right.

Witness. Will I read this?

Mr. Gilmour. Better read it into the record.

10 *Mr. Minard.* I don't want to interfere with the method which the board prefers, but if a detailed estimate like that—we have no objection to its going in as a statement and then we can get copies and consider it.

Mr. Gilmour. I would be very glad to have it done that way. I was going to read it in the record, so the copy of the record would show all the details.

20 *Witness.* The types of the rails are given and the proposed, the different types and kinds, and it might be rather confusing to get it all down; some places the same rails are used, other places they are renewed by a different type of rail.

Commissioner Donges. It is better to put it in, I should think in the form of a tabulation.

Mr. Minard. It is just as much a part of the record then.

30 *Mr. Gilmour.* With that understanding, I will have tabulation on each of these crossings furnished. I will send copies to the board and the secretary can forward them to the railroad company.

Mr. Minard. So if we get it in time our engineer can make suggestions next week.

Mr. Hobart. I would suggest you send it direct to the company.

Mr. Gilmour. All right.

Commissioner Donges. To Mr. Lewis and the railroad company.

40 *Mr. Gilmour.* Mr. Lewis is interested in this detail?

Walter, L. Bartholomew, direct.

Mr. Lewis. The city is perfectly agreeable that it go on.

Mr. Gilmour. I did not know whether the city wanted a detail or not, it is not interested in the cost.

Commissioner Donges. But in general.

Mr. Gilmour. In general, but as I see it not interested in the detail of cost. The railroad company of course is, because they will have to bear part of it. 10

Commissioner Donges. I think it would be well to submit it to the city.

Mr. Gilmour. All right. I will see that Mr. Lewis gets a copy.

Q That will do as to Park avenue and Market street. Your next crossing is Broadway?

A Broadway.

Q What is your estimate on that? 20

A I will read the description of what will take place. The proposed change at this location involves 1,379 lineal feet of single track street railway. The plans call for the same elevation of the railroad tracks and the same depression of the street grade as at Park avenue and Market street. The grade on the easterly side of the railroad will be run out at a point about one hundred feet east of Straight street, affecting also about one hundred feet on Straight street, northwardly from Broadway. The grade on the westerly side 30 of the railroad will be run out at a point in our present crossover between Paterson street and the railroad tracks. The total estimated cost to the railway company at this point is \$14,830.80, which includes excavation under our tracks. The alignment of our tracks at this location will not be affected by the improvement.

Q On those figures we will also submit the detail. Go on with the next one at River and Putnam?

A The proposed change at this point involves 940 40

Walter L. Bartholomew, *direct.*

lineal feet of double track street railway. The railroad tracks are to be elevated fourteen feet and the street depressed about three feet, giving a clearance under the bridge girders of about fourteen feet. The grade will be run out at Warren street on the westerly side of the railroad and at Lyons street on the easterly side of the railroad. The plans call for closing
10 up the present River street crossing, the reason given by engineer Harder's office being on account of the sharp incline of crossing making such an expensive type of bridge necessary to carry the railroad over the street, should River street be maintained in its present alignment. One opening under the elevated structure is to provide to accommodate traffic from Putnam and River streets, making necessary a detour in our tracks and the installation of a sharp reverse curve. This means a very bad operating condi-
20 tion, both because of the sharp curve with increased track and equipment maintenance, and because of the obstructed view and traffic congestion which is bound to result. This proposed blocking off of River street should, therefore, be strenuously opposed by our company. The estimated cost to the railway company is \$8,650, which includes excavation under the railway tracks.

Q That estimate is based on the plan with a double reverse?

30 A It is.

Q What would be your cost if River street were continued straight through and the alignment of the track were not changed?

A It would be about two thousand less.

Q Have you made any estimate of the additional maintenance cost required by the introduction of this reverse curve?

A If we had a reverse curve in there the rails would have to be renewed oftener. The maintenance
40 on the curves would be higher than what it is on a

Walter L. Bartholomew, *direct.*

straight track, due to the fact that the curves have to be greased. I haven't any figures right with me I can give right now. I could prepare figures for that.

Q You have not prepared any figures as to the additional cost of maintenance?

A Not for that reverse curve?

Q How often in your judgment would the tracks on the curve have to be renewed?

10

A The rails might have to be renewed every five or six years.

Q And how long—what would be the difference in the life of the rails on straight track?

A Some places our straight track rails last twelve or fourteen years.

Q So that the difference for maintenance in that respect would be at least one hundred per cent.?

A It would.

Q Is there any increased danger from operation involved by this proposed change in alignment?

20

A There is. You have an obstructed view there of the street, a sharp curve there, also a slight grade coming down onto this curve.

Q The view of the car coming east would be obstructed so that a car coming west could not be observed until it had reached the opening?

A It would be necessary to install signals, yes.

Q And the maintenance of signals would be an additional cost?

30

A It would.

Q They are not required at the present time and would not be required if the alignment were not changed?

A They would not.

Q Take the next crossing at Madison avenue.

A Madison avenue; our track does not cross the railroad at this point, but turns from Madison avenue into Railway avenue on which street it parallels the railroad. The plans call for depressing the railroad

40

Walter L. Bartholomew, cross.

10 tracks ten feet and raising the grade at the junction of Railway and Madison avenues twelve feet, the streets to cross the railroad above grade. The grade on Railway avenue will be run out at Iowa avenue and that on Madison avenue at a point between Railway avenue and Twenty-third avenue. This proposition involves 1,028 lineal feet of single track street railway and the estimated cost to the company is \$14,621.33, which includes the fill under the railroad tracks.

Q (By Commissioner Donges.) Includes what?

A The fill.

Q (By Mr. Gilmour.) Take the crossing at Clay street?

20 A Clay street; our track does not cross the railroad at this point but turns from Straight street into Clay street both of which streets diverge from the railroad tracks. The plans call for raising the railroad tracks nine feet and depressing the streets at their intersection about seven feet, running out the grade at Clay street at Madison street and on Straight street at Bond street, making the street cross the railroad tracks under grade. This proposition involves 614 lineal feet of street railway and the estimated cost to the company \$5,351.52, which includes the excavation under the railway tracks.

30 Q Does that complete all the crossings where the street railway has tracks in the City of Paterson?

Q It does.

Q What is the total cost as estimated by you to the railway company of the change in accordance with the plan submitted?

A That is \$62,278.77.

Cross examination by Mr. Minard.

40 Q Mr. Bartholomew, this I understand is only the estimate of the cost to you and it hasn't anything to do with the estimate with what proportion of ex-

Walter L. Bartholomew, cross.

pense of elimination of the crossing the street railway should bear?

A It has not.

Mr. Misard. That is all; subject to our reservation of the right to examine the detailed estimates when they come in.

Mr. Lewis. No questions.

Commissioner Donges. The matter will be continued, and the further cross examination of this witness to next Friday at Newark. 10

Mr. Gilmour. Mr. Mead has called my attention to an error in the statement which I filed. The first one should be Park avenue and Market street instead of Park avenue and Broadway. It is a typographical error and I would like to ask the secretary to note that.

Commissioner Donges. Why don't you send to the secretary a substitution? 20

Mr. Gilmour. With the consent of the board I will do that.

Adjourned until Friday, October 23, at Kinney building, Newark, at 10.30 A. M.

Discussion.

FOURTEENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Friday, October 23, 1914.

PATERSON GRADE CROSSING ELIMINATION, }
ERIE RAILROAD COMPANY. }

10

Before the following commissioners:

R. W. E. Donges, Esq.

T. J. Hillery, Esq.

J. J. Treacy, Esq.

F. H. Sommer, Esq., counsel.

For petitioners, City of Paterson, appears E. F. Merrey, Esq.

20 For respondent, Erie Railroad Company, appears G. S. Hobart, Esq., and D. E. Minard, Esq.

For Public Service Railway Company appears L. D. H. Gilmour, Esq.

Mr. Hobart. In this matter there is one particular feature, which from our standpoint is of special importance; I suggest to the board whether it wouldn't be better to have the whole board sit, if that could be arranged.

30 *Commissioner Donges.* That would be impossible this afternoon. There is a case on now which was started this morning and the Paterson case was fixed subject to that, so it will be impossible to discontinue now. We could give you some other day.

Mr. Merrey. I object to that. This testimony has been going on for over a year now, I guess. It has all been typewritten. I think the commission can get it just as well from the book.

40 *Commissioner Donges.* Of course, every commissioner would take the book.

Discussion.

Mr. Mervey. I object to the opening of counsel: I haven't the record before me. My understanding was they were to have the right before the final close of the case to put this in. Has the commission allowed it?

Commissioner Donges. At the time testimony was closed Mr. Hobart suggested to the board he might ask for an opportunity. He was told before the determination of the case if he made application we would consider it. 10

Mr. Mervey. The commission has opened it, however, to put in some figures before testimony was closed, some figures they didn't have at that time. I objected to that testimony at the time it was put in with a great deal of declamation and shouting. I think it can go in better in the form of figures and tabulations simply handed in. I don't think it will do any good for the officers of the company to come here and talk to the commission and try to impress them a little stronger. I think the figures speak stronger than any other thing. 20

Commissioner Donges. If the testimony is to be taken the company is entitled to submit witnesses to support the figures if they desire that also.

Mr. Mervey. I presume so. There is no reason I can see under the circumstances, the length of the case and the necessity of the commission having to go over the entire matter to impress themselves, to take the time of the whole commission and ask them to sit here while there is so much other business the commission has to attend to. I don't want to come down here another time. 30

Mr. Hobart. I only make the suggestion; we feel from our standpoint this is perhaps the most 40

Discussion.

important testimony that can be presented; we are prepared to do it by the highest officers of the departments. True, we have prepared certain tabulated statements, but they go very far from showing the situation such as could be testified to by a witness who is familiar with the situation. We feel it is so important, it is desirable to have the board sit together.

10

Commissioner Donges. It is impossible; it would embarrass the work of the board somewhat because every day is taken up.

Mr. Hobart. I know that. It is simply because of the unusual nature.

Commissioner Treacy. Have you any witnesses to-day?

Mr. Merrey. No, we have none. We don't propose to have any.

20

Commissioner Treacy. We meet every Monday in Newark at this office to go over reports and we can probably finish up by one o'clock and maybe arrange for Monday afternoon.

Mr. Sommer. Next Monday I will have to be in Trenton.

Commissioner Donges. In addition, Mr. Hobart, I doubt very much if anything will be gained; while it is always preferable to have every commissioner sit in every case, it is impossible; the work of the board is so heavy it is physically impossible. The record, of course, would be studied by every commissioner.

30

Mr. Hobart. Of course, in a hearing of this kind, which is somewhat peculiar, there are questions likely to suggest themselves to the various commissioners, which we are only too anxious to answer and explain fully. I understand while the board, as in every case, will read the testimony and study it, it is not quite first-hand in

40

Discussion.

the matter of arriving at a conclusion. In ordinary cases it would not make the slightest difference. It is only because it is an unusual condition that I make these suggestions.

Mr. Merrey. There is another matter; how about the Public Service interest in this, Mr. Gilmour?

Mr. Gilmour. The president already knows I am somewhat embarrassed because I am interested in this case before the board now and I would like to present some testimony, if it may be done, in regard to one crossing and the proposed plan in regard to one crossing. 10

Mr. Merrey. Which one?

Mr. Gilmour. The River street crossing.

Mr. Merrey. That is the bad one.

Mr. Gilmour. The place where you propose to put a kink in the street railway grade, what we regard as a very dangerous situation. I want to examine a witness in that respect. That is all I have. 20

Mr. Merrey. Can you tell us how to do it without putting the kink in?

Mr. Gilmour. Yes; spend ten thousand dollars more.

Mr. Merrey. Is that all?

Commissioner Donges. It is apparent Mr. Gilmour cannot submit his proof to-day, so a continuance will be necessary anyway. 30

Mr. Merrey. It will not take a lot of time, it seems to me, from what they say.

Commissioner Donges. If that is true it is doubtful if we could conclude that testimony this afternoon.

Mr. Merrey. I wouldn't be surprised if we couldn't. I would like to get along toward it.

Commissioner Donges. The board will fix 40

Discussion.

next Thursday morning at ten o'clock for the hearing. It is the first and only day that seems at all possible to devote to this case.

Mr. Hobart. We can safely take a chance on that day.

Commissioner Donges. Make it half-past eleven, if you please.

10 *Mr. Merrey.* How long will you take?

Mr. Gilmour. Not half an hour.

Mr. Merrey. I understood you were to leave us your tabulations.

Mr. Gilmour. I have them.

20 *Mr. Merrey.* The only change we are interested in in the Public Service matter is to find out whether they have included in some of their sums they may have put in, our estimates. Any duplication of our own estimates. I would have to have their tabulation to find that out.

Mr. Gilmour. I was going to suggest the easiest way to have that settled is to have the city engineer and the railway engineer confer and in fifteen minutes they can tell whether there is any duplication.

Commissioner Donges. I think they are entitled to have it in the testimony.

30 *Mr. Gilmour.* I don't see how we can put it in the testimony except through conference with the city engineer.

Mr. Merrey. There should be a conference.

Mr. Gilmour. I don't know what his estimates cover.

Mr. Merrey. There should be a conference between the Public Service and our engineer.

Mr. Minard. How about ours?

40 *Commissioner Donges.* Suppose between now and next Thursday morning a conference is had

Discussion.

between the engineer of the Public Service and the Erie and the City.

Mr. Merrey. How many months does the Erie Railroad want to examine this plan?

Mr. Hobart. We can do it in fifteen minutes.

Commissioner Donges. Can you agree when these representatives are to meet? 10

Mr. Gilmour. I can.

Mr. Merrey. I think any day will suit Mr. Harder.

Commissioner Donges. Is there any suggestion as to day?

Mr. Gilmour. Any day except Monday.

Mr. Merrey. How about Tuesday?

Mr. Hobart. We will adjust ourselves to your convenience.

Mr. Merrey. Tuesday. 20

Mr. Gilmour. What time? In Mr. Harder's office?

Commissioner Donges. Tuesday in Mr. Harder's office in Paterson, eleven o'clock. This matter will go over until 10.40 until next Thursday.

Mr. Minard. I have an affidavit of how I mailed copies of the notices; will that be satisfactory to the board?

Commissioner Donges. It might be just as well to show it with the same exactness as Mr. Gilmour. 30

Mr. Minard. At a later date?

Commissioner Donges. Yes, at next Thursday's hearing.

Mr. Gilmour. For the purpose of the record I want to submit the details of the figures which we presented on behalf of the street railway last week. I have them—I have sent over to the office; the man didn't understand we wanted 40

Discussion.

three copies. I have sent over to the office for the second and third copy? I will file this copy with the board and see that the Erie Railroad and the city get a copy.

Commissioner Donges. All right.

Adjourned until Thursday, October 29, 1914, at the Kinney building, Newark, N. J., at 10.40 o'clock A. M.

FIFTEENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Thursday, October 29, 1914.

20 PATERSON GRADE CROSSING ELIMINATION, }
ERIE RAILROAD COMPANY.

Before the following commissioners:

R. W. E. Donges, Esq.

T. J. Hillery, Esq.

J. J. Treacy, Esq.

For the City of Paterson appears E. F. Merrey, Esq.

30 For the Erie Railroad Company appears H. A. Taylor, Esq., G. S. Hobart, Esq. and D. E. Minard, Esq.

For the Public Service Railway Company appears L. D. H. Gilmour, Esq.

Mr. Minard. I might say now we have looked over the testimony, as far as Mr. Bartholomew's testimony is concerned and decided there wasn't anything we wanted to challenge or cross examine about it.

40 *Commissioner Donges.* How about the City of Paterson, the testimony of Mr. Bartholomew,

R. George, direct.

who testified for the Public Service Railway Company?

Mr. Merrey. I don't recall having a copy of the testimony.

Commissioner Donges. He testified to some physical conditions and put in a table and was to submit some further details.

Mr. Gilmour. Submit a detail, which we did submit to the city and the railroad company. 10

Commissioner Donges. The question is whether you desire any further cross examination of that witness.

Mr. Gilmour. I brought another witness here this morning who had a conference with Mr. Harder and the engineer of the Erie Railroad in regard to whether the figures put in included some figures heretofore submitted by the city and the railroad and they have arrived at a conclusion for which I was going to call him. 20

Mr. Minard. I understand they are all included, only the railroad company differs as to what figures on the costs heretofore submitted to the commission included all this railroad work, is that true, Mr. Gilmour?

Mr. Gilmour. I don't understand it included it all; it included most of it. The unit costs used by the city engineer are costs for which we could not do the standard construction. 30

R. GEORGE, sworn on behalf of Public Service Railway Company.

Direct examination by Mr. Gilmour.

Q Mr. George, what is your occupation?

A Assistant engineer, Public Service.

Q As such, have you had any connection with estimates of cost connected with the elimination of grade crossings on the Erie Railroad in Paterson? 40

R. George, direct.

A Yes, sir.

Q Did you have a conference with the engineer of the city and the engineer of the Erie Railroad Company concerning these costs?

A Yes, sir.

Q And what was that conference; what did that conference cover?

10 A The conference covered a comparison between the estimates prepared by the railroad company for the cost to them of making changes in their track and the similar estimates prepared by the city and the Erie Railroad for doing the railway company's part of the work.

Q Have you a tabulation of the results of that conference?

A Yes, sir.

Q Will you submit it to the board, please?

20 A I have my own rough notes in my hand here and Mr. Gilmour has a typewritten copy.

Mr. Gilmour. I have a typewritten report on that; I will submit that and ask it be marked for identification.

Commissioner Donges. It will be marked.

(Comparison of estimates received and marked Exhibit A for identification.)

Q Does the total on that agree?

30 A The copy was made in Mr. Harder's office from my notes and I compared that copy so it agrees with my figures.

Q In the figures submitted by the Public Service Railway Company to this board of the cost to the railway in changing its grade and tracks according to the tentative plan before the board, did you find on consultation that any of those figures were included in the costs heretofore submitted by the Erie Railroad Company and the city?

40 A Yes, sir.

R. George, direct.

Q What differences did you find between the costs, estimated costs, submitted by the Public Service Railway Company and the figures submitted by the city and the railroad company for the same work?

A The total difference between the estimated cost submitted by the city and that submitted by the Public Service Railway was \$22,273.97 and the difference between the Public Service Railway estimate and the estimate prepared by the Erie Railroad was \$17,375.26. 10

Q What was the principal items of difference in the estimates of the city and of the Public Service Railway Company?

A One of the differences was in the amount of track, lineal feet of track affected, another difference was in the unit costs of doing the work on the track, another difference was in the unit cost of grading, also in the amount allowed for paving and the type of paving. 20

Q In making up these figures which you have submitted, what basis of cost have you used?

A We took the actual quantities of the different materials going into the track construction and figured them at our present prices. The pavement, we used granite block pavement and the excavation throughout, we figured that at one dollar a yard as against some places fifty cents on the city's estimate and seventy-five cents on part of the Erie Railroad's estimate. 30

Q There were some places where granite block pavement is not now used on the streets affected?

A Yes, sir.

Q You figured granite block paving on those streets as well, did you?

A Yes, sir.

Q Had the city figured on granite block pavement or on some other kind? 40

R. George, cross.

10 A Some streets they figured granite block, some streets they had figured brick, and some streets they figured macadam. I did not put macadam back because at places where there was macadam, owing to the change in grade, the grade that would be put into our track would not permit of macadam being put back and being held on that grade very well, so we put granite block in there.

Q So, from a careful revision of the figures and from the comparison with the figures of the city and of the railroad company, and consultation with the engineers of the city and the railroad company, are you satisfied that the figures now submitted by you are the reasonable estimate of the cost that will be entailed on the street railway company for doing the work covered by the tentative plans for these grade crossings removals?

20 A Yes, sir.

Cross examination by Mr. Merrey.

Q In making this estimate, where you find work belonging to the street railway company not up to the present standard, you provide for the cost of bringing it up to your present standard, do you not?

A Yes, sir.

30 Q So far as quantities were concerned, you find them to be practically the same as was found by the city and the Erie Railroad Company?

A With the exception of the number of feet of track affected.

Q That particularly applies to the one crossing, doesn't it?

A It applies generally to all the crossings.

Q There is one crossing in which there was a turnout which was not estimated in the city's figures, Straight and Clay streets?

40 A Railway avenue, Madison street and Railway avenue.

R. George, cross.

Q Outside of that particular place the quantities generally agree, do they not?

A In every case I could give the difference in feet, at each location of track.

Q Take the Park avenue and Market street crossing; tell me where you differ there?

A Park avenue and Market street we figure there would be 1,895 feet of track affected as against 1,240 provided for in the city's estimate. 10

Q That additional amount of track is for track outside of the zone that the city says will be affected?

A Not entirely so.

Q You furnished a sketch to the commission, the company furnished a sketch to the commission last week in which you show there is considerable track to be relaid and renewed on Market street outside of the zone covered by the city?

A Yes, sir. 20

Q Doesn't that include practically all the difference?

A That includes part of the difference, but not all of it.

Q Where did the rest of the difference come in?

A I think part of the difference came in probably—I don't know on what basis the distance was figured—but probably a part of it came in by having the distance across the improvement scaled and multiplying it by two and neglecting to take in a part of that third track through the improvement. We have three tracks through a part of that improvement, if you will notice, one on one street and two tracks on the other street. 30

Q But the main difference is due to your intention to relay track outside of the zone covered by the work?

A Part of that track at one end has a crossover in it which is partly affected by this improvement and 40

R. George, cross.

It was made necessary to go back into another cross-over and reconstruct the whole thing.

Q I understand you to say there is a difference of 645 feet?

A Yes, sir, 645 feet.

Q Just tell us how much is covered by the amount outside of the zone declared by the city?

10 *Mr. Gilmour.* I don't want to interfere with this line of questioning, but I would like Mr. Merrey to specify for the record what he means by zone.

Mr. Merrey. The zone as indicated on the maps where the change of grade begins on Market street.

A Probably in the neighborhood of about 375 feet, as near as I can tell. About three times that distance that I have shown on the map outside of the improvement plan, and special work.

20 Q There is sixty feet here (indicating)?

A Sixty-six feet at this end.

Q And two hundred and forty, and that turnover would be about 260; isn't it nearer 500 feet?

A I should say about 450 feet altogether.

Q On the Madison street and Railway avenue change there is a difference of how many feet?

A We have 1,028 feet as against 700 feet, the city's estimate, a difference of 328 feet.

30 Q Most of that is in the turnout?

A Most of that is in the turnout.

Q On Straight and Clay street there is only a difference of fourteen feet; one is six hundred and the other six hundred and fourteen feet?

A That is all, fourteen feet.

Q At Broadway your estimate is 1,379 feet and—

A As against 1,100 feet.

Q Where does that difference come in?

40 A It might, part of it, come in in the crossover

R. George, cross.

which has to be taken care of at one end of the improvement and also in special track connections down at the corner of Straight street. Probably also not any track has been allowed for reconstruction on Straight street which is affected by a change in grade, in the city's estimate.

Q Your estimate as to the amount of grading compared about with the city's?

10

A We figured grading under our tracks only and the city was taking our figures for that amount. I believe Mr. Harder thought our figures and calculations for under the track were probably correct.

Q You provide for putting in your specification granite block?

A Yes, sir.

Q In every place where the change is made?

A Yes, sir.

Q Notwithstanding the fact that there are other kinds of pavement there now?

20

A Yes, sir.

Q And you provided for substituting that for wood block on Market street and Park avenue?

A Yes, sir.

Q Wood block would cost a great deal less, would it not?

A It would cost less, yes, sir.

Q Do you think that now in Madison avenue and Railway avenue there is any need of specification granite block?

30

A We have figured, as I said before, on our standard reconstruction in each one of these cases with the exception of those places where we are leaving the same rail in.

Q In making changes throughout your system, do you always put in this standard?

A No, there are some places—where we have new construction we always put in standard granite block pavement.

40

R. George, re-direct.

Q No matter where you put in new work?

A Where we are putting in new work, and frequently on reconstruction work.

Q But not always on reconstruction work?

A Not always.

Q Putting in very little new work, are you not?

A Just at the present time, we are.

10 Q The last work that you did in the vicinity of Paterson, the extension of the Hawthorne line to Ridgewood, did you put in standard specification granite block there?

A No, sir.

Q You put in macadam there?

A Put in macadam there, that is T rail.

Mr. Gilmour. That is suburban reconstruction.

20 Q Madison avenue and Railway avenue might be considered suburban construction?

A Hardly.

Q As far as the amount of traffic is concerned?

A No, sir.

Q (*By Mr. Minard.*) At your conference with the railroad and the city engineer which you referred to, there was no agreement reached as to a given set of figures, was there?

A No, sir.

30 Q Each side maintained their figures were—stood by their figures, did they not?

A Mr. Brameld agreed that probably our estimate of the costs were more nearly correct than the estimates either prepared by the Erie or the city, because of the fact that we went into them more in detail and are in a better position to figure our own cost than they were.

Re-direct examination by Mr. Gilmour.

40 Q There is one more matter I did not ask you about and that is the proposed crossing at Putnam

R. George, re-direct.

and River streets. The method of eliminating that crossing shows a proposed reverse curve in the track of Public Service Railway; what have you to say about the desirability of changing that method of eliminating that crossing?

A I should say from an engineering standpoint and from an operating standpoint of the railway company it would be very desirable to keep River street in its present alignment rather than make the detour that is shown on the plans proposed by the city.

10

Q Would the carrying out of that plan create a point of danger on the railway?

A I should consider it would.

Q Why?

A Because of the fact that a view of the approach on either side is obstructed, the cars coming through from either side of this approach.

Q Do you know whether the street railway company has paid considerable sums of money in the last few years to eliminate just such situations?

20

A I know of several places where we have eliminated sharp reverse curves.

Q And at considerable expense?

A Yes, sir.

Q And partly to remove a danger point?

A Yes, sir.

Q In your judgment, estimated roughly, what would be the increased cost of the bridge at that point, if River street, the alignment of River street were preserved?

30

Mr. Merrey. I object to this question unless the witness has prepared a plan. A rough estimate is not of any use to the commission.

Mr. Gilmour. I am not asking him now as a bridge expert. I am asking him as an engineer generally what the additional cost would be.

Q What is the length of that bridge now, Mr. George?

40

R. George, re-direct.

A The plans call for a ninety foot span at that point.

Q A ninety foot span?

A Yes, sir.

Q And what area would that give, floor area?

A The floor area figured on the city's plans called for about thirty-four foot width there including plat-
10 forms and that, by ninety feet—

Mr. Merr-y. I don't object to the ability of the witness to answer the question, but to change that means a lot of work, a lot of changes.

Mr. Gilmour. You can show that.

Commissioner Donges. That will show by examination.

Mr. Merrey. Why should we have it if we afterwards show it is not worth anything?

20 *Commissioner Donges.* Let Mr. Gilmour ascertain whether he knows.

Mr. Merrey. If the witness has prepared such a plan we would be glad to hear what he said, but I don't see it is any use if he makes a mere guess.

Q To carry River street through on its present alignment and bridge both Putnam and River streets, have you made any estimate as to what length of bridge would be necessary?

A Yes, sir.

30 Q And have you computed the additional cost, figured on the estimated cost of the present bridge per square foot, as now proposed by the railroad company?

A Yes, sir.

Q And what would be the additional cost estimated that way?

A The additional cost based on the per square foot price as provided for in the city's estimate would bring the total cost of such a bridge up to about \$55,-
40 000.

R. George, re-cross.

Q And what is the present estimated cost?

A About twenty thousand dollars.

Q So the difference would be about \$35,000?

A Yes, sir, on that basis.

Re-cross examination by Mr. Merrey.

Q What would require greater floor depth, wouldn't it, of the bridge?

A It would depend entirely how they lay out the columns to support the bridge for the space between the abutments at either end.

Q You have not gone into a plan, the cost of a plan in exchange for the one that is presented, have you?

A No, sir, not prepared any plans.

Q So you cannot tell what it would cost to change it and make a straight crossing there?

A No, sir.

By Mr. Minard.

Q Do I understand you correctly, that on the basis of the plan submitted for River street the kind of a crossing that you have described would cost thirty-five thousand dollars more?

A Based on the same per square foot price that the city used.

Q You speak of the company's willingness to spend money to eliminate this sort of what you call danger points?

Mr. Gilmour. He did not speak of the willingness to do it, he spoke of their having done it.

Q Their having done it. Do you know anything about whether the Public Service Railway Company is willing to bear this difference if the plan is changed?

A No, sir, I am not in a position to state that.

Mr. Minard. I would like to know from Mr. Gilmour.

Mr. Gilmour. I am not the Board of Directors.

R. George, re-cross.

Mr. Minard. It would make a difference whether we put in testimony to rebut this sort of testimony.

10 *Mr. Gilmour.* Under this act we have an obligation up to ten per cent. of the total cost of this work, and if in the execution of the work a burden is put on the street railway company by this kind of construction which entails an expense equal to over ten per cent., and where one accident might cost all of the benefit to the street railway by this change, I think the street railway company ought to protest, for that reason.

20 *Mr. Minard.* The only reason I said anything on that point was this; when the city has agreed on a form of crossing there which suits it and so far as the general plan is concerned, no testimony has come from the railroad company to criticise that method of crossing, if the thirty-five thousand dollars difference in cost of the crossing is to be considered solely for the benefit of the trolley company, then it ought to be considered outside of their ten per cent. cost of the whole.

30 *Mr. Gilmour.* I want to say right here that I don't know of anything in the act that will compel the street railway company to put a reverse curve in its tracks to conform to this method of undercrossing.

Mr. Minard. All I know is that the act says—

Mr. Gilmour. They have a definite location in that street.

Mr. Minard. I don't know, very few know what the act does mean. I know what it says, in one place, that the utility company such as the street railway shall make necessary changes to make its railway conform to the order of the commission. What that means I don't know.

R. George, re-cross.

Mr. Gilmour. That means change of grade and not change of street line.

Commissioner Donges. That can hardly be true, can it, Mr. Gilmour; when the act provides that the location of the street may be changed?

Mr. Gilmour. I have examined the act, not very carefully, but I was rather of the impression that the change of street lines was a matter that required agreement rather than a direction of the commission. 10

Commissioner Donges. I think not, under the language of the act.

Mr. Gilmour. I have not examined it carefully, but here is a position where the street railway company has a location in the street, it is under obligation under the act to change to conform to a change of grade on that street, it is under a franchise obligation to conform to a change of grade, but having been located in the street by the city under the authority of a State law, I have some doubt as to whether, without its consent, its location in the street can be changed to its disadvantage. I only suggest that at this time. I have not worked it out carefully. 20

Commissioner Treacy. Could it be changed to its advantage?

Mr. Gilmour. Possibly not, but it would consent to such a change. 30

Commissioner Treacy. Couldn't the street railway defeat the very object of this statute if it did not want to consent, where it would be necessary to change the street line?

Mr. Gilmour. No, I think not. I think it could defeat the closing of the street. That is my point. I think that you can close streets under this act where there is no other interest except the city and the railroad company, but where there is a vested right of a street railway to use 40

R. George, re-cross.

a street for a public use, it does not seem to me that under the act you can change that location to the detriment of the street railway or to the disadvantage of the public use.

Commissioner Treacy. Suppose the only way that a railroad crossing could be eliminated would be by a change in the street line?

10 *Mr. Gilmour.* That is a different case from any that is presented here.

Commissioner Treacy. Wouldn't this board in that case have the right?

Mr. Gilmour. I have not examined that question.

Commissioner Treacy. Would the railroad company have the right to prohibit or obstruct the elimination of the grade crossing by not consenting to that?

20 *Mr. Gilmour.* The street railway? I don't think they would take that position at all.

Commissioner Treacy. You are maintaining the board has not the right to order that.

Mr. Gilmour. I think that is true, under the act.

Commissioner Treacy. Then the statute would be of no value in this connection.

30 *Mr. Gilmour.* The statute is not as carefully drawn as it might be. I think—I have a theory which, as I said, I have not worked out to my own satisfaction, but my impression now is that the board cannot take away from the street railway a vested right which it has to the use of the street, either by closing the street or making that use dangerous.

Commissioner Donges. Your idea is the rights of the street railway are superior to those of the public.

40 *Mr. Gilmour.* No, not at all. I think the

R. George, re-cross.

rights of the street railway are the rights of the public.

Commissioner Donges. If they are no greater, if you can close a public street against the public—

Mr. Gilmour. That is provided in the act.

Commissioner Donges. Certainly provided in the act. 10

Mr. Gilmour. But it is not provided as to the railway. The power is not in the act as to the railway

Mr. Gilmour. I offer now that report in evidence and ask it be received.

I ask that the board now authorize the marking of the tables as exhibits. There was a statement of the cost submitted and verified by the testimony of the witness afterward, and a sheet showing those costs was submitted to the board and asked to be marked as an exhibit. That was in Jersey City. 20

Commissioner Donges. Let that be marked P.S.R.-1.

(Same is received and marked Ex. P.S.R.-1.)

Mr. Gilmour. Then the board said will you submit details of those figures. The details I submitted last Monday and offered them here and supposed they were marked. 30

Commissioner Donges. The detail statement may be marked P.S.R.-2.

(Detailed statement of cost to Public Service Railway received and marked Ex. P.S.R.-2.)

Commissioner Donges. And the comparative statement may be marked P.S.R.-3.

(Statement of comparison between costs as estimated by the Public Service Railway Company, City of Paterson, and the Erie Railroad Company, received and marked Ex. P.S.R.-3.) 40

W. H. Brameld, direct.

W. H. BRAMELD, recalled on behalf of respondent.

Direct examination by Mr. Minard.

Q You attended a conference at the city hall in Paterson with the engineers for the Public Service Railway Company and the city, did you not?

A I did.

10 Q You are familiar with the statement that has been brought here, P.S.R. Exhibit 3?

A Yes.

Q Did you make a comparison of your own as between the Public Service Railway and the Erie Railroad?

A Yes, I did.

Q Does it differ in any way from the statement already in evidence?

20 A As to the total amounts, no. This statement is a comparison between the estimate made by the railroad company on the city's plan and the estimate submitted by the Public Service Railway engineer, and indicates the quantities and unit prices that were used in the railroad estimate, to enable the commission to note in detail just how much the Public Service Railway estimate increased the cost of the work over the figures that have already been submitted by the railroad company on its estimate and that amounts between the Erie estimate and the street railway company's estimate, to an increase of \$17,375.26, as testified to by Mr. George.

30

Q Then the difference between your statement and the one already in is that the details are in, regarding quantities and unit prices?

A Yes.

40

Mr. Minard. I offer that simply to explain more fully what this exhibit, P.S.R.-3, is intended to do. I will read the title of it: "Erie Railroad Company, office of Assistant Engineer. Comparative statement of estimate of cost of street

W. H. Brameld, direct.

railway work taken from estimate submitted to Public Utilities Commission of New Jersey to Public Service Railway Company and estimate submitted to Public Utilities Commission of New Jersey by Erie Railroad Company, in connection with elimination of grade crossings, Erie Railroad, Paterson, N. J."

(Statement here described received and marked Exhibit R-110.)

10

Mr. Gilmour. Under this grade crossing act there is a provision that the street railway company may be required to pay a part of the cost up to ten per cent. The board makes a finding that these grade crossings shall be eliminated in a certain way, based on estimated costs. What I desire to ask is as to the present thought of the board, whether the amount which the street railway company will have to pay will be a fixed amount based on those estimated costs or whether it would be a percentage of the total cost when the work is actually completed and the actual total cost is ascertained.

20

Commissioner Donges. The fourth section of the act says, "Where the order of said board shall require changes in, or the removal of the property or constructions of any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe lines, or other company or corporation, co-partnership or individual, they shall, at their own expense, move or change the grade or location of their property, or constructions in conformity with the order of said board."

30

Mr. Minard. Section Two contains the other one.

Commissioner Donges. Section Two says, "The entire expense of such alterations, changes, relocation or opening, including damages to adjacent property, shall be paid by such railroad, unless

40

W. H. Brameld, direct.

10 a street railway uses such crossing, in which event the board may order not exceeding ten per centum of such expense directly chargeable to the crossing used by the street railway company, to be paid by the company operating such street railway and the balance to be paid by the company operating such railroad." Now, just how the board would direct the street railway and what portion it should pay, the board at this time is unable to say.

20 *Mr. Gilmour.* I have no questions to ask this witness if the board in its finding is going to follow the words of the act and direct the street railway company shall pay ten per cent. of the cost connected with the particular crossing. Then I don't care whether he uses one dollar as a unit cost for excavation or whether he uses fifty cents, because when the actual cost is ascertained we pay a percentage of it, and it does not make any difference to me what unit prices he estimates on.

Commissioner Donges. Certainly, in no case could your company be required to pay more than the statute says, and that is, "not exceeding ten per centum of such expense directly chargeable to the crossing used by the street railway company."

30 *Mr. Gilmour.* If our cost of conforming to the change is more than that ten per cent., then the excess is paid by the railroad company, that is evident.

Commissioner Donges. I should say you had better, Mr. Gilmour, at this time, cross examine to cover whatever you think is necessary, because the board is not prepared now to announce as to the basis that will be adopted, so you better fully protect yourself.

W. H. Brameld, cross.

Cross examination by Mr. Gilmour.

Q Mr. Brameld, in estimating the cost of excavation I notice you use fifty cents a yard; do you think that is a reasonable estimate for excavation beneath the surface of street railway tracks where the railway has got to be kept in operation?

A I don't use fifty cents, I use one dollar the same as the Public Service. 10

Q I thought you used fifty cents?

A Except, I use fifty cents at Madison avenue, because that is filling material and I use one dollar at all streets except River street where I use seventy-five cents on account of the large quantity of excavation.

Q You say you use seventy-five cents at River street on account of the large quantity of excavation. What is the quantity of excavation at River street?

A I think it was something like sixty-eight hundred cubic yards. 20

Q How much?

A Sixty-eight hundred cubic yards.

Q You mean the total excavation?

A Yes.

Q In the Market and Park avenue excavation for the street railway is 974 cubic yards and for that you have allowed one dollar a yard as a unit price; in River street the grading by the street railway company is only 545 cubic yards and there you use a price of seventy-five cents; is that a fair difference when the work is even less than it is at Market street? 30

A On the total amount of grading at River street it is considerably less. When I figured those estimates I didn't figure the trolley company had to excavate the material under its tracks, but that the excavation would be let as a whole to one contractor.

Q Then you have not figured especially on the cost of work done by the street railway company to 40

W. H. Brameld, cross.

conform its tracks to the plan? You have only figured on general cost to do the whole work?

A Yes.

Q That is all?

A Yes.

10 Q (*By Mr. Minard.*) Mr. Brameld, on that point, having the work done by one contractor, of course, that would be the most economical way of doing it, rather than have different people doing different parts here and there?

A As a usual thing it is, yes.

20 *Mr. Minard.* I want to offer, not so much for it evidential value, but for the benefit of the commission in comprehending the Erie system as a whole, the map which is taken from our 1914 annual report entitled, Erie Railroad with branches and connections, 1914. It contains the different lines in different colors with an explanation which will indicate what the different colors mean and gives a very good picture of the system.

Commissioner Donges. You offer this?

Mr. Minard. I offer it for the information of the commission.

Commissioner Donges. Let it be marked.

30 (Map entitled Erie Railroad, with branches and connections, 1914, received and marked Exhibit R-111.)

Mr. Minard. The last time we were here I stated I would file an affidavit showing proof of the mailing and the president was of the opinion we better follow the precedent.

D. E. Minard—Charles P. Crawford, direct.

D. E. MINARD, sworn on behalf of respondent.

Can I say I did it in accordance with that affidavit and offer that as an exhibit?

Commissioner Donges. Yes.

Witness. I prepared notice to be sent to all of the parties mentioned on the list which I obtained of the parties interested in this case, and had that notice printed in post card form and deposited in the post-office letter chutes in the building, 50 Church street, which chutes are installed by the United States Postal authorities, 10

Q (*By Commissioner Donges.*) When?

A I think it was on Monday of last week, as that hearing was to be held on Friday. I sent them out on the day set forth in that affidavit and to the persons mentioned in that affidavit and in the manner stated therein, and I will offer that affidavit. 20

Q With copy of notice attached?

A Copy of notice attached.

Commissioner Donges. That will be admitted and marked as Exhibit R-112.

(Affidavit as to mailing of notice of hearing received and marked Exhibit R-112.)

Q That was then on October 19th?

A Yes, sir, that is my recollection, but that affidavit states it exactly. 30

CHARLES P. CRAWFORD, sworn on behalf of respondent.

Direct examination by Mr. Taylor.

Q Mr. Crawford, you are an officer of the Erie Railroad Company?

A Yes, sir, comptroller.

Q And of its subsidiary companies?

A Yes, sir.

Q How long have you held that position? 40

Charles P. Crawford, direct.

A Since February, 1910.

Q What was your position before that time?

A Auditor.

Q How long were you auditor?

A Four or five years.

Q How long have you been connected with the service of the Erie Railroad Company and its predecessors?

A Over thirty years.

Q Continuously?

A Almost.

Q What is the nature of your duties as comptroller?

A Chief of the accounting department.

Q You have general charge of the accounts of the Erie Railroad Company and its subsidiaries?

A Yes, sir.

Q Mr. Crawford, have you prepared an income statement of the Erie Railroad Company, including the Chicago & Erie Railroad for the year ending June 30th, 1914, as compared with 1913, showing the increases and decreases on each item?

A I have, yes, sir.

Q Is that statement prepared from the books of accounting of the company?

A It was.

Q Is it correct?

A It is.

Mr. Taylor. I will offer that in evidence.

(Statement entitled "Erie Railroad Company income statement, for years ending June 30, 1914 and 1913," received and marked Exhibit R-113.)

Q You stated, Mr. Crawford, that that included the Chicago & Erie Railroad?

A Yes, sir.

Charles P. Crawford, direct.

Q Kindly explain what the Chicago & Erie Railroad is.

A The Chicago & Erie Railroad is that portion of the lines operated as part of the Erie system which extends from Marion, Ohio, to the Indiana State line and having trackage rights over the Chicago & Western Indiana, giving entrance in Chicago.

Mr. Taylor. If the commission will refer to the exhibit offered a few moments ago, the map, they will see where that line is. 10

Q (*By Commissioner Treacy.*) That is about how far from Chicago?

A 260 miles.

Q From Chicago to Hammond?

A 19.99 miles.

Q Hammond is about the end of the Chicago & Erie?

A Yes, sir, the State line. 20

Q (*By Mr. Taylor.*) We have trackage rights over that nineteen miles?

A Yes, sir.

Q The Chicago & Erie owns and operated the line between Hammond and Marion?

A Yes, sir.

Q What is the relationship between the Chicago and Erie Railroad Company and the Erie Railroad Company?

A The Erie Railroad is the owner of the capital stock of the Chicago & Erie. 30

Q The entire capital stock?

A Yes, sir.

Q But the Chicago and Erie Railroad is a separately operated railroad, is that correct?

A It is.

Q Which reports separately to the Interstate Commerce Commission and files its own tariffs?

A Yes, sir. 40

Charles P. Crawford, direct.

Q Are the accounts from which this statement, Exhibit R-113, is made, kept in accordance with the rules and requirements of the Interstate Commerce Commission?

A Yes, sir.

10 Q What is the difference in the net income as shown for the years ending June 30th, 1914 and 1913, respectively?

A For the year ending June 30th, 1913, the company's net income was \$8,105,675. For the year ending June 30th, 1914, it was \$1,422,975, a decrease of \$339,488.

Q (*By Commissioner Donges.*) That is wrong.

A A decrease of \$6,682,700.

Q (*By Mr. Taylor.*) That is the total net income of the Erie system, is that correct; that is including the Erie Railroad and the Chicago & Erie?

20 A Yes, sir.

Q That however does not include the New York, Susquehanna & Western Railroad Company?

A No, sir.

Q Or the Wilkesbarre & Eastern?

A No, sir.

Q Or the New Jersey & New York Railroad Company?

A No, sir.

30 Q Nor the Bath & Hammondsport Railroad Company?

A No, sir.

Q Mr. Crawford, referring to this map, Exhibit R-111, how is the Bath & Hammondsport Railroad referred to, or rather, shown on that map?

A The Bath & Hammondsport is a line ten miles in length, extending from Bath, New York to Hammondsport, New York, shown in black ink.

Q Marked B. & H. R. R.?

40 A Yes, sir.

Charles P. Crawford, direct.

Q How is the Wilkesbarre & Eastern shown on that map?

A In yellow ink, extending from Stroudsburg, Pennsylvania, westward to Wilkesbarre and Minooka.

Q It is shown on this map as part of the New York, Susquehanna & Western Railroad, is it not?

A Yes, sir.

Mr. Taylor. The statement on the map with respect to the New Jersey & New York Railroad is self explanatory. 10

Commissioner Donges. You say that line runs from Stroudsburg?

Mr. Taylor. The Wilksbarre & Eastern, yes.

Q What was the difference in the surplus as shown on this income statement of the Erie Railroad system for the two years?

A The corporate surplus for the year ending June 30th, 1913, was \$6,682,568. For the year ending June 30th, 1914, it was but \$159,523, a decrease of \$6,523,045. 20

Q Were appropriations for additions and betterments in 1914 more or less than in 1913?

A They were \$154,845 less.

Q So if they had been the same in 1914 as in 1913, there would have been practically no surplus, is that correct?

A It is. 30

Q Referring to the railroad operating income of the Erie system as shown on this map, what was the difference between the railroad operating income of the two years?

A A decrease of \$3,741,031.

Q What was the total income in 1914?

A Gross income?

Q Total railway operating income for 1914?

A \$12,759,567. 40

Charles P. Crawford, direct.

Q That is net of course, net so far as operations are concerned. That is not, I want the commission to understand, that is not the gross receipts?

A That is revenues, less expenses and taxes.

Mr. Taylor. It is net revenues from operation after deductions for fixed charges.

10 *Mr. Merrey.* I understand the witness is reading figures from the tabulation.

Q Mr. Crawford, how did the operating income of the Erie system for the year ending June 30th, 1914, compare generally with operating incomes earned by the system for the last ten years?

A It was the smallest in any year since 1905, with the exception of the panic year of 1908.

Q How did the extent of railroad operated in 1914 compare with the extent of railroad operated ten years ago?

20 A One hundred miles more.

Q In 1914?

A Yes, sir.

Q How did interest charges and road rentals compare in 1914 as compared with 1905?

A They increased from 1905 to 1914, \$2,609,553.

Q So that amount, \$2,609,553, represented additional fixed charges which the road had to make?

A It did.

30 Q Out of an income which was the smallest—out of net operating income which was the smallest in ten years, is that correct?

A Yes, sir.

Q How does the surplus in 1914 compare with the surplus as shown in the last ten years?

A The smallest of any for the past ten years, with the single exception of 1908.

Q What was the smallest surplus excepting 1908 and 1914?

40 A \$2,565,717.

Charles P. Crawford, direct.

Q As compared with the surplus in 1914 of one hundred and fifty-nine thousand and some odd dollars; is that correct?

A \$159,523 in 1914; yes, sir.

Q I understand, Mr. Crawford, that the appropriations for additions and betterments are taken out of the net income of the system before you state your surplus, is that correct?

10

A They are, yes, sir.

Q So the amount of the surplus of course, would be affected by the amount appropriated for additions and betterments in any particular year?

A Yes.

Q You stated, and the statement shows, that the amount appropriated from income for additions and betterments in 1914 was approximately five hundred and two thousand dollars. How does that compare with the average for the ten years from 1905 to 1914?

20

A The average for the ten years 1905 to 1914, inclusive, was \$970,689.

Q So that it was considerably less than the average in 1914?

A Much less.

Q There is another item of appropriations of income to sinking and other reserve funds which comes out of net income before surplus is stated, according to your exhibit.

30

A Yes.

Q What does that amount include, generally speaking? Give the character of the charges.

A It is the amount we are required to pay to the trustees of one of our mortgages as a sinking fund and is based on the tonnage of coal produced on one of our subsidiary companies, one of our companies of which the capital stock is owned by the Erie Railroad.

40

Charles P. Crawford, direct.

Q So that is in the nature of a fixed charge as to amount?

A Based on tons of coal produced.

Q And does not vary greatly from year to year, is that correct?

A It does not.

Q Have you prepared an income statement for the
10 Erie Railroad system for the two months ending August 31st, 1913 and 1914?

A I have.

Q Was that prepared from the books of the company, the same as the other?

A Yes, sir.

Q And is it correct?

A It is.

20 *Commissioner Donges.* Let me ask Mr. Crawford, before you leave this other statement—by the way has it been offered and given a number?

Mr. Taylor. Yes, 113.

Q (*By Commissioner Donges.*) Item number 12, dividend income, shows that in the year 1913 \$2,611,880 and 1914 \$800,320. Of what does that item consist?

A Dividends on capital stock owned by the Erie Railroad Company.

Q And it showed a decrease of \$1,811,560?

30 A A great decrease. One company which in 1913 we had dividends amounting to \$2,450,000, in 1914 the same company only paid dividends of \$500,000.

Q (*By Mr. Merrey.*) May we ask what company that is?

A The Pennsylvania Coal Company.

Q (*By Commissioner Donges.*) Item 14, income from unfunded securities and accounts; what does that represent?

40 A That is, the funded securities according to the classification are all securities maturing more than

Charles P. Crawford, direct.

one year after date. Included in this item 14, interest on unfunded securities, is interest on any short term notes which the company owns and advances made to other companies. The principal item in which there was a large decrease, which I assume you would like to know about, is largely on account of interest received from the Hillside Coal & Iron Company.

10

Q For advances made?

A Which owes the Erie Railroad Company a very large sum for advances made in previous years.

Q (*By Mr. Taylor.*) Made in what years, Mr. Crawford, recent years?

A No, prior to 1895. They were able to pay, or rather they did pay during the year 1913, \$1,419,990.

Q Mr. Crawford, right in that connection, state what you know about any extraordinary sources of income the Hillside Coal & Iron Company had during that year?

20

A Yes, sir. While in 1914—

Q (*By Commissioner Donges.*) In 1913, did I understand you to say?

A Yes, sir, they paid \$1,419,990.

Q That was interest on the—

A On this very large indebtedness they owe to the Erie Railroad Company. They are able to pay that on account of having been successful in litigation in securing and collecting a judgment in relation to royalties on coal which had been mined for many years which gave them funds and allowed them to make this large payment.

30

Q (*By Mr. Taylor.*) You mean back royalties, Mr. Crawford?

A Yes, sir.

Q (*By Commissioner Donges.*) The Hillside company is a coal mining company?

A Entirely so, yes, sir.

40

Charles P. Crawford, direct.

Q (*By Mr. Taylor.*) Of which the Erie Railroad Company owns the capital stock?

10 A The Erie Railroad Company owns the entire capital stock of the Hillside Coal & Iron Company. Having made that large payment in 1913 it caught up with the interest to date so the interest payments in 1914 is practically only the amount which accrued during that year, with the exception of about four thousand dollars from another coal company. That would explain the decrease in the account to which you called attention.

Q (*By Commissioner Donges.*) So that the income shown in 1913 of \$2,006,119 was more than was customarily received from sources included in that item?

A Very much more, yes, sir.

20 Q Would the sum of \$424,453 be about what that fund ordinarily produces?

A I think it would.

Q What is received from these sources?

A Yes, sir.

Q (*By Mr. Taylor.*) Coming back to item 12, Mr. Crawford, as to dividend income; what would you say about whether the income in 1913 was extraordinary?

A Much above the average.

30 Q In order that we may have the whole thing, what would you say about income in 1914 on that item?

A Based on previous years, that would seem to be below the normal.

Q How much do you think?

A I haven't any figures at hand to answer that question.

40 Q (*By Commissioner Donges.*) I understood you to say though, Mr. Crawford, that the income, dividend income in 1913 was about what would be ordinarily expected?

Charles P. Crawford, direct.

A I did not intend to say that in 1913.

Mr. Merrey. Didn't you answer practically all that was owed to the company by one concern?

Commissioner Donges. No, not on that item.

Mr. Taylor. I think what Mr. Crawford said was, that the income from funded securities was about what was to be expected. He said, and I brought this out, because I want to be entirely fair and open with the commission, that the dividend income for 1914 as shown here is somewhat below the average.

10

Mr. Merrey. Yes, he said that, but he also said that one company was in default for practically the difference, as I got it.

Witness. That is in item 14, sir.

Mr. Merrey. Dividend income I spoke about. You gave the figures and mentioned one company, the Pennsylvania Coal Company.

20

Commissioner Treacy. He said there wasn't any dividend paid on the stock.

Mr. Taylor. He said they did not pay a dividend on the stock and the figures they owe made up almost the difference here.

Mr. Merrey. That is the way I got it.

Q (By *Commissioner Donges.*) Will you tell us what the fact is; what the dividend ordinarily received from the Pennsylvania Company is, if you are able to give that?

30

A I have no figures to give on the average dividends received from the Pennsylvania Coal Company. We received during the year 1913, \$2,450,000 and in the year 1914, \$500,000.

Mr. Taylor. The commission will observe that is within about \$300,000 of the entire account in both years.

40

Charles P. Crawford, direct.

Mr. Merrey. In other words, the decrease in that dividend practically is the cause of this decrease?

Mr. Taylor. The decrease in that item, yes.

Witness. The Pennsylvania Coal Company dividend practically explains that.

10 Q (*By Mr. Merrey.*) They owe you that money and haven't paid it?

A No, sir, they paid their dividends.

Mr. Taylor. Dividends are not owed until declared.

Q (*By Commissioner Donges.*) No dividend declared in excess of \$500,000?

A Not up to this time, no, sir.

Q (*By Mr. Merrey.*) It is not a fixed dividend they must declare?

20 A No, sir.

Q Not preferred stock or anything of that kind?

A Oh, no.

Q (*By Mr. Taylor.*) The fact is that the Erie Railroad Company owns all the stock of the Pennsylvania Coal Company and that all profits which the Pennsylvania Coal Company can spare from its working capital are declared as dividends and paid to the Erie Railroad Company?

A I understand that is their policy, yes, sir.

30 Q As far as that is concerned, do you know whether the Pennsylvania Coal Company has a separate management, and separate board of directors from the Erie?

A It has.

Q And its business is run separately on its own account?

A Yes, sir.

Q Are you an officer of the Pennsylvania Coal Company?

40 A No, sir.

Charles P. Crawford, direct.

Q (*By Commissioner Treacy.*) Do you know, Mr. Crawford, of your own knowledge what was the cause of the decrease of the dividend of the Pennsylvania Coal Company?

A Only in a general way. I had understood they had an immense amount of coal stocks and had not sold it, their surplus being tied up in stock of coal rather than being in cash.

10

Q (*By Commissioner Donges.*) They had mined more than usual?

A I could not say as to that, sir.

Q Or had not been able to move the usual quantity of coal?

A My understanding was the sales were decreased largely, particularly in the northwest. That is merely hearsay.

Mr. Taylor. Mr. Chairman, permit me to call your attention to the fact that their revenue in 1914 under item, coal, shows a decrease on the Erie Railroad system of \$877,934 in gross revenue.

20

Q (*By Mr. Taylor.*) Mr. Crawford, how does the movement of anthracite coal and bituminous coal compare on the Erie system?

A It is a very small portion of bituminous coal.

Q What proportion of the anthracite coal shipped, roughly speaking, is the coal mined by the Pennsylvania Coal Company?

30

Commissioner Donges. Shipped over the Erie, you mean?

Mr. Taylor. Yes.

A What proportion of that shipped over the Erie is Pennsylvania coal?

Q Yes?

Commissioner Donges. Pennsylvania Company coal.

40

Charles P. Crawford, direct.

Q The percentage of the total coal mined by the Pennsylvania Coal Company?

A More than half of it.

Q More than half of it?

A Yes, sir.

10 *Mr. Taylor.* So, Mr. Chairman, you can see the amount of coal shipped by the Pennsylvania Coal Company as indicated by these figures is very much less in one fiscal year than in the other.

Q (*By Commissioner Treacy.*) Do you know how the amount of coal now on hand, of the Pennsylvania Coal Company, compares with the amount usually on hand?

20 A I do not. It was merely stated to me by an employe that they had a very large stock of coal on hand and I assumed from his calling my attention to it, that it must have exceeded previous years, but I have no figures.

Q Do you think the amount of coal on hand would be equal in value to the difference in dividend declared by the company in 1913 over that of 1914?

A I haven't any figures that would give that, sir.

30 *Mr. Taylor.* Mr. Commissioner, we would be glad to file, if you wish, a statement of the average amounts received as dividends by the Erie Railroad Company from the Pennsylvania Coal Company for a series of years.

Commissioner Donges. That would be well to do, inasmuch as that is the chief item of decrease.

40 *Commissioner Treacy.* Mr. Taylor, the point I had in mind was this; Mr. Crawford has testified that the reason, or the principal reason why the same dividend was not paid this year by the Pennsylvania Coal Company as was paid in previous years was due mainly to the fact that it has a large stock of coal on hand.

Charles P. Crawford, direct.

Q (*By Mr. Taylor.*) Did you so testify, Mr. Crawford?

A I said I had heard so. I think my testimony will show that is hearsay.

Commissioner Tracy. If the value of that stock on hand is comparable or equal to the value of the dividends that are usually declared, it might have some bearing.

10

Mr. Taylor. I shall be very glad to endeavor to obtain a statement of the comparative amount of coal in stock by the Pennsylvania Coal Company this year and last year. You understand they always have a large amount of stock in hand.

Witness. Probably four or five million dollars worth.

Q (*By Mr. Taylor.*) At all times, at least in every year at the same time of the year.

20

A Yes.

Q But some years would be more than others?

Commissioner Douglas. Suppose you submit a statement then.

Mr. Taylor. I will endeavor to obtain that. I don't know whether I can get that or not—

Commissioner Douglas. Showing the dividends over a period of years.

Mr. Taylor. —but I think I can.

30

Witness. The dividends paid to the Erie Railroad are obtainable, of course.

Mr. Taylor. The dividend is.

Commissioner Douglas. And the other too, perhaps.

Mr. Taylor. I will endeavor to get it.

Referring to the second statement, Mr. Crawford, Erie Railroad Company, income statement for the two months ending August 31, 1914 and 1913—I will offer that in evidence.

40

Charles P. Crawford, direct.

(Statement entitled "Erie Railroad Company, income statement, for the two months ending August 31, 1914 and 1913," received and marked Exhibit R-114.)

Mr. Merrey. I had a couple of questions I wanted to ask Mr. Crawford about Exhibit 113.

10 *Commissioner Douglas.* It might be well to take that up, unless you prefer—

Mr. Taylor. If only one or two questions to get rid of the thing for good, I won't object. If you are going to develop it into a protracted examination, I think we can—

Mr. Merrey. I only have a couple of questions. The commission has covered most of the examination I intended to make.

20 *Q (By Mr. Merrey.)* I wanted to ask Mr. Crawford, under the head of rail operations—expenses, the first item is maintenance of way and structures. I want to ask if that is fixed in any permanent way, the amount of expenditures which must be made.

A Not that I am aware.

Q That is, you spend on that item as much as you can afford in consideration of what is needed?

A I could not testify as to that. I only know what was expended.

Q What was expended?

30 *A* Yes.

Mr. Taylor. I will have a witness you can ask about that.

Mr. Merrey. Then I won't ask any further questions.

Mr. Taylor. I have offered this statement.

Commissioner Douglas. Yes, it is marked Exhibit R-114.

Charles P. Crawford, direct.

Q (*By Mr. Taylor.*) I think you said, Mr. Crawford, this is prepared from the accounts of the company the same as the other statement, and is correct?

A In exactly the same manner, and is correct.

Q The fiscal year of the Erie system ends when?

A June 30th.

Q Is that the explanation of putting two statements in in this form?

10

A For the two months of the present fiscal year, yes.

Q For those two months of the two years how does the net income compare?

A There is a slight increase in net income, increasing from \$611,457, for July and August, 1913, to \$625,523 for the months of July and August, 1914.

Q Take the railway operating income, what change is shown there as compared with last year?

A There is a decrease of \$46,231.

20

Q Take the railway operating revenues, what is the difference between this year and last year?

A A decrease of \$282,406 in operating revenue.

Q That means then that the railroad company received \$282,000 less from the public for the conduct of its transportation business in the two months August 31st, 1913 and 1914?

A Yes.

Q How much did they save in expenses?

30

A The expenses were reduced by the sum of \$236,568.

Q That is operating expenses?

A Yes.

Q Mr. Crawford, have you prepared a statement showing the principal of the obligations of the Erie Railroad Company maturing during the period from October 14th, 1914, to June 30th, 1915?

A Yes, sir, the statements start with the month of November, Mr. Taylor.

40

Charles P. Crawford, direct.

Mr. Taylor. When I said principal, I meant obligations which are for principal payments as distinguished from interest.

I will offer that statement which Mr. Crawford has prepared in evidence.

Commissioner Donges. It will be marked.

10 (Statement entitled, "Erie Railroad Company, statement showing obligations [principal only] maturing during period October 14th, 1914, to June 30th, 1915," received and marked Exhibit R-115.)

Q What is the total amount of those obligations?

A The statement shows \$18,831,000 including an October payment of \$203,312.

Q Which has been made?

20 A Which has now been made, yes, sir, leaving the total commencing with November, \$18,628,627.

Q These payments are described as either equipment trust certificates, construction obligations, real estate mortgage or collateral notes?

A Yes, sir.

Q Describe the character of each one of those.

A The items shown as equipment trust certificates are the installments due on new equipment purchased.

30 Q That is, the railroad company already has the equipment in its possession?

A Oh, yes.

Q And is called upon under written obligations to pay those amounts at stated dates?

40 A Practically all our new equipment is bought under the so-called equipment trust plan. We secure it by paying, giving an initial payment of possibly fifteen or twenty per cent. in cash and the balance is deferred and the principal is paid in twenty equal installments, semi-annually, due semi-annually.

Charles P. Crawford, direct.

Q (*By Commissioner Donges.*) Does that come out of current income, operating income?

Mr. Taylor. I will come to that.

Q (*By Mr. Taylor.*) Those installments have to be paid to the holders of the obligations in cash, do they not?

A They do.

Q Those equipment obligations are not extended as they fall due, are they? 10

A Never have been, no, sir.

Q Always taken up and paid?

A Yes, sir.

Q That is the universal practice of railroads, so far as you know?

A Yes, sir.

Q Of course, they are legal obligations which would have to be paid if insisted upon, of course, the equipment trust obligations? 20

A Yes, sir.

Q Are you familiar with the terms of those agreements, Mr. Crawford, in a general way?

A I think so.

Q Do you know whether under the terms of the agreements the possession of the equipment which the company is using is dependent on those payments being made?

A Yes, sir, and title is not secured by the railroad company until final payment is made. 30

Q How can the railroad company get money to pay obligations of that sort, where from?

A Either from its general fund, that is, its income, or the sale of bonds.

Q What is the nature of the construction obligations shown on this statement?

Commissioner Donges. Before you leave that other, the equipment trust certificates—Mr. Crawford, has it been the practice of the Erie 40

Charles P. Crawford, direct.

Railroad Company to pay the equipment trust certificates falling due, maturing, out of income, so far as possible?

Witness. Not appropriated from income, but paid out of the current cash.

Mr. Merrey. What is it charged to in this other statement?

10 Q (By Commissioner Donges.) In Exhibit R-113, where does that expenditure appear?

A R-113 is a statement of the income account and it would not appear except the only entries in the income account affecting these car trust would be under interest on funded debt, which would include the interest.

Q But not any of the principal?

20 A No, sir, the principal appears on our balance sheet as an asset under the heads of additions and betterments, and the liability appears on the other side of the balance sheet as bonded debt.

Q Is any part of this eighteen millions paid out of income, permanently paid out of income?

30 A As the equipment is purchased, the Board of Directors designate at that time whether it shall be charged to capital account, additions and betterments with the intention of later being reimbursed by securing bonds from the trustees under the mortgages, or whether they will permanently appropriate it from income.

Q In the year ending June 30th, 1914, what sum of money was appropriated by the Board of Directors out of current income for the payment of maturing certificates?

A None.

Q All payments on such account were made from?

A The treasurer pays them out of his general cash.

40 Q And how then is the treasurer reimbursed, how

Charles P. Crawford, direct.

was it during that period from June 30th, 1913, to June 30th, 1914?

A We secure from the trustees either general lien bonds or convertible bonds.

Q (*By Mr. Taylor.*) Just a minute—what do you mean by general lien bonds?

A The general lien bonds are issued under the Erie Railroad first consolidated mortgage. .

10

Q Dated in 1895, December 1895?

A 1895. The mortgage provides that of this fourteen million, I think that was set aside for additions and betterments to the property, the company could procure from the trustee, bonds to the extent of one million per year by furnishing a statement they had expended the previous million for proper capital purposes. That is, real additions to the property. We are not permitted to include in those certificates, expenditures over five years old, so that there is only a very small proportion, and there may be—well, there is, none of the expenditures on these car trust certificates can be included in those certificates until the final payment is made and we get title to the property.

20

Q (*By Commissioner Donges.*) Then meantime are all payments made out of current income?

A Yes, sir.

Q And then in the expenses charged to operating expense is the aggregate of these payments on these car trust certificates?

30

A Not at all. These are capital payments. They have no relation to—

Q I understand however, there is no way of securing reimbursement for such capital expenditures until the completion of the payment and title is secured?

A That is true, yes, sir.

Q So that any semi-annual payments—

A Yes.

40

Charles P. Crawford, direct.

Q —made, must be made out of current income?

A They are, yes, sir.

Q (*By Mr. Taylor.*) But they are not charged on income account?

A The liability is set up on the books for the total amount of the car trust certificates. As the treasurer pays them off, we credit cash and charge to that capital account. It don't appear in the income.

10 Q (*By Commissioner Donges.*) Don't figure as an operating expense?

A No, sir, only the interest.

Q (*By Mr. Taylor.*) However, Mr. Crawford, I assume that the amount which the company has available as a result of its current operations is a very important factor in determining whether it is able to meet these payments as they become due, is that correct?

20 A Yes, that is the entire factor.

Q (*By Commissioner Donges.*) In other words, it cannot pay the money if it hasn't got it?

A Yes.

Q (*By Mr. Merrey.*) Before we pass that, on Exhibit R-113 under 33, there is an item marked, appropriations of income for additions and betterments.

A Yes, sir.

30 Q Do you ever pay any of those car trust, equipment trust certificates out of that item?

A No, sir. These are the items amounting to \$502,000 in the year just closed, they are the amounts selected by the board as being definitely appropriated from our income and devoted to the betterments of the property, so it would not be applicable to dividends in case we earn a sufficient amount to pay dividends.

Q You mean to say none of that money was ever used for taking up these equipment trust certificates?

40 A No.

Charles P. Crawford, direct.

Mr. Taylor. The question is, whether in any year, as I understand it, Mr. Merrey, whether in any year, the company devoted any part of its appropriation of income for additions and betterments to the payment for equipment; is that your question?

Mr. Merrey. That is it; not any one year. I am asking for that one year, 1914.

10

Witness. Yes, I recall--I cannot state the exact year--but I recall that equipment purchased I think, under two or three trusts, were appropriated from income instead of capitalizing them, but none of this.

Q The intention of the company evidently is, as far as equipment trust certificates are concerned, to fund them later and make them part of the principal debt of the company?

20

A I think it is, where we can include them in our statement to the trustee in which to procure these general lien bonds of which I speak.

Q If you cannot get them, cannot issue general lien bonds to pay for those, you have to appropriate from some other place. It can only come from your surplus.

Mr. Taylor. I will come to that, if you will let me proceed.

Mr. Merrey. I thought you were through, and I want to call attention, before we pass from this exhibit, to the fact that the bulk of the amount shown on this exhibit, 115, I think it is, this last exhibit, includes collateral notes.

30

Commissioner Donges. Mr. Taylor had not taken up anything except the equipment trust certificates.

Recess from 12.45 to 1.45 P. M.

40

Charles P. Crawford, direct.

AFTER RECESS.

CHARLES P. CRAWFORD, resumes the stand.

Direct examination by Mr. Taylor continued.

10 Q Mr. Crawford, returning for the moment to the subject of these equipment trust obligations and to the question of what the policy of the company has been with respect to paying for equipment out of income and capital; I understood you to say in response to a question I framed for Mr. Merrey, that the company has expended various amounts from time to time out of its income, appropriated for that purpose, for the purchase of equipment?

A Yes, sir.

Q Such expenditures not being capitalized, is that correct?

20 A That is right?

Q In such cases is that equipment usually covered by a car trust at all?

A Only in two or three cases which I mentioned this morning.

Q As a general proposition, when you pay for equipment out of appropriated income what is done about the issuing of any car trust; anything at all?

A None are issued, merely paid out of the general working fund of the company.

30 Q And that is the end of it?

A That is the end of it.

Q So that these cars and other equipment which are covered by the equipment trust certificates are the cars which it has been intended from the first to capitalize?

A With the exception of the three which I mentioned this morning.

Q With the exception of the three trusts which you mentioned this morning?

40 A Yes, sir.

Charles P. Crawford, direct.

Q Illustrating that, I will ask you to refer to the annual report of the Erie Railroad Company to its bond and shareholders, first, for the fiscal year ending June 30th, 1913. Do you find anything in there to indicate whether or not the company appropriated any amounts from income for additions and betterments in the form of equipment?

A Yes, sir, large sums; on page ten of this report under the heading giving the expenditures for additions and betterments appropriated from income— 10

Q Don't read all the figures, Mr. Crawford, leave out the hundreds of dollars, just read the thousands.

A — I find these items; 250 gondola cars, \$170,400; fifty refrigerator cars, \$25,000; one dynamometer car, \$5,000; track construction car, \$5,000; seventy-one cinder cars, \$35,000; six locomotive cranes, \$33,000; miscellaneous equipment, \$178,000.

Q Are there similar expenditures in other years? 20

A Yes, sir.

Q For a greater or less amount in every year?

A Yes, sir.

Q Turn to say 1911, just on a chance, I haven't looked at it, and state the approximate amount in round figures, the approximate total amount in round figures that was appropriated out of income that year and paid for equipment.

A Nearly \$800,000.

Q None of that was covered by these equipment trust certificates? 30

A No, sir.

Q That \$800,000 would be charged to the additions and betterments account on your income statement.

A Shown as a deduction from income, yes, sir.

Q The same as appears on your exhibit here?

A The same as the item of \$502,000 in the 1914 income statement; but that is included in 1911, the total item was \$1,339,000. 40

Charles P. Crawford, direct.

Q And that included the \$800,000 for equipment?

A Yes, sir.

Q So the \$500,000 which you got down for 1914 would include any corresponding items spent in that year. What did they amount to?

A Only about \$300,000.

10 Q What page of that report does that appear on, in 1914?

A Page 10.

Q So then to summarize it, these equipment trust obligations and the amounts charged to income, appropriated out of income to purchase new equipment, are two separate and distinct ways of securing new equipment?

A Yes, sir.

20 Q And the payments which you have to make out of whatever funds you have in your treasury to take up these equipment trust certificates are in addition to whatever payments you may be making in that year for the purchase of equipment out of appropriated income?

A Yes, sir.

30 Q Referring to Exhibit R-115, the second class of obligations which has to be met during the coming year was stated to be construction obligation. There are two items of that sort on the exhibit. What is the nature of those items?

40 A The first item, \$13,890, is due the City of Buffalo for elimination of grade crossings there. A number of years ago we were financially in about the condition we are now and the City of Buffalo advanced the funds to pay for the Erie Railroad's proportion of the expense of eliminating the grade crossings in the City of Buffalo, and we are paying it in installments, I think it is for a period of twenty years. The second item, \$90,000, covers a note given in payment

Charles P. Crawford, direct.

for construction work on property in Cleveland, the ore docks.

Q Those ore docks are in use, Mr. Crawford?

A They are.

Q Have been for several years?

A Yes.

Q And this is simply a part of the payment therefor?

10

A Yes, sir, there were a number of notes issued.

Q Running over a series of years?

A Yes, sir.

Q There is one small item of real estate mortgage; what is the nature of that?

A I haven't the explanation of that. We have a number of rather small items, mortgages which were on real estate at the time we acquired it and as they became due we have been paying them off as we could.

Q I presume, as a practical matter, that small amount of \$37,000 could probably stand, couldn't it; if the holder of the mortgage was willing to accept his interest and not foreclose it would stand?

20

A Yes, we frequently allow them to run after maturity.

Q That amounts to only \$37,000?

A \$37,000.

Q The remaining items on this sheet, R-115, are entitled "Erie Railroad Company collateral notes," two items aggregating six million dollars.

30

Commissioner Donges. And another of ten million.

Q And another of ten million, three items of sixteen million; what is the nature of those obligations?

A The ten million dollars of notes falling due in April, 1915, were issued to secure funds with which to double track the Chicago & Erie Railroad and a portion of the Meadville division of the Erie Railroad.

40

Charles P. Crawford, direct.

Q Just state where the Meadville division is.

A It extends from Salamanca, New York, to Meadville, Pennsylvania. The work on the Meadville division was principally between Corry and Meadville, but it included double tracking between Salamanca and the first station, Red House, also the elimination of the grade crossing at Jamestown, in the reconstruction of the passenger terminals at that point.

Mr. Taylor. That, Mr. Chairman, is something which can be described in detail by a later witness, as to the nature of the work done.

Q Has that money been expended, Mr. Crawford?

A It has practically all been expended, a few hundred thousand dollars yet remaining to be applied on the Jamestown work.

20 Q (*By Commissioner Donges.*) What?

A Two or three hundred thousand yet remaining to be applied on the Jamestown work.

Q (*By Mr. Taylor.*) Is that under way?

A That is under way?

Q Under contract?

A I believe so.

Q The company is under obligation to expend that money?

30 A Yes, it can expend it in no other way, because it is required by the order of the Public Service Commission of New York.

Mr. Merrey. I might say right at this point, it seems to me now quite evident we won't get through with this matter to-day, but these are all matters that the company had in hand and could have testified to before the hearing closed. As I understood, they were only going to be permitted to show at this hearing matters of financing and reports of the company which they have

Charles P. Crawford, direct.

come into possession of since the hearing closed.

Commissioner Douglas. I think, Mr. Merrey, the idea was to show the present financial condition of the company.

Mr. Merrey. Yes, but here they have been going over now a lot of notes which were issued long before the time of the other hearing in this matter, except, I notice, these last notes of six million were issued in October, 1914. They are undoubtedly renewals. So far as this statement is concerned there isn't anything at all new in it that they did not have at the time the examination closed. Of course, I cannot see the pertinence of all this material being offered. It seems to be along the lines of the opening of the testimony. The commission, however, has permitted it to go in and I would like to call the attention of the commission, that they are going beyond what they ought to do. So far as their August statement is concerned and so far as this statement showing the income and condition of the company at the close of June 30th, 1914, that was clearly within what the commission intended, but it doesn't seem to me it was intended they should be allowed to explain how all their present indebtedness was incurred, when it was incurred long, long ago.

Commissioner Douglas. This statement goes no further than to show what payments according to the company's view it will be required to make between October 14th, 1914, and June 30th, 1915. We will take it.

Mr. Merrey. The point I make is they have that information in their possession.

Commissioner Douglas. I dare say they have all of it—

Mr. Merrey. They could not have had all.

Charles P. Crawford, direct.

Commissioner Donges. —shown on this statement.

Mr. Merrey. Yes, but not on the other.

Commissioner Donges. We will take this.

Q Passing to the other two items of collateral notes aggregating six million; what is the nature of those obligations?

10 A Five million is a renewal of a note for a similar amount which was issued to secure funds to reimburse the treasury for moneys expended in improvements, additions and betterments.

Q (*By Commissioner Donges.*) Of what character?

A They were of the general character, construction work along the road and the funds having become depleted by using it for those purposes the company issued this five million short term note.

20 Q When were those notes first issued; do you know?

A Yes, sir, I think I have it here. Page eleven, under financial, the third paragraph, I think it is, explains the issue. "On April 1st, 1914, \$13,500,000 three-year five and one-half per cent. collateral gold notes, and on April 8th, a special note maturing October 1, 1914, for \$1,000,000, were issued, the proceeds thereof being applied toward the payment of \$12,500,000 collateral gold notes and \$2,500,000 short term notes maturing April 8, 1914, \$500,000 of the last mentioned notes being retired." The million dollar note shown on the bottom of Exhibit B-115 is a renewal of the million dollar note which I just mentioned.

30 Q How long is it since the Erie Railroad Company has sold any bonds to the public?

A We sold a few Pennsylvania collateral bonds in 1908. With that exception we have not been able to market any bonds since 1908.

40

Charles P. Crawford, direct.

Q And so these notes have been the method which the company has adopted of financing, during that period?

A That is right.

Q And these renewals have simply marked the accumulation of such notes, is that correct?

A That is right, yes, sir.

Q Of course, when you say the company has not 10
been able to sell bonds, you mean they have not been
able to sell them on terms which the directors thought
were acceptable, is that correct?

A The price too low, yes, sir.

Q What method was adopted for renewing these
notes in October, 1914, Mr. Crawford?

A The five million dollar note and the one million
dollar note were, I believe, held, each held, by one
banking institution and we were able to renew with 20
them. Of the \$4,500,000 collateral gold notes which
matured October 14th, 1914, a renewal of the notes
was offered at a rate of ninety-seven and a half—

Q You mean offered by the company, any?

A Offered by the company to the holders of the
notes. We were able to secure consent of the holders
of but \$1,300,000 of those notes.

Q And that I left how many?

A \$3,250,000 which it was necessary to take care
of. The company succeeded in getting a syndicate 30
of bankers, largely, I think wholly, made up of banks
where we had our deposit accounts. They made up
a syndicate and under-wrote the balance of them.

Q Where were those banks located?

A At various places along the line of the road
between New York and Chicago?

Q All along the line?

A Yes, sir.

Q And you say those were the banks with which
the company had been doing business as a depositor? 40

Charles P. Crawford, direct.

A Yes, sir, where we have our active deposit accounts.

Q Is that a usual way of raising money, Mr. Crawford?

A It is unusual, so far as we are concerned.

Q Why did you resort to it?

10 A We were told by our financial advisors it was up to us to get the renewal.

Q On account of the existing financial situation?

A On account of the existing financial condition in New York.

Q Have you also prepared a statement showing the obligations, principal only, as contrasted with interested, maturing during the year ending June 30th, 1916?

A I have.

20 Q Is that statement correct?

A It is.

Mr. Taylor. I will offer the statement entitled "Erie Railroad system, statement showing obligations (principal only) maturing during year ending June 30, 1916."

(Same is received and marked Exhibit R-116.)

30 Q (*By Commissioner Donges.*) Going back to Exhibit 115, this item of ten million Erie Railroad collateral notes, it is the expectation to renew those notes?

A We hope to.

Q They bear interest at what rate?

A Five per cent.

Q (*By Mr. Taylor.*) Have any arrangements as yet been made for the renewal of any of these obligations, Mr. Crawford?

40 A I believe some preliminary arrangements have been made; they are discussing a new mortgage.

Charles P. Crawford, direct.

Q But no definite and final arrangements have been made, have they?

A Nothing definite, no, sir. The meeting of stockholders to agree on the mortgage has been postponed two or three times. The next date is next Tuesday.

Q (*By Commissioner Treacy.*) The stockholders are to meet to agree upon the making of a new mortgage?

10

A To approve of the mortgage, which, I believe, has been written up, but it has not yet assumed definite shape.

Q (*By Mr. Taylor.*) Have any contracts been made for the sale of bonds to be issued under that mortgage?

A Oh, no, no, sir.

Q Referring now to Respondent's Exhibit 116; what is the total amount of obligations, principal obligations, that is, obligations for principal maturing during the year ending June 30, 1916?

20

A \$11,241,000.

Q Most of those items are equipment trust certificates?

A They are similar items to those appearing on Exhibit R-115, with the exception of the first item, I think.

Q That is a promissory note?

A A promissory note issued by the Long Dock Company, \$700,000. That is a second renewal of a note for the same amount issued by the Long Dock Company.

30

Q What is the Long Dock Company?

A The Long Dock Company is the owner of practically all of the Jersey City Terminal used by the Erie Railroad Company. The property extends from the east portal of the tunnel to the water front.

Q From the east or west portal of the tunnel; the west portal of the tunnel, isn't it, Mr. Crawford?

40

Charles P. Crawford, direct.

A Yes, the west portal of the tunnel.

Q It includes the tunnel, in other words?

A Yes, that is right.

Q What is the relationship of the Erie Railroad Company to the Long Dock Company?

10 A The Erie Railroad Company owns the entire capital stock of the Long Dock Company, and leases its property. The conditions of the lease are that the Erie Railroad Company shall pay the interest on the bonds of the Long Dock Company which, I think, is \$37,500 per month, all taxes and maintenance and other charges.

Q Then, I take it, in order to retain its Jersey City terminal, the Erie Railroad Company has to stand in back of the Long Dock Company?

A Oh, yes, indeed.

20 Q What was this note of the Long Dock Company issued for?

A For the purchase of the elevator at Jersey City. My recollection is the price of the elevator was a couple of hundred thousand—was ninety thousand more than this note.

Q That includes the wharf property on which the elevator is located?

A Yes, sir, and the Long Dock mill and elevator property.

30 Q That is the structure, the Long Dock mill is the structure on the dock out beyond the elevator?

A To the westward of it, yes, sir.

Q Eastward, you mean, Mr. Crawford?

A I really thought it was to the west. I may be mistaken. I have not been over there in years. It adjoins it.

Q (*By Commissioner Treacy.*) This promissory note, how much of this \$700,000 was issued for the Long Dock elevator?

40 A The price of the elevator, as I recall, was \$790,-

Charles P. Crawford, direct.

000. Two notes were issued, one for \$90,000, one for \$700,000, each in favor of the Erie Railroad Company. The Erie Railroad Company endorsed the \$700,000 note and sold it.

Q (*By Mr. Taylor.*) Mr. Crawford, as I understand it, the amount of this purchase price was fixed by contract years ago, was it not?

A It is stated in the contract issued many years ago. 10

Q The elevator was constructed under a contract which bound the Long Dock Company to purchase it at a fixed price at a fixed date, is that correct?

A It is.

Q Did the contract require the payment of the amount which the Long Dock Company paid at the time this note was issued?

A It did.

Q (*By Commissioner Donges.*) The contract was one of the Long Dock Company? 20

A Yes, sir, the contract was of the Long Dock Company with the owners of the elevator, that the Long Dock Company would purchase the property at a specified date.

Q The Long Dock Company is legally a separate corporation—

A A separate corporation.

Q —from the Erie Railroad?

A Yes, sir. 30

Mr. Taylor. All of the stock, of which, however, is owned by the Erie Railroad.

Q The obligation is primarily that of the Long Dock Company?

A Yes, sir, the note runs to the Erie Railroad, endorsed by the Erie Railroad Company and sold.

Q Does the Long Dock Company now own the elevator or the Long Dock Mills & Elevator Company? 40

Charles P. Crawford, direct.

A The title is in the Long Dock Company. The Long Dock Mills is an additional building.

Mr. Taylor. The Long Dock Mills is not a company in which the Erie Railroad Company has any interest. It is a lessee of the property of the Long Dock Company.

10 *Witness.* This \$700,000 appears on this statement and of course, the Erie Railroad Company has got to raise the money.

Q It advanced that money, however, to the Long Dock Company?

A Yes, sir.

Q (*By Mr. Taylor.*) Does the Long Dock Company operate anything?

A No, sir.

20 Q So it has no income to pay the interest on its bonds except what it receives from the Erie Railroad Company and from the lease of this elevator, is that correct?

A That is all.

Q And such small parcels of property as it may own in Jersey City.

A That is all.

30 *Commissioner Donges.* But the Erie Railroad Company is a creditor of the Long Dock Company for this amount?

Mr. Taylor. Yes, that is true.

Witness. Yes, sir.

Q (*By Mr. Taylor.*) These bonds of the Long Dock Company are a lien on the Jersey City terminal used by the Erie Railroad Company?

A Yes, sir.

40 Q There is another item on this Exhibit R-116, which is different, mortgage bonds, Tioga; what are those?

Charles P. Crawford, direct.

A Those are bonds of the Tioga Railroad Company which become due in November, 1915.

Q What is the Tioga Railroad Company?

A The Tioga Railroad Company is the owner of the property extending from Elmira, New York, southward to Hoyteville, and Arnot, Pennsylvania.

Q It is shown in blue and marked, Tioga division, on the map? 10

A It is a leased line of the Erie Railroad.

Q Does the Erie Railroad also own the capital stock of the Tioga Railroad Company?

A It does and it has it pledged under its mortgage.

Q Is this mortgage which is coming due in 1915 a lien on the railroad and property of the Tioga Railroad?

A Yes, a first lien.

Q There is a similar item, mortgage bonds, B. N. Y. & E. 1st, \$2,380,000 shown on Exhibit 116, explain that item. 20

A The Buffalo, New York & Erie Railroad, was merged with the Erie Railroad Company at the time of the reorganization.

Q What reorganization, 1895?

A The reorganization of December 1st, 1895.

Q (*By Commissioner Donges.*) Where is the Buffalo, New York & Erie? 30

A It has title to that portion of the main line—

Q What you call the Buffalo division?

A Not exactly, it is the portion from Painted Post around via Batavia to Attica, part of our main line at the western part of New York State.

Q (*By Mr. Taylor.*) It is part of the Rochester division on the map, isn't it?

A Yes, sir.

Q What is the nature of this mortgage which is coming due in June, 1916? 40

Charles P. Crawford, direct.

A It is the first mortgage on that section of the road and was assumed by the Erie Railroad Company in December, 1895.

Q This \$90,000 construction obligation due in June, 1916, is that another—

10 A That is another one of the notes given in settlements for reimprovements made in the ore docks at Cleveland.

Q This construction obligation, various, due July, 1915, fifty-two thousand dollars; what is that?

A I haven't the detail of that. We have only two other construction obligations beside the one in connection with the ore docks in Cleveland, and those are the matters that the City of Buffalo for construction work which I have heretofore explained and notes given the Buffalo, Rochester & Pittsburg in settlement for improvements made on the Bradford division.

20 Q That portion of the line over which they—

A The Buffalo, Rochester & Pittsburg operates its trains.

Q (*By Commissioner Donges.*) Wouldn't the items of ten million shown on Exhibit 115 and five and one million, sixteen million of collateral notes, as well as the items, the first six items on Exhibit 116 be largely chargeable to capital account, be proper capital expenditures for additions, improvements and betterments, that would be properly chargeable.

30 A With the exception of the one million, sir, I would say, yes, sir.

Q (*By Mr. Taylor.*) I suppose, Mr. Crawford, it would be the expectation of the company to capitalize those amounts in some permanent form, would it not?

A Yes, sir.

Q If its credit was sufficient to enable it to do so?

40 A Yes, sir.

Charles P. Crawford, direct.

Q Have you prepared a similar statement showing the obligations for principal as contrasted to interest maturing during the year ending June 30, 1917?

A I have.

Mr. Taylor. I will offer that statement in evidence as Respondent's Exhibit 117.

Commissioner Donges. It will be admitted.

10

(Statement entitled "Erie Railroad system, statement showing obligations maturing during year ending June 30, 1917, received and marked Exhibit R-117.)

Q What is the total amount shown on that statement, Mr. Crawford?

A \$16,079,000.

Q I observe, Mr. Crawford, two items of construction obligation, \$90,000 and \$52,000.

20

A The same explanation as in Exhibit R-116.

Q There is also an item of \$13,500,000, and the balance other than the items which I have mentioned is all for equipment trust certificates?

A Additional installments on some equipment trusts, as appeared on the other statement, yes, sir.

Q Go back to the item of \$13,500,000 Erie Railroad Company collateral notes issued April, 1914, and due April, 1917; did you explain a little ago what those notes were for?

30

A I can do so now, more particularly perhaps. On April 1st, 1914, thirteen and a half millions three-years five and a half per cent. collateral gold notes together with a special note for a million dollars were issued, and the proceeds used to take up twelve and a half millions of collateral gold notes which became due at that time, with two and a half million short term notes. We were able to retire \$500,000 at that time. The twelve and a half million of which these

40

Charles P. Crawford, direct.

notes are renewal were short term notes issued for the reason that we were unable to market our bonds, and the bonds are pledged as collateral.

Q You mean the bonds which the company was authorized to issue under the terms of its mortgages?

10 A The bonds, yes, sir, which the company had received from its trustee in reimbursement for expenditures made for reasons stated, we were not able to market them, but to procure funds, the short term notes at relatively high rates of interest were issued.

Q That is all part of the plan which the company has pursued for the last six or eight years of taking care of its capital obligations temporarily, by issuing short term notes, is that correct?

A Yes.

20 *Mr. Taylor.* Mr. Chairman, I should like to offer in evidence, although I haven't them here at present, I should like to file as an exhibit in this case copies of the open mortgages of the Erie Railroad Company.

Q What are they, Mr. Crawford?

A The first consolidated mortgage dated December, 1895, covering the issue of prior lien and general lien bonds.

30 Q I wanted you to describe the mortgages so we can identify them, that is all. You have described the first consolidated mortgage of December, 1895.

A The next in order of date would be the Pennsylvania collateral indenture, but that is not a mortgage.

Q I intended to include that.

A The Pennsylvania collateral indenture of February 1st, 1901. The Erie Railroad Company's general mortgage, popularly known as the convertible mortgage, of April 1st, 1903.

40 Q Take first the general mortgage; what was the

Charles P. Crawford, direct.

total amount of bonds which could be issued under that mortgage?

A I could not answer.

Q How many bonds are there under that mortgage which have not yet been issued and which the company can secure to reimburse it for past or future expenditures out of its income?

A Two millions. There were seventeen million reserved and we have received from the trustee fifteen millions. 10

Q So that on the basis—

A Just a minute—that refers to general lien bonds only. Of the prior lien bonds all have been received which the mortgage provided.

Q Then the company is practically limited, with the exception of this two million, the company is limited to the bonds which it may secure under the convertible mortgage? 20

A Yes, sir.

Q Now, as to the Pennsylvania collateral indenture which you referred to; what is the nature of that security?

A The bonds issued under that indenture together with, I think, five million of capital stock of the Erie Railroad, were issued for the purchase of the capital stock of the Pennsylvania Coal Company and the Erie and Wyoming Valley Railroad Company. 30

Q What is the Erie & Wyoming Valley Railroad Company?

A A railroad extending from Lackawaxen, Pennsylvania, to Plains, near Scranton.

Q What does it correspond with on the map in evidence? Look at the map and see what it is called on the map.

A Shown in red and marked Wyoming division.

Q Are the expenditures for which the company 40

Charles P. Crawford, direct.

may be reimbursed by issues of bonds under the Pennsylvania collateral indenture limited?

A They are restricted to expenditures on that railroad and it also provides that we may be reimbursed for expenditures made on the property of the coal company, but we are not expending any there.

Q The coal company is spending that itself?

10 A The coal company is providing for that itself.

Mr. Taylor. Mr. Chairman, I should like to have made a part of the record those three mortgages which Mr. Crawford has referred to and give them exhibit numbers, R-118, 119 and 120 respectively.

Commissioner Donges. Very well, that may be done.

20 (First consolidated mortgage of December, 1895, marked Exhibit R-118.)

(Pennsylvania collateral indenture, February 1, 1901, marked Exhibit R-119.)

(Erie Railroad Company general mortgage, April 1, 1903, marked Exhibit R-120.)

30 *Mr. Taylor.* I desire to call the attention of the commission particularly to the provisions of those mortgages which provide for what purposes bonds may be issued, so that they will be able to see the restrictions under which the company may obtain bonds to reimburse its treasury, under those mortgages. With the board's permission I will have those portions of the mortgages marked on the copies which are put in, for convenience of reference.

Commissioner Tracy. Did Mr. Crawford state what amount of bonds can be issued under the convertible fifty year mortgage?

40 *Mr. Taylor.* He did not. I don't know as it makes very much difference until you can sell them.

Charles P. Crawford, direct.

Commissioner Treacy. You have to issue bonds to take care of all these notes that are maturing, of which you have some thirty million.

Q (*By Mr. Taylor.*) Mr. Crawford, has there been any market for these convertible bonds in recent years?

A There have been no sales.

Q (*By Commissioner Treacy.*) How do you expect to take care of the thirty million of collateral notes? Eventually you intend to capitalize those items? 10

A Yes, sir.

Q What was your scheme for taking care of them?

A It is hoped that we will be able to have this new mortgage in operation by that time, if the conditions warrant.

Mr. Taylor. That is a general refunding mortgage, Mr. Commissioner. 20

Q What amount?

A I believe the amount is not to be stated. I understand not less than three hundred million, to be known as the refunding and improvement mortgage. The particulars have been more or less made public recently.

Q You propose under that mortgage to refund—

A To refund all of these underlying securities as they come due, including these equipment trust obligations or a percentage of them. 20

Mr. Taylor. Of course, the commission appreciates that is dependent on our ability to dispose of the bonds issued under that mortgage.

By Mr. Taylor.

Q I suppose the company has been securing the bonds issuable under these various mortgages from the trustees from time to time as it was entitled to them under the terms of the mortgage, is that correct? 40

Charles P. Crawford, direct.

A Yes, we have taken advantage of all of those and each year have secured the instalment which the mortgage provided.

Q Are those bonds, generally speaking, pledged under these notes?

A All of them.

Q All of the bonds which the company has been
10 able to secure under these mortgages are pledged under these notes?

A Yes, sir.

Q (*By Commissioner Donges.*) In other words, the practice of the company is to take down the bonds from the trustee and pledge them with these notes?

A Yes, sir.

Q (*By Mr. Taylor.*) Mr. Crawford, has there
20 been made in your department and under your direction, an estimate of the additional revenue which will be obtained by the Erie Railroad Company from the increases in rates in Central Freight Association territory and a certain few in trunk line territory which the Interstate Commerce Commission said might be made, in its opinion of last summer?

A Yes, the auditor—

Mr. Merrey. You mean which they authorized.

30 *Mr. Taylor.* They did not authorize them, but they wrote an opinion in which they indicated that certain increases might be made.

Commissioner Donges. You mean, pointed out how revenues might be increased.

Mr. Taylor. I am not talking about that, Mr. Commissioner.

Commissioner Donges. Only of increases of rates?

40 *Mr. Taylor.* Only of increases of existing rates which they set out that it might be made.

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Mr. Mervoy. In other words, the company must file, whatever rates are actually authorized, they must file a statement of them with the commission for a certain length of time.

Mr. Taylor. We have to file—in order to increase any rate we have to file them thirty days in advance with the Interstate Commerce Commission, any interstate rate. In this advanced rate case to which I refer the commission indicated that if the rates in certain territory were increased by a certain amount, the commission would not suspend the increases. Now I am asking Mr. Crawford whether he has made an estimate of how much the Erie Railroad Company may expect to get from such increases. 10

Witness. We have made a rather rough estimate. It would have taken a long period of time and cost considerable money to work out the details, but our auditor of freight accounts has made an estimate that the increased rates granted by the decision of the Interstate Commerce Commission, which applies only to rates in Central Freight Association territory, and that only to intra-territorial rates, and excepting anthracite coal, bituminous coal and various other commodities, we have made an estimate that our—I will give such details as I have—the estimate of Erie Railroad revenue in Central Freight Association territory was— 20 30

Q (*By Mr. Taylor.*) Right there, please define Central Freight Association territory roughly, for the information of the commission.

A I don't believe I can give the boundaries of it.

Mr. Taylor. I will give it if the commission will accept my statement.

Witness. It is the territory tributary to Chicago. 40

Charles P. Crawford, direct.

Mr. Taylor. So far as the Erie territory is concerned it is practically west of Buffalo and Salamanca, includes the line marked B. & S. W. R. R.

Commissioner Donges. Really west of Buffalo and Salamanca?

10 *Witness.* Yes, so far as the Erie Railroad is concerned, yes, sir.

Commissioner Donges. Between Buffalo and Salamanca on the east and Chicago on the west?

Mr. Taylor. Yes, all our lines are in C. F. A. territory west of Buffalo and Salamanca.

Witness. Our freight revenue for the year ending June 30th, 1914, in Central Freight Association territory was \$16,256,000.

Q (By Mr. Taylor.) That is the revenue?

20 A That is the proportion of the revenue earned in that territory.

Q On intra-territorial business?

A No, sir, that is the entire Erie Railroad revenue in that territory.

Commissioner Donges. This had better be marked.

Mr. Taylor. I will offer that statement.

30 (Statement entitled "Erie Railroad Company, estimate of revenue which will be obtained from increases already granted in Central Freight Association territory. This will include the few in trunk line territory which the commission permitted to be made in order to make effective the increase in Central Freight Association territory—based on the fiscal year ended June 30th, 1914" received and marked Exhibit R-121.)

40 *Witness.* We find that the revenue in that territory on the commodities which the commission decided should not receive the increase is \$6,737,000.

Charles P. Crawford, direct.

Q (*By Commissioner Donges.*) Won't you go back. What did I understand you to say was the revenue received from all freight in that territory for the fiscal year ending June 30th, 1914?

A The revenue in that territory was \$16,256,000.

Q (*By Mr. Taylor.*) That includes all revenue on business from one point to another point in that territory as well as revenue on business running all the way through it. 10

A All the revenue, gross revenue.

Q And the revenue on business originating in the territory and passing out of it?

A Yes, sir.

Q (*By Commissioner Donges.*) That is the amount allocated to that district as its earnings on freight.

A That is it exactly.

Q Freight only? 20

A Freight only. From that amount we deduct the revenue on the commodities which the commission decided should not receive an increase, \$6,737,000. That will leave the revenue on other commodities to which the five per cent. increase may be applied, \$9,519,000. Five per cent. of that amount would be \$475,958, but the increase only applies to the traffic which both originates and terminates in that territory and our best information is that that is fifteen per cent. of the total, so the benefit which the Erie Railroad would derive from the decision seems to be very slight, according to our figures only \$71,393. Of course, as I say, the fifteen per cent. is an estimate, but it is the judgment of our freight officers. 30

Q (*By Commissioner Donges.*) That is the utmost that you have been able to estimate as the increase in revenues by reason of the opinion of the commission you may be entitled to earn?

A Yes, sir. 40

Charles P. Crawford, direct.

Q (*By Mr. Taylor.*) Have you made an estimate of the additional revenue which would accrue to the Erie Railroad Company from the extension of those increases in rates to trunk line territory, that is, territory east of Buffalo and Salamanca?

A Yes, sir.

10 *Mr. Taylor.* I will offer that statement in evidence and have it marked R-122.

Commissioner Donges. It may be so marked.

(Statement entitled "Erie Railroad Company, estimate of the revenue which will accrue to the Erie R. R. Co. from the extension to trunk line territory of the increase in rates granted to Central Freight Association territory by the commission in its report—based on the fiscal year ended June 30th, 1914," received and marked Exhibit R-122.)

20

Q (*By Commissioner Treacy.*) Do you mean Mr. Crawford, that you have estimated that the Erie Railroad Company does only fifteen per cent. of the business which originates and terminates within its territory along its line from Buffalo to Chicago?

A Our business on the Chicago & Erie for example is practically all through, very few towns or cities along that line, so that our estimate is that of the freight which both originates in this territory and terminates in the territory does not go beyond the Central Freight Association territory line in either direction, is but fifteen per cent. of the total money we earn in that territory.

30

Q That includes then, as I understand it, all revenue that may be collected from freight in this territory, whether it be shipped the whole distance of the territory along your own line or along connecting lines within that territory, of other roads?

Charles P. Crawford, direct.

Commissioner Hillery. That would include all revenue than, both local—

Mr. Taylor. Allow me to call your attention to the fact that out of this total of sixteen million revenue of C. F. A. territory nearly seven million is on commodities which take no increase at all, and as a matter of fact, I think Mr. Crawford would state—I don't want to put words in his mouth—I think he would state the very heaviest tonnage which moves exclusively from one point to another point, does not go outside of the territory, is that which is included in commodities on which there is no increase. For instance, coal, bituminous coal and ore are very much the heaviest commodities moving in C. F. A. territory. 10

Commissioner Donges. Entirely intra-territorial. 20

Mr. Taylor. Entirely intra-territorial. In fact, they are the heaviest commodities of any sort moving in that territory and happen to be intra-territorial, but not in this at all because we get no increase on them.

Commissioner Donges. Mr. Crawford says as to the nine million, that only fifteen per cent. of that is strictly intra-territorial and that eighty-five per cent. is that which originates in C. F. A. territory, whose point of destination is in trunk line territory. 30

Witness. Or vice versa.

Mr. Taylor. Either trunk line or west of Chicago; that is the way I understood him.

Q (*By Commissioner Donges.*) Is that the situation?

A Yes, sir.

Commissioner Donges. Judge Treacy's question is whether that includes not only freight 40

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that originates on the Erie property but whether it includes also freight that comes to the Erie from connecting lines, all within C. F. A. territory.

Mr. Taylor. To put it in technical language; does it include only Erie local traffic, or does it include interline traffic in C. F. A. territory?

10 *Witness.* The statement says it is local to C. F. A. territory on Erie Railroad lines.

Q (By Commissioner Donges.) It would not include the interline traffic?

A It would include the interline traffic, but only the revenue on our own road, no, I take it from the statement this is the revenue local to Erie lines.

Mr. Taylor. It does not say so, it says traffic local to Central Freight Association territory on Erie Railroad lines.

20

Witness. I did not go into that very deeply.

Mr. Taylor. I suggest that Mr. Crawford reserve his answer on that and make inquiry of the man who made the details.

Commissioner Donges. Very well.

Witness. I will be glad to clear that up.

Q (By Mr. Taylor.) Going to Exhibit R-122, what is the total amount of the increased revenue which might accrue to the Erie Railroad Company from the extension of those increases in rates to trunk line territory?

30

A We estimate that if the decision was made to apply to both territories it would increase our revenues \$1,203,000.

Q (By Commissioner Donges.) That is on freight only, of course?

A Freight only, yes, sir.

Q If the Interstate Commerce Commission should allow the increase in the trunk line territory it would

40

Charles P. Crawford, direct.

allow the company an increase in the intra-territorial rates as well?

A That would allow that to come in as well.

Q Not only intra-territorial, but both?

A It removes the intra-territorial bars.

Q (*By Mr. Merrey.*) May I ask—this is the maximum of what the railroad is asking from the Interstate Commerce Commission?

10

A I am not just familiar with what they have asked except that I understand they asked for five per cent. flat increase on all rates.

Q It is not all then, because I notice you have included anthracite coal, bituminous coal, coke, iron ore and some others.

Witness. No, this isn't what we asked.

Mr. Taylor. Mr. Chairman, I think I might make a statement on that, inasmuch as it is a matter related to the proceeding before the Interstate Commerce Commission. With certain exceptions, we made no request of the commission at any time, by filing tariffs or otherwise, by filing any increase in revenue on anthracite coal, which is about \$12,600,000 of our revenue out of a total freight revenue of \$42,000,000 or pretty nearly one-third, just about thirty per cent. of our total freight revenue. We made no request for an increase, not because we did not want the money, but because there are other people in the anthracite business that did not need the money.

20

30

Commissioner Donges. Isn't this estimate in Exhibit R-122 made up on the basis of the allowance in trunk line territory in accordance with what the commission said might be done in C. F. A. territory?

Mr. Taylor. That is so.

Commissioner Donges. Isn't that the whole situation?

40

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Mr. Taylor. We asked—to make it clear if it not already is—I think perhaps it is—we asked for increases on a good many of those commodities which are excluded in this statement R-122.

Commissioner Donges. And are excluded here because the commission said it would not permit in C. F. A. territory increases on those commodities.

10

Mr. Taylor. Exactly. The items are on this Exhibit R-122 and you can see how much our increased revenue would be increased if the Interstate Commerce Commission should have a change of heart on bituminous coal and coke and those other things where we asked them in the first place for a five per cent. increase.

20 Q (*By Mr. Taylor.*) Mr. Crawford, what is this reduction of \$977,000 at the bottom of Exhibit R-122?

A Transcontinental freight on which we understood the decision would not apply; I cannot state exactly why.

Q I guess it was not included in the original proposed increases.

A Probably not.

30 Q (*By Commissioner Donges.*) Are you able to say whether or not it is a fact that there have recently been some increases in passenger rates which will accord the company an increased revenue?

A I am not sufficiently familiar with the details to say that.

Q Do you know generally there have been some increases, mileage, for example?

Mr. Taylor. We admit they have.

A I don't know of the mileage case.

40 *Mr. Taylor.* We have no figures to show what those increases will amount to and, as a matter of fact, it is an extremely difficult thing to figure

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because of the shifting of purchasers from one class of tickets to another when rates are changed.

Commissioner Donges. Wasn't it estimated, Mr. Taylor, that the companies affected, those who filed schedules providing for an increase in the mileage rate from two cents to two and a quarter, that the increase would approximate ten million dollars? 10

Mr. Taylor. For all the companies in the United States or in the territory which made it?

Commissioner Donges. Only in the territory that made it.

Mr. Taylor. I don't know, Mr. Chairman.

Commissioner Donges. The eastern roads.

Mr. Taylor. I understand this commission had a hearing. 20

Commissioner Donges. Mr. Bikle, of the Pennsylvania Railroad, who appeared for the railroads at a conference called, practically a conference, called by this board, made the statement, as I recall it, that approximately ten or eleven millions was the estimated increase anticipated from the filing of the new schedule and the sale of mileage on the new basis.

Mr. Taylor. That may be; I don't know, but doubtless your recollection is correct. However, I think in considering that in this connection it would be only fair for the board to compare the Erie passenger revenue in the territory affected by such changes so as to see what proportion of that roughly, in a very rough way, what proportion of that ten million the Erie might expect to enjoy. My expectation would be it is small, because we are not much of a passenger road, except in this immediate territory. 30 40

Charles P. Crawford, direct.

I should like to offer in evidence the annual report of the directors of the Erie Railroad Company to the stockholders of the company for the year ending June 30th, 1914.

(Annual report of Erie Railroad for 1914 received and marked Exhibit R-123.)

10 Q (By Mr. Taylor.) Mr. Crawford, have you a statement there showing generally the disposition of the profit and loss surplus shown on the balance sheet in the annual report?

A I have a general statement showing that information, yes, sir.

Mr. Taylor. I would like to offer that in evidence.

Commissioner Donges. It will be marked.

20 (Statement entitled "Erie Railroad system statement showing disposition of profit and loss surplus to June 30, 1914, received and marked Exhibit R-124.)

Q (By Commissioner Donges.) Is this shown in the annual report?

A No.

Q (By Mr. Taylor.) That statement will supplement the balance sheet in the annual report; is that correct, Mr. Crawford?

A Yes.

30 Q And explains the disposition as nearly as possible of that profit and loss surplus?

A It will explain it within about \$56,000 which we thought was near enough.

Q That shows the disposition of all surplus earned by the company since its organization in 1896?

A Yes, sir.

Q Explain that item of cash, Mr. Crawford, please, on this statement.

40 A That is the same amount as appears in our general balance sheet in the annual report and includes

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not only cash on hand but the cash in transit, so that it really does not represent actual cash in hand.

Q Is that in excess of the ordinary working capital required by the company for the conduct of its current business?

A Not much. We have estimated that we need at least four and a quarter millions as an average amount necessary to conduct our business, as a working fund. 10

Q What do you mean by working fund?

A The amount it is necessary to have to conduct our business.

Q Practically, it represents the amount you have spent and have not collected from your customers, doesn't it? That is, the amount that you have to spend, the amount you are behind all the time in your current expenditures, as compared with collections on account of those expenditures? 20

A Yes. I arrived at the estimate of four and a quarter million by assuming that if we collected all our current assets with the exception of cash and material and supplies, and had to pay all our current liabilities, we would need that additional sum. That was made up from the average of some five years, I think.

Q In other words, as I understand it, it practically represents the amount of money which you had to have to start with? 30

A Yes, you can state it that way.

Q You had to spend that amount before you commenced to earn, practically speaking?

A Yes.

Q And always keep behind about that amount?

A Yes, sir.

Q Have you a copy of the statement, Mr. Crawford, showing the estimated increase in expenses of the Erie, New York, Susquehanna & Western, and 40

Charles P. Crawford, direct.

New Jersey & New York on account of the extra crew laws in various States, the so-called Full Crew Laws?

Mr. Merrey. I think that was put in.

Mr. Minard. We put an estimate of what it would cost. Now we have the figures.

10 A I brought along only our office copy, not expecting to be questioned about it.

Q Was that made in the accounting department?

A It was made by one of our travelling auditors who secured the information from the division offices and was very carefully prepared. The entries were made from the original time slips on which was shown the allowance to this extra man.

Q In other words, he took the time slips of the men who were employed solely on account of these laws?

20 A Yes, sir.

Q And computed the amount from those time slips?

A Yes, sir.

Q Is this the same statement, Mr. Crawford, which was prepared and put in evidence in the proceeding before the Interstate Commerce Commission in regard to anthracite rates and practices, Docket Number 4914?

A It is.

30 Q And was it subjected thereto examination and cross examination by representatives of the Interstate Commerce Commission?

A Yes, sir.

40 *Mr. Taylor.* I would like to offer this statement in evidence and would be quite willing, if Mr. Merrey or anybody else wishes to do so, that they should refer to the record of cross examination in regard to this statement in the anthracite investigation referred to.

Charles P. Crawford, direct.

Commissioner Douglas. It will be admitted and marked.

(Statement showing increased expenses to Erie R. R. Co., including the N. J. & N. Y. R. R. Co., N. Y. S. & W. R. R. Co., and Wilkes-Barre & Eastern R. R. Co., resulting from the operation of Full Crew Laws in the States of New York, New Jersey and Pennsylvania, for the months of September, 1913, to March, 1914, inclusive, for the State of New York; July, 1913, to March, 1914, inclusive, for the States of New Jersey & Pennsylvania; with estimates for the full year, received and marked Exhibit R-125.) 10

Q I will ask Mr. Crawford to state the total amount for the nine months for which this statement was made, July, 1913, to March, 1914, in the State of New Jersey.

20

A \$26,877.

Q How much did that figure out on the same proportionate basis for a full year?

A \$35,836.

Q It appears that figures were made in Pennsylvania for nine months, also, the same nine months; what was the figure in Pennsylvania?

A \$54,773.

Q And the full year, how much?

A \$73,031.

30

Q How much in New York for the seven months the law was in effect up to March, 1914?

A \$104,268.

Q And the full year?

A \$178,745.

Q For the three States how much does that make for a full year?

A \$287,614.

Q That includes, as you stated, the Erie, New

40

Charles P. Crawford, direct.

York, Susquehanna & Western, Wilkes-Barre & Eastern and New Jersey & New York?

A All of them.

Q Have you figured out the figures for the Erie alone, the Erie Railroad Company alone?

A I have.

10 Q State what they are for the full year in the three States?

A \$277,691.

Commissioner Donges. There were two sets of figures given, one for the Erie Railroad and the other, I took it, included the entire Erie system.

20 *Mr. Taylor.* Mr. Chairman, in this territory, in New Jersey, New York & Pennsylvania the Erie Railroad and the Erie system as we use it, are synonymous. There is nothing in the Erie system, as we use it in this territory, except the Erie Railroad. The first figures which Mr. Crawford gave on this exhibit included roads controlled by the Erie, separately operated, the New York, Susquehanna & Western, the Wilkes-Barre & Eastern and New Jersey & New York. In this proceeding we have not been considering them as part of the Erie system. When we say Erie system we mean Erie Railroad Company plus Chicago & Erie Railroad.

30 Q What is the situation of the company's cash balance in hand in the treasury at present?

A My inquiry was for October 15th, when we had in round figures \$1,200,000, but of that amount \$250,000 was in special time deposits and not subject to immediate check.

Q That is rather less than you usually have on hand for conducting the business, is it not?

A Much less.

40 Q I show you a statement, taxes paid in the State

Charles P. Crawford, cross.

of New Jersey, not including taxes paid on property not used for railroad purposes for the years 1900 to 1913, inclusive—I will withdraw that. Those are not prepared by Mr. Crawford.

Cross examination by Mr. Merrey.

Q Exhibit 114, Mr. Crawford, under heading deductions from gross income, I notice Item 547 under heading of deductions from gross income, interest on unfunded debt \$73,389 as against \$10,813 in 1913. 10

A I have not the details with me. I shall be very glad to furnish a statement showing the composition of each amount and explaining the increase.

Q (*By Commissioner Hillery.*) Is it due to the additional short time notes issued in the meantime, probably, that additional interest on unfunded debt? Would that make up a considerable portion of the difference between \$73,000— 20

A These renewals were in October, Mr. Commissioner. If you permit it, I would prefer not to give the information off-hand.

Commissioner Donges. You may submit a statement.

Q (*By Mr. Merrey.*) Do you spread your interest over the full year or do you charge it up at the time when it is paid?

A The interest is charged out as it accrues. 30

Q So that this happens because some payments were made to fall due in August, 1914, that did not fall due in August, 1913?

A It has no reference to payments, Mr. Merrey; it is accrued interest.

Q Accrued interest?

A Yes, it may have been paid, of course, but it is made up on the basis of accruals.

Q You don't mean to say your unfunded debt increased enough to make the August interest— 40

691

Charles P. Crawford, cross.

A We issued a number of car trusts during the year and a number of notes.

Commissioner Donges. But that payment of \$73,000 is not indicative of what the payment for the succeeding month or two or three months might be?

10 *Mr. Merrey.* It is an increase of seven times, or it is seven times more, an increase of six times.

Witness. The interest on unfunded debt is confined to notes less than one year in maturity.

Q They have not been increased seven times over, have they? You have not seven times as much—

A Won't it answer if I furnish you this detailed statement?

20 *Mr. Merrey.* I don't know whether it will or not; it may. If you know anything about it, I ask you—

Mr. Taylor. Mr. Crawford is going to explain the details in his statement.

Mr. Merrey. That is all I want to know and if he could finish it now it would be so much better.

Q Do you know whether the unfunded debt is seven times as great, was seven times as great in August, 1914, as it was in August, 1913?

30 *Mr. Taylor.* That would not be a moral conclusion.

A It might be a difference in interest rates. The classification now provides that discount on some of these short term items must be charged to this account and if you have the Interstate Commerce Commission classification you will see it includes discount and the expense of these short term obligations.

Q It might include the expense of the issues of some such notes?

40 A Very likely it does.

Charles P. Crawford, cross.

Q (*By Commissioner Donges.*) It does not represent one-sixth of what might be expected on this account for any twelve months.

A No, sir. For example, in the month of October there will be some very heavy charges on account of the renewal of the five million dollar and the one million dollar note; each being less than a year will come under that heading. That is the name of the account as given by the Interstate Commerce Commission. 10

Q (*By Mr. Merrey.*) I notice from that statement that your net income for August, 1914, has increased \$14,000?

A For the two months combined, July and August, it did.

Q This statement then covers July and August?

A Headed, if you will notice, for two months ending August 31st. 20

Q I thought August, 1913, and August, 1914.

A For the months of July and August would be more explanatory.

Q For those two months your net income has increased?

A Yes, sir, \$14,000.

Q (*By Mr. Taylor.*) On this deduction from gross income I notice there is a decrease in deductions of \$157,539 on the one item of hire of freight cars, debit balance. Of course, that change in that one item is what makes the increase in the net income of \$14,000, and in fact, if that one item had been the same for these months as the two months before, there would have been a deficit of something like— 30

A \$143,000.

Q Please explain what that item hire of freight cars—debit balance, is.

A It represents the balance of the settlement made between the carriers, our cars on their lines : 40

Charles P. Crawford, cross.

cars of other lines on our road. The per diem rate is forty-five cents per day. This represents the net difference between the amounts paid and the amount received during the two months.

Q In other words, it means you used less cars of other roads or they used more of yours during those two months?

10 A Yes, you might state it that way.

Q You did less business than you had theretofore and received less revenue and it cost that much less to do it?

A Yes, it may have been on account of additional cars put into service by the Erie, or it might have been by economic measures to reduce the movement of cars.

20 *Mr. Taylor.* When we put on the operating witness we will make some explanation of what we have done to change that car hire item from a debit to a credit item.

Q (*By Commissioner Donges.*) I notice dividend income, 513, non-operating income is the same for the months of July and August, 1913, as July and August, 1914.

A Yes, sir, that is due to certain stocks which we have that are dividend paying, as stated, a regular stated amount, one of them being the Chicago & Western Indiana Railroad stock.

30 Q When is the dividend from the coal company, the Pennsylvania, ordinarily paid?

A They, in past years have had no established dates. I think they have tried when they had a dividend, it was to be paid quarterly during the year.

Q (*By Mr. Taylor.*) In what months was it ordinarily paid?

A I am sorry I cannot tell you.

Q Do you know whether it was ever paid in August?

40

Charles P. Crawford, cross.

A I wouldn't want to say, Mr. Taylor.

Q I suppose if you left the Pennsylvania Coal Company dividend out of consideration that the item of dividend income would not vary much from year to year as far as the Erie Railroad Company is concerned, would it?

A It might. For example, we got a dividend somewhat unexpected a few months ago, but generally speaking, I think it would remain practically constant. 10

Q In other words, the great variation in that account comes from the operations of the coal companies?

A Oh, yes; yes, sir.

Mr. Taylor. The chairman will recall the great bulk of that item is coal company dividends. 20

Q (*By Commissioner Donges.*) I understand you to say, Mr. Crawford, in discussing the note \$700,000 on account of the Long Dock Company, as shown on Exhibit 116, \$700,000, that the Long Dock Company had no income.

A Or did you say no operating income? It has really no income.

Q Hasn't it a rental income?

A The Erie Railroad Company pays to the trustees of the Long Dock mortgage each month a sufficient sum to meet the interest on their bonds. We, of course, maintain the property, the Erie Railroad Company maintains the property and pays the taxes and all other items. 30

Q It operates that property under a lease?

A It is leased property, yes, sir.

Mr. Taylor. Mr. Chairman, I think that is possibly a little misleading. I think it ought to be said that the lease is not necessarily exclusive, 40

Charles P. Crawford, cross.

more in the nature of a trackage agreement, and other companies might use the terminal so far as that contract is concerned.

Commissioner Donges. The point I have in mind is that the Long Dock Company has an income from the rental or the leasing of its facilities.

10 *Mr. Taylor.* Under that agreement the rental for the use of those facilities is paid direct to the trustees for the bondholders of the Long Dock Company, so the Long Dock Company has no income.

Mr. Merrey. It has an income in a sense, the Erie pays its debts for it.

20 *Commissioner Donges.* I think in the report of the Erie on page 30 the statement is made, the first item under table seven, rentals of leased lines for the year ending June 30, 1914, Long Dock Company's railroad, \$450,000.

Witness. That is the exact amount of the interest on these bonds, if you will notice on page 29.

Q So the rental paid by the Erie Railroad Company is the amount of interest upon seven and a half millions of six per cent bonds of the Long Dock Company?

30 A Yes, sir.

Q (*By Mr. Taylor.*) And those bonds, Mr. Crawford, are outstanding in the hands of the public?

A All in the hands of the public, yes, sir.

Mr. Merrey. There is a mill you spoke about that was leased.

Q (*By Commissioner Donges.*) But the Long Dock Company has income from other sources, hasn't it?

40

Charles P. Crawford, cross.

A I should have stated that they received a rental for the elevator.

Mr. Taylor. You did so state, as a matter of fact, that is what the testimony will show.

Q From what other sources is there income to the Long Dock Company?

A I know of no other sources.

10

Mr. Taylor. Did you include the elevator in your question?

Commissioner Donges. I asked what other sources.

Mr. Taylor. If you will turn back to Mr. Crawford's original statement you will see that as I framed the question I excepted the income from the elevator and from the Long Dock mill. Those are two structures, both on the same dock.

Commissioner Donges. Doesn't the Long Dock Company own all of the property located on the dock? 20

Mr. Taylor. It owns all the property, and the rental from those properties is technically, I suppose, income of the Long Dock Company, but of course it does not pay the interest. I say, of course, as a matter of fact it does not pay the interest.

Commissioner Donges. The Erie Railroad as a rental for facilities used by it, the Erie Railroad pays the interest on seven and a half millions of bonds. 30

Mr. Taylor. Exactly, sir.

Commissioner Donges. But other income for use of property and facilities of the Long Dock Company is paid by the lessees or users to the Long Dock Company, as I understand it.

Mr. Taylor. I so understand.

Commissioner Donges. Is that right? 40

Charles P. Crawford, cross.

Witness. Yes, sir. The Long Dock elevator, the Jersey City elevator is leased by the Long Dock Company to a corporation known as the Erie Company, but it has no connection with the Erie Railroad Company, and the Long Dock Company receives a rental from the Erie Company (that is the elevator company) for the use of the elevator.

10

Q (*By Mr. Taylor.*) Do you happen to know, Mr. Crawford, whether that rental is sufficient to pay the interest on the promissory note of the Long Dock Company?

A I believe there is a loss; not sufficient.

Q (*By Commissioner Donges.*) Is there any other source from which the Long Dock Company receives any income?

20

A Not that I think of, sir. There are a few parcels of real estate that the Erie receives the rental and pays the expenses. Possibly it is a net loss, I am not sure, but those are the only items I think of.

(Adjourned until Monday, November 2, 1914, at the Kinney building, Newark, N. J., at two o'clock P. M.)

30

40

Charles P. Crawford, direct.

SIXTEENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Monday, November 2, 1914.

PATERSON GRADE CROSSING ELIMINATION,
ERIE RAILROAD COMPANY. }

10

Before the following commissioners:

R. W. E. Donges, Esq.

T. J. Hillery, Esq.

J. J. Treacy, Esq.

For the petitioner appears E. F. Merrey, Esq.

For the respondent appear H. A. Taylor, Esq.,
D. E. Minard, Esq., and G. S. Hobart, Esq.

Mr. Minard. We want to offer the general mortgages, the three of them. We have not very numerous copies and I have had to gather them up. I got these from the secretary's office, which he told me was all I could have. I have them in another form as offered as an exhibit in another case which we have a record of here and I thought I would loan this, if I could get it back, and those I could leave with the commission.

20

(These three mortgages were previously offered and given numbers as Exhibit R-118, R-119, and R-120.)

30

CHARLES P. CRAWFORD, re-called on behalf of respondent.

Direct examination by Mr. Minard.

Q On the question of the Pennsylvania Coal Company dividends, you were to find out for a period of years, I believe, Mr. Crawford, what the dividends have been, to show how the last few years compared.

A Yes, sir.

40

Charles P. Crawford, direct.

Q What have you got about that?

A I have a statement of the amounts received by the Erie Railroad Company from the Pennsylvania Coal Company for the ten years, 1905 to 1914, inclusive.

Q And you take that ten-year period as a representative period from which to strike an average?

10 A Oh, yes.

Q Why are there two columns instead of one?

A During the years ending June 30th, 1905, 1906, 1907 and 1908, the surplus of the coal company was paid over to the Erie Railroad Company as being the sole stockholder. Since 1909 the coal company has declared dividends by its Board of Directors.

Q (*By Commissioner Donges.*) Before, the dividends were not formally declared?

20 A Not as dividends; I think the Board of Directors merely passed a resolution that the surplus should be paid over to the owners of the stock, which was the railroad company.

Mr. Minard. I offer that statement.

(Statement entitled, "Erie Railroad Company, statement showing amounts included in Income Account of E. R. R. Co., derived from Pennsylvania Coal Co., as dividends for years ending June 30th," received and marked Exhibit R-126.)

30 Q (*By Mr. Minard.*) Mr. Crawford, you were asked to ascertain if you could anything that would explain the difference in amount of dividend, 1913 and 1914. Have you been able to find out anything about the stock of coal that was suggested here?

A Yes, sir; I have made inquiry respecting the value of the coal in stock that is mined and held for the market by the Pennsylvania Coal Company at June 30th, 1913, and June 30th, 1914, but I find no
40 explanation there for the increased dividend, for the

Charles P. Crawford, direct.

amount of stock is practically the same, being \$1,370,835 in June 30th, 1913, and \$1,323,000 in 1914.

Q Have you reached any other conclusion as to the difference in these amounts?

A I have no definite information as I have no official connection with the coal company. The statement perhaps indicates that the dividend for 1913 was very large, perhaps larger than it should have been. 10

Q So taking 1913 and 1914 together for two years, do they make an average above what they have been in the habit of paying per year?

A Some, not very much.

Q As a matter of fact, the two years taken together divided by two represent a fair average of dividends per year as shown for a period of ten years?

A Yes, sir. 20

Mr. Merrey. It seems to me those things are all matters which are apparent. It is just a little less if you want to do it yourself.

Commissioner Donges. The statement, of course, shows; it is mere mathematics.

Mr. Merrey. The suggestion I was going to make was, that the fair thing to do in computing an average was to exclude 1914.

Mr. Minard. We cannot eliminate that in striking an average. 30

Commissioner Donges. That is a matter of argument.

Q You were asked, Mr. Crawford, about the estimated advantage to be derived from the advance in rates given in C. F. A. territory by the decision of the Interstate Commerce Commission in July, particularly with regard to the fifteen per cent. of the traffic intra-territorial in that district which was the basis of your figures. Can you explain that? 40

Charles P. Crawford, direct.

10 A I have had—since the last hearing, I have had a conference with the officer of our department who prepared the estimate and he informed me that the fifteen per cent. represents our estimate of the revenue which accrues to the Erie lines in C. F. A. territory, not only from local traffic, but freight traffic also in which other roads are interested. I think that was your question, sir.

Q You were asked, also, Mr. Crawford, to ascertain what advantage the Erie expected to gain from the increase of the mileage books. It was stated by a member . . . the commission that when the application for that increase was before the commission the statement was made that the roads interested would benefit by ten million dollars. Have you ascertained what proportion of that amount will come to the Erie?

20 A I have conferred with an officer of our passenger department and he tells me that they made the estimate which was included in the ten million dollars which went to make up the total of all the railroads.

Q Did they give you the figures which they had furnished at that time to make up the ten millions?

A They did.

Q Have you it in the form of a statement so that you can hand it to the commission?

30 A There is a memorandum.

Mr. Minard. I will offer that as an explanation of the details of that.

(Memorandum showing basis of estimate of additional revenue to be secured by the Erie R. R. Co. on account of advance in price of mileage books, received and marked Exhibit R-127.)

Q (*By Mr. Minard.*) It shows then, Mr. Crawford, does it not, that our interest—

Charles P. Crawford, direct.

Commissioner Donges. This shows only the estimated increase on the Erie line.

Mr. Minard. That is all.

Commissioner Donges. I understood Mr. Minard's question to embrace other lines as well.

Mr. Minard. I did not mean to.

Q Our benefit out of that increase this statement shows how much, Mr. Crawford? 10

A \$48,842.

Q And six-and-four cents?

A Yes, sir.

Q There are a couple of notes there, Mr. Crawford, I believe. Will you just read into the record what those notes say?

A Which of the two?

Q (*By Mr. Merrey.*) Is this your own information or what somebody told you? 20

A This is received from an officer of the passenger department.

Mr. Merrey. You might just as well read it yourself.

Mr. Minard. I will just offer the statement.

Commissioner Donges. The statement has been marked; it is not necessary to read it in.

Mr. Minard. I might say those statements explain certain contingencies that might arise in that change of price that would affect our revenue so we would not realize as much as that, but, of course, we cannot tell definitely whether they will come or not. 30

Mr. Merrey. Is that all on that statement?

Mr. Minard. Yes.

Mr. Merrey. I would like to ask a question or two on that.

Charles P. Crawford, direct.

Q (*By Mr. Merrey.*) This refers to the number of books sold, the amount sold by the Erie. Does that refer to interchangeable books?

A The first item does, trunk lines.

Q Does that mean the amount that the Erie sells?

A That is the number of books the Erie sold.

10 Q Would there be other revenue if other passengers used the books of other companies on your road?

A Yes; you will notice the second column is headed "Value of mileage coupons collected."

Q (*By Mr. Minard.*) I understand this statement shows not the value—is not based upon the value of the books which we sell, but upon the value of the coupons which we collected no matter where they were sold.

A The statement shows, yes, sir.

20 Q (*By Mr. Merrey.*) If you have not taken into consideration the fact that a number of passengers may use other kinds of transportation, such other kinds would bring a greater revenue, would they not, than the mileage books?

A If the rate was greater than two and a quarter cents, of course.

Q Most other forms are greater, are they not?

A I don't know that most other forms are. Some of them are, many of them are.

30 Q That is, your rate is two and a half cents for ordinary passenger ticket?

A I am not really familiar with the details.

Mr. Minard. If it were, they would still buy mileage at two and a quarter cents.

Q As I take it, you mean, that people, if they see a fairly large saving, they might buy a mileage book; where they don't see that, they might buy an ordinary ticket; that is what you mean by that, is it?

40 A This is an estimate made on an inquiry from the trunk line officials of what the additional revenue of the Erie Railroad Company might obtain with the

Charles P. Crawford, direct.

rates of mileage books advanced and the estimate is merely based on the value of our mileage books, mileage coupons collected and that increase figured out twelve and a half per cent., which is the one-quarter cent; that is all it is intended to be.

Q That second paragraph says it doesn't take into consideration the fact that due to an increase in price a large number of people might change the form of transportation which they would use; are you prepared to say that would make a loss or gain? 10

A No, sir, I am not prepared to say.

Q Most likely it would give you further revenue?

A I couldn't say.

Mr. Minard. That is pure speculation anyway.

Mr. Merrey. I don't know, you ought to know.

You changed other systems of tickets, take your ten trip tickets, you don't use them as much now. 20

Q (*By Mr. Minard.*) Mr. Crawford, I believe you took away a copy of the statement of the cost of the full crew law which was offered in evidence. 20

A I have already furnished the reporter with another copy.

Q Mr. Crawford, were you also asked to explain what seemed to be a large difference in the amount of interest on unfunded debt as it appeared in the statement of July and August, 1914, as compared with July and August, 1913, on the income statement? 30

A Yes, sir. In the months of July and August, 1914, the statement showed charges to that account amounting to \$73,389, while for the same period in the previous year the charges were but \$10,813.

Q Will you explain what the difference represents?

A I find that the principle items of difference is, for the reason that two notes, one of five million and one of one million, total six million dollars, were run- 40

Charles P. Crawford, cross.

ning during the two months of 1914 and not in 1913 and the accrued interest and proportionate discount applicable to that period for the both notes was \$68,000.

Q What was the next item which was in that way any different?

10 A That explains all but a difference of about \$5,000 and in looking the matter up I find in the months of July and August, 1913, we included some interest on mortgages on construction obligations amounting to \$5,975 which should not have been included. The accounts were adjusted in later months, so these items possibly should not appear here. I think that explains the entire difference of \$63,000.

Q Did the company pay, during July and August, 1914, any interest on bills for materials, accounts that were due and unpaid?

20 A Yes, sir, \$985.

Q Explain what that was for.

A People demand interest on some of our larger bills when we are not able to pay them or don't pay them within the sixty or ninety or three months' time which they are allowed on the invoices. That is, they exact interest on account of our delay in paying some of our bills.

Q Any particular reason for the delay?

30 A None, except that we did not have the money to meet them as promptly as we should.

Mr. Minard. That, I believe, is all the information requested by the commission, according to my notes.

Cross examination by Mr. Merrey.

Q I notice this item of two months' proportion of interest on the five million dollar note, the rate of discount must have been something above six per
40 cent., wasn't it?

F. B. Lincoln, direct.

A Yes, sir.

Q What rate were you paying?

A It cost us on the basis of seven per cent.

Q (*By Commissioner Donges.*) It was what?

A The note for five million was discounted on the basis of seven per cent. per annum, the note issued March 2nd, 1914, maturing October 1st, 1914.

Q Is that a high rate or a low rate, as far as the company has been generally paying? 10

A I think that is higher than they have been paying.

Q Did I understand that five million dollar note issued in March, 1914, was a renewal?

A No, sir, that was an original note. It was renewed in October and appeared, I think, on one of the other exhibits.

Q You explained before what the note was issued for? 20

A Yes, sir.

F. B. LINCOLN, sworn on behalf of respondent.

Direct examination by Mr. Minard.

Q Mr. Lincoln, are you the general superintendent of the Erie Railroad Company?

A Yes, sir.

Q How long have you been in the railroad business? 30

A Twenty-eight years.

Q How long have you been with the railroad company?

A About seventeen years altogether.

Q Where did you begin as a railroad man?

A Where?

Q Yes.

A With the Erie Railroad.

Q In what capacity? 40

F. B. Lincoln, direct.

A As a civil engineer on the general corps.

Q How long were you an engineer on the railroad, civil engineer?

A About eight years.

Q Are you a graduate of any college?

A No.

Q Where did you get your degree of civil engineer?

A Didn't get any.

Q Your work then has been practical work entirely?

A Absolutely.

Q As an engineer, what official position did you have with the Erie?

A I started in as rod man and wound up as division engineer.

Q In charge of a division, the engineering work of a division?

A Yes, sir.

Q After eight years with the Erie did you then leave the railroad company?

A Oh, no.

Q What did you do then?

A I was transported to the traffic department for about a year and a half and then to the operating department.

Q And how long did you remain with the Erie after that?

A About five or six years.

Q Then where did you go?

A From the Erie I went to the Buffalo and Susquehanna Railroad interests.

Q How long were you with them?

A About two years.

Q As operating or as engineering?

A General manager of the coal companies.

F. B. Lincoln, direct.

Q What other companies have you had experience with?

A The Delaware & Hudson Railroad.

Q For how long?

A A year and a half.

Q Operating or engineering?

A Division superintendent.

Q What other companies?

10

A The Pittsburg, Shawmut & Northern Railroad.

Q How long were you with the Pittsburg, Shawmut & Northern?

A Eight years.

Q What was the condition of the Pittsburg, Shawmut & Northern while you were there?

A You mean its operating situation?

Q Yes.

A It was in the hands of a receiver.

Q During the entire time?

20

A Yes.

Q Who was the receiver?

A Frank Sullivan Smith.

Q What is his profession?

A Lawyer.

Q Who was the operating official of the railroad company?

A I was.

Q What was your title?

A Assistant to the receiver.

30

Q On the strength of your experience with the Erie and with other railroad companies I would like to have you make a statement to the commission discussing the situation which confronts the Erie Railroad at present, particularly with regard to its ability to furnish money at the present time for the improvements, for the elimination of grade crossings in Paterson, and giving your opinion as to whether this

40

F. B. Lincoln, direct.

work ought to be done under present conditions and if not, why.

Mr. Merrey. Is that a matter of argument?

Mr. Minard. No, it is not a matter of argument; simply a matter of stating the railroad company's condition for the benefit of the commission.

10 *Mr. Merrey.* Haven't we that in the statement before us?

Mr. Minard. Not in the way Mr. Lincoln can give it. We have the bare financial situation.

Mr. Merrey. I think that is a matter for a lawyer summing up on the situation.

Commissioner Donges. If it is a mere matter of argument based on the statements, based on the conditions as shown.

20 *Mr. Minard.* Our idea about that is this: that the whole railroad situation bristles at the present time with economic necessities and things are being done along the line in the way of improvements at the present time in the order of their necessity, because of the fact as the financial statements will show you, that we have not had money enough to do what was necessary, and therefore we have had to marshal our assets in order to take care of things in the order of their necessity. The purpose of Mr. Lincoln's testimony will be to show facts in which this commission is directly and particularly interested with regard to our ability to render safe and adequate service to the public and what if we are required to spend this money for grade crossing elimination—the ways in which that will impair the service which we are to offer to the public and which you are to conserve.

30

40 *Commissioner Donges.* If it be a statement of facts—

F. B. Lincoln, direct.

Mr. Minard. I will confine it to facts.

Commissioner Donges. Not argument.

Mr. Minard. No.

Commissioner Donges. Very well, any facts affecting this question may be put in.

Mr. Minard. Mr. Lincoln will understand that he is not to sum the case up for us. We have been over the matter and I understand what he has in mind and I know it will not only be pertinent, but it will be interesting to the commission. 10

Commissioner Donges. Very well.

Q Proceed, Mr. Lincoln.

A Under those instructions I will confine myself, if I may, pretty closely to some notes I have made on this matter. The operating income of the property in the last year shows a decrease of \$3,741,000. The operating income is vital to the development of any work of this character and it is the direct responsibility of the operating department to make its recommendations based as far as possible on the ability of the operating income to stand the expense. The trend of business at the present time is indicated by last year's experience and this year's experience up to date. 20

Q Mr. Lincoln, from time to time I will ask you a question perhaps to expedite the matter a little. Have you made an investigation of improvements necessary to the line of the order of their importance from the standpoint of safety, which in your judgment are demanded under present conditions? 30

A I have.

Q Will you proceed with that list explaining each one, the nature of the improvement required and why you have given it the present position in the order of safety.

A The primary consideration of all expenditure on a railroad and certainly as governed by the operating 40

F. B. Lincoln, direct.

department is safety of operation. The basic consideration and first requirement of safety is double track on any railroad. We have voted the largest share of the available funds that we could secure for construction purposes from any source for a number of years to double tracking. We have under way or authorized double track construction which will require an additional expenditure of seven millions.

10

Q (*By Mr. Merrett.*) Where?

A At different points on the line, not at any one isolated location; largely west of Salamanca, but some portion of it east of Salamanca. There is still some work to be done to complete the double track line on what we call the Erie division proper east of Salamanca. The balance of that expenditure comprised within the seven million dollars which has been estimated upon is west of Salamanca.

20

Q (*By Mr. Minard.*) How much has been spent for double tracking in the last few years to carry out this scheme of double track; have you any idea?

A Not offhand; I should have to go to the records to locate those figures.

Q What is the reason for your placing double tracking first among the list of those improvements intended for safety?

A Because it is the basic safety requirement on a railroad.

30

Q And the reason for that?

A For the protection of the public in traveling, for the protection of the company in the operation of its property. A secondary consideration is the added ability to earn money. The construction of double track necessarily facilitates movement of traffic, reduces the cost of operating. That is a secondary consideration, but a very vital consideration.

40

Q In regard to the saving of the money, what are the items or elements which enter into that saving?

F. B. Lincoln, direct.

A The whole thing resolves itself into a greater facility of train movement.

Q What have you to say about the cost due to delay for a train passing and so on?

A The construction of double track and double track operation reduces the cost of operation by a very large percentage, simply because it reduces the time of getting trains over the railroad.

10

Q Has that condition been exaggerated lately by legislation on the question of hours of service and so on?

A Very largely.

Q In what particular?

A In reducing the time allowed on the road by train crews, so that trains must be moved over the operating territory that will not keep the employees on duty over sixteen hours which is, under some phases of operation, a practical impossibility. If train crews are not relieved inside of sixteen hours the company is penalized by practically double expense for train operation, and the construction of double track eliminates that contingency very largely.

20

Q Then, in your judgment, the completing of the double tracking which is estimated to cost seven millions is the matter of first importance confronting the railroad company at the present time?

A Absolutely. Now, that seven million does not cover all of the additional track work which we contemplate and which we regard as a very important necessity. Ahead of any other expenditure that we have in view, the next important large item in that connection is the construction of additional tracks between Jersey City and Suffern in this immediate territory. The element of safety is a very large factor in that for the reason that a very dense passenger traffic is now handled over the tracks on which we have to move freight. As an element of safety to the

30

40

F. B. Lincoln, direct.

public we feel it is imperative to construct additional tracks in the commuter territory so that we can take the freight service off of the passenger tracks. That means additional construction between Jersey City and Suffern for which we have already made estimates amounting to \$3,500,000.

Q How will that improvement affect Paterson?

- 10 A There is a very considerable proportion of the commuter travel going into Jersey City which comes from Paterson and it will certainly make travel from Paterson to Jersey City safer and will facilitate the movement of trains. There will be less delay to passenger movement if we have additional tracks from Crockston yard outside of the City of Paterson. It would be a very great benefit to the people of Paterson generally. That makes a total in sight now of estimated expenditures for that class of work
- 20 that we are now figuring on of \$10,500,000.

Q Under present conditions is that money available in the way of loans?

A No, it is not.

Q How would you expect to obtain that money?

- A We do not expect to obtain it under present conditions, counsel. We haven't the earnings, we haven't the income at the present time which would justify making a loan of that character and I don't think we could make such a loan because the bank
- 30 would not advance the money on any basis that would be within reason.

Q Proceed with your list then of improvements.

- A The next item I have taken into consideration on which we have already made estimates for safety provisions required is that of signalling. We have got our railroad partly signalled, but there is a considerable percentage—I don't recall exactly how much—yet to be done and the estimated requirement
- 40 is \$500,000.

F. B. Lincoln, direct.

Q When you say signals, what do you refer to?

A Block signals for protection of train movement.

Q Automatic signals?

A Automatic signals.

Q There are some places where these automatic signals are not now provided?

A There are on the property and we deem it a vital necessity to proceed with that work just as rapidly as the funds can be secured. The amount now involved to complete the signalling on the main line and such side lines where the density of traffic require it amounts to \$500,000. 10

By Commissioner Douglas.

Q That is the estimate?

A That is the estimated further cost. The next item that we are facing—

Q (*By Mr. Minard.*) Do you know how much has been spent on this automatic signalling recently? 20

A No, I could not answer that without—I haven't the figures right here.

Q What proportion can you say of the general work is done, the larger or the less?

A More than half of it is done; probably, I should say, two-thirds.

Q So what you now contemplate then is finishing up the whole proposition so that the whole road will be benefited by the automatic signals? 30

A Exactly; simply finishing what work that is under way or authorized. The next item of safety expenditure is one which we have no defense against whether we want to or not and that is the application of safety appliances to operating equipment under the United States Safety Appliance Act. The Federal Act requires that our equipment shall be fitted to meet Federal specifications by July 1st, 1916. The original amount involved for that work was \$1,750, 40

F. B. Lincoln, Director.

000. We still have to expend \$1,354,741, and that money will have to be spent before July 1st, 1916, or we will not be able to use our equipment.

Q Has the railroad company been proceeding with this work right along or has it been necessary to postpone it?

10 A Why, we have proceeded with it right along, that is, it is all the time under way. The amount that we do on it varies with the character of the equipment force, shop forces, but at no time is there any cessation in that work.

Q When did this work begin?

A About two years ago.

Q Do you know how much has been spent? Does this difference represent the amount that has been spent?

A Exactly.

20 Q \$400,000. Has the work been spread out evenly over that period, or is there more to do in the future than there has been in the past?

A A great deal more to do than we have done. The work in the past has been governed partly by the exigencies of the equipment. In other words, we have not been able to take equipment out of service many times, to apply these features.

30 Q So that between now and July 1st, 1916, it will be necessary for us to complete an expenditure of \$1,354,741?

A We shall have to do that or take the equipment out of service.

Q A while ago you spoke of the amount being authorized; what do you mean by that; expenditure being authorized?

A Authorized by the Board of Directors, based on estimates submitted.

40 Q Does the Board of Directors pass on the necessity of the thing before they authorize it?

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A Absolutely in every instance.

Q So when it is authorized it is considered by them to be necessary?

A Yes.

Q Proceed with your statement.

A The next item to which we are giving consideration of large volume and one that probably more directly concerns the people of Paterson than almost anybody else is that of the construction of a passenger terminal at Jersey City. We have outgrown the present, the existing passenger facilities, as I presume everybody knows, and plans have been made for the reconstruction and the erection of suitable facilities at Jersey City. We are handling through that terminal now an average of about 55,000 people a day. At times that runs up to 90,000 in a given twenty-four hours, but the average is about 55,000 people daily now, and it is very difficult to handle them successfully and safely. We have done it so far, but it is growing more difficult every year. That terminal serves a population of about from three-quarters to a million people directly tributary to our line within forty miles of Jersey City and as an element of safety and as an element of convenience to the public and as a necessity to the growth of our business we have got to face the construction of a suitable terminal at that point. The estimates so far for the passenger terminal itself involve an expenditure of seven million.

Q Does that involve any other changes that are expensive?

A It necessitates very large other expenses for the reason that the absorption of the entire area in the passenger terminal, the facilities between Bergen tunnel and the water front, will involve our taking all of the locomotive facilities, shop facilities, out of Jersey City. We cannot construct the required pas-

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senger facilities unless we remove all the shop facilities. We haven't the room there to develop a passenger terminal without removing the engine terminal. That involves the construction of the necessary engine terminal facilities outside of the tunnel.

Q Where had you considered putting it?

10 A Just west of Bergen tunnel, what is known as Crockston yard, and the estimates for shop and yard facilities there to take care of the engine equipment involves an expenditure of three and half million dollars.

Q The place you propose to put them is still in Jersey City?

A I don't know, I guess it is within the city limits of Jersey, but outside of the tunnel.

Q Just at the west end of the tunnel?

A Yes.

20 Q (*By Commissioner Treacy.*) Why is it necessary to change your shops to the west end of the tunnel, for engines?

A There isn't room—

Q Is it because they are built so close to the present terminal?

30 A Yes. We have to move back from the water front. In any comprehensive plan of development there, we have to move back from the water front with the passenger terminal and the engine terminal is right in the rear of our train shed now, practically within about two hundred or three hundred feet; in addition to which the widening out of that passenger terminal, commissioner, which is necessary, involves wiping out all that locomotive equipment from Pavonia avenue clear over to what we call the north side shops, and there is no place on our property, our holdings in Jersey City east of the tunnel, that will adapt itself to the size of the engine terminal we have
40 got to have. We are taking care of five hundred ca-

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gines a day there and have to have more room for that alone. Our existing facilities in that particular are inadequate, subjecting us to more or less delay and also a great deal of extra expense at the present time.

Q Your yard for your engine terminal facilities is now west of the entrance to the subway, to the Hudson & Manhattan tubes?

A Yes.

10

Q Would your passenger terminal go farther west than the entrance to the Hudson & Manhattan?

A No, not the main buildings themselves would not, but then the train sheds and approaches would absorb all of that room out there. That is the contemplated layout.

Q (*By Mr. Minard.*) You spoke of three and a half million dollars necessary to change the engine and shop facilities. That is in addition to the seven million dollar terminal expenditure?

20

A Yes. In other words, the total expenditure involved in the change of the passenger terminal facilities there is not less than ten and a half million dollars as now contemplated.

Q Proceed with your next item.

A The next important large expenditure on our line is the installation of steel underframes in passenger train equipment. A very large share of the passenger train equipment now in use is wooden cars, and regardless of any legislation which we may naturally expect in that particular, we have prepared to put steel underframes under all of our passenger service equipment. The work is partly under way, we have made some very heavy expenditures on it already and the estimated cost to complete that work is \$741,-854. That we regard as a safety measure because it is quite vital to the equipment, for the protection of it in its movement and for the benefit of the people that ride in it. The additional expenses that we are

30

40

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facing, one of the biggest items involved is that of the legislation that has probably originated with labor organizations, known as the Full Crew law. The Full Crew law is now costing us an excess charge for wholly unnecessary expenditure of \$277,691 a year, approximately, in other words, in round figures, \$275,000 a year increased charge of operation for which we get no recompense and which we have to find out of our operating earnings. Another burden that we are facing is an increase in direct payroll charge arising from wage increase of substantially three million dollars a year which has to come out of operating earnings.

Q Have you any statement there on the wage increase?

A Yes.

Q (*By Commissioner Treacy.*) At the bottom of this statement, R-125, I notice in the recapitulation it is stated that the expense of the Full Crew law, the increased expense of the Full Crew law upon the Erie, New York, Susquehanna & Western and New Jersey & New York Railroad is \$287,000, and the Erie Railroad only is \$277,000.

A Yes, that is without the New York, Susquehanna & Western.

Q Or the New Jersey & New York?

A That is the Erie proper.

Q So that the increased cost on the Susquehanna and the New York & New Jersey is only \$10,000 a year?

A \$10,000 a year on those two lines as estimated there.

Q (*By Mr. Minard.*) Both short lines?

A Short lines.

Q And run short trains?

A A good deal of that service, a whole lot of short

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passenger trains, don't come within the scope of the laws; less than five car trains.

Q Have you figures here on the increased cost of the payroll which you have just spoken of?

A Yes. The payroll increases—these figures were made for the year ending June 30th, 1913. I haven't had them made up for this past fiscal year yet.

Q That statement was made, as I understand it, by Doctor Dickson of the Bureau of Railroad Economics, was it not? 10

A Yes.

Q And was offered in evidence in the Anthracite Coal cases before the Interstate Commerce Commission?

A Yes, it was.

Q What does that show with regard to the Erie Railroad Company up to that time? Just read the figures across there and the heads of the columns so as to indicate what they mean. 20

A It shows compensation paid in the year ending June 30th, 1913, on Erie property, \$24,751,614.01 and the compensation which would have been earned by the same employees under the rates prevailing in the year ending June 30th, 1909, would have amounted to \$22,006,946.01, showing an increase of \$2,744,688, or twelve and a half per cent. on the payroll.

Q That is on the annual basis, is it not?

A That is on the annual basis. 30

Q (*By Commissioner Donges.*) This statement is for the year ending June 30th, 1913.

A 1913.

Q (*By Mr. Minard.*) Has the same increased rate prevailed during 1914?

A No; there have been two other wage increases made effective which increased the difference in the fiscal year ending June 30th, 1914.

Q By how much?

40

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A Wait a minute—one in the fiscal year ending June 30th, 1914, and one taken effect since.

Q What was the amount of that increase?

10 A The increase becoming effective July 1st, as the award of the arbitration commission to the conductors and trainmen which was handed down as retroactive to October 1st, 1913, but by an adjustment with our employees they accepted the new rates as applying from July 1st, 1914. That increase on our payrolls will amount to \$400,000 a year.

Q In addition to the increase mentioned in the statement that you just read?

A Yes.

Q You say there has been an increase since then, since 1914?

A No, that is the last one.

20 Q Have any wages been reduced or any wages of any class of employees been reduced to offset this?

A None whatever.

Q Then this increase which you have described here will amount to a total of more than three million dollars, will it not, as an increase in wages?

A Yes.

Q Is there any way of getting that back out of the business at the present time?

30 A Not unless we can get an increase in freight rates.

Q (*By Commissioner Donges.*) Do I understand the increase, using round figures, between twenty-two and twenty-four million covers the same service for the same number of employees?

40 A Yes, the new rates applied on exactly the same number of hours of labor. The next item of increase of importance is the hours of service law to which reference was made a little while ago, under which we are prohibited from using our train service employees over sixteen hours continuously or our telegraph and

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telephone operators over nine hours, without penalty payments, and that is costing us on an average of \$140,000 a year.

Q (*By Mr. Minard.*) Over and above what the same service would cost otherwise?

A Yes; in other words, the penalty which we pay for the excess hours under the hours of service law which is unavoidable, averages about \$140,000 a year. 10
The next item of increased charges we are facing is that of the increase in taxes. The taxes on our property have doubled in ten years. They were nine hundred thousand dollars ten years and they are \$1,800,000 in 1914.

Q Was that increase general or more or less in some places?

A That is taking the property as a whole. As a matter of fact, the taxes in the State of New Jersey have trebled in ten years. They are three times as much as they were ten years ago in the State of New Jersey. The growth is practically at the rate of ten per cent. a year and if they are to keep on that rate we will be facing taxes of over three millions in about ten years more or an increase of another million which has to be met out of operating earnings. 20

The cost of maintenance of way, maintenance of permanent way of the road which is met out of operating earnings, shows an increase on an average of about \$500,000 a year. That is to say, the increase, the betterment of the standard of upkeep requires a growing charge of about \$500,000. If we could hold our maintenance of way charges at a level that is to say, if we could simply maintain the property at a given level continuously, our charge would be about seven millions a year as we now spend the money, but each year we face an increase of about a half million for raising the standard of maintenance, increased rails, heavy weight of bridges, more and better ballast 30
40

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and other betterments that are required from the growth of the traffic, from the heavier locomotives and larger cars we have to handle and other safety precautions. The maintenance of our signal system—

Q What effort is the railroad company making to offset this increase?

A In maintenance?

10 Q Yes, the heavier rail, the heavier bridges, ballast, and so on.

A They are not making any effort to offset it; we have to face it.

Q What causes that, what produces that situation?

A The growth of traffic and the growth in the standard of the requirements of the public for better service, more rapid service, heavier equipment.

20 Q Has the hours of service act and the Full Crew law had anything to do with the lengthening of trains and the increasing of the size of cars?

A No.

Q You spoke of seven million a year for the cost keeping the railroad at a given level of condition and the increase of \$500,000 a year that is necessary; can you say whether recently it has been necessary to postpone this work or defer this annual expenditure?

30 A Why, yes, from lack of funds we have been obliged to postpone a great deal of betterment and considerable maintenance work that we otherwise should do. We have reduced our forces since the first of September and have done very much less work this year than we did last year, for lack of funds to do the work with.

Q What does that mean in the long run?

A It simply means that we have deferred necessary upkeep work which will have to be done later.

40 Q In your judgment, how soon—how long can this work be postponed?

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A The important work on which we have deferred expenditure to the extent of possibly \$200,000 since July 1st, will have to be done within a year. We cannot defer it beyond next spring or summer.

Q (*By Commissioner Douges.*) What work is that?

A Rail and tie renewals, very largely, ballasting to some extent. We found ourselves short of funds after the first of the fiscal year and reduced our estimates for the ballast requirements very largely and put over some rail renewals and a considerable share of tie renewals in order to reduce force. Part of the ties are on yet and others are included in our estimates for this year which we feel have got to go under the track between now and sometime next summer. Normally we have put in those ties and made those rail renewals prior to December 1st. This year we could not, so that work has been deferred until next spring, and with due regard to safe conditions of the track I believe we could not defer it in the spring; they must go in then if we can find the money. 10 20

Q Will that then interfere with the annual increase of cost of maintenance which will accrue for next year?

A Oh, no, the same general average of increasing costs is running all the time.

Q Whether the work is postponed or not?

A You might put over a part of it for one year and you would have to double up the following year. The permanent way of the railroad is in the nature of a savings bank and when you get hard up you borrow from that bank, but you always have to pay it back with a very large rate of interest. 30

Q What is the next item you have there?

A Maintenance of equipment.

Q What has been done in the last year or so regarding the equipment, keeping it in repair? 40

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A The normal maintenance of equipment charge is running now about eleven million dollars a year which, of course, comes out of operating earnings, but the principal factor entering into an increase in that charge has already been taken into consideration in the safety appliance act and the steel underframes.

10 Q Is there an accumulation now or has there been up to recently an accumulation of cars which needed repairs but to which repairs had not been made?

A We had on the first of August a very large accumulation of bad order cars, because we had deferred the repair work for lack of funds.

Q How long had that work been deferred?

A Well, the shop forces have been on a reduced time basis since last January.

20 Q How many cars accumulated or what proportion of the equipment, do you know?

A About ten and a half per cent. of the total equipment owned was in bad order on the first of August.

Q What has been done to bring that up?

30 A We have increased the shop time and increased the force because we had to have the cars for use. We could not allow the cripples to accumulate and the prospective demands of business indicated we would have to repair more cars than we were doing so we increased the shop forces and have now reduced the percentage of bad order cars to about four and a half. That is a fluctuating condition and governed quite largely by our funds.

Q Have you any idea what this has cost, this emergency work of restoring cars?

A No, I couldn't say.

Q How much additional cost?

40 A There is no additional cost involved above the average cost of upkeep of the equipment. It costs

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about seventy-five dollars per year to maintain a car. You have to maintain the car if you keep it in service and the money has to be spent at some one time or another. If you defer it at one time you have to apply it later. The only excess charge involved is, that when you are working your men full force and full time you get better efficiency; when you shut your shops down and run them on part time and part force you lose efficiency and the unit costs are necessary slightly increased. In the matter of equipment, we have got to buy a million dollars worth of passenger train service cars per year for the next ten years to properly protect the traffic.

10

Q And what is the occasion for that?

A The obsolescence of equipment now in service and the growth of traffic. We are not going to spend a million for passenger train equipment this year because we haven't got the money, but the best estimates we are able to make as to the requirement, based on our past experience, indicate that we will have to spend an average of one million dollars a year for ten years.

20

Q Have you any idea what proportion of this passenger equipment is used in New Jersey?

A Well, no, not offhand. I have an assignment of passenger service equipment here, I think, but it would be pretty hard to tell the exact percentage. A very large share of it is used in New Jersey because the biggest part of our passenger train service is in the commuter service.

30

Q Generally speaking, is three-fourths of the passenger car equipment used here?

A Yes, I should say approximately that; it would not be far off.

Q What have you to say about the necessary expenditures for freight car equipment, freight equipment? Are you looking up something there?

40

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A I was looking for the assignment of passenger train service cars. Out of six hundred and ninety-seven passenger service cars there are 407 in suburban equipment alone and 200 in other local service, so that seventy-five per cent. of the total passenger service equipment is probably in the State of New Jersey; substantially.

10 Q (*By Commissioner Treacy.*) You say seventy-five per cent. of the total passenger service?

A Pretty near.

Q The total passenger service on all Erie Railroad lines between New York and Chicago?

A Yes, sir.

Q Seventy-five per cent. of it is used in New Jersey?

A Four hundred and seven cars out of 697. That is in suburban service alone.

20 Q Have you only 697 passenger cars on the whole Erie system?

A That is all.

Mr. Taylor. That, Mr. Commissioner, is substantially the same evidence as we put in in the commutation case. Of the cars used in passenger service something like 600 out of 800 were in use in New Jersey.

By Mr. Minard.

30 Q What about the necessary expenditures for freight equipment?

A The requirements for freight equipment in the next ten years will average \$2,500,000 a year.

Q What makes this necessary?

A The deterioration of cars in service, requiring a dismantelling, and the growth of business. That estimate is based on the average rate of growth of business and average purchase of equipment in the
40 past, and the known rate of depreciation of our equip-

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ment now in service. The same conditions will apply in that particular as with the passenger service equipment. We have no order, nor do we expect to buy this year two and a half million dollars worth of freight equipment, because it will be impossible for us to pay for it, but on the average we will be obliged to make those purchases if we are to take care of the service required and take care of the people tributary to our line. It is a condition, particularly in freight service, that we must meet, because the population living tributary to the Erie and quite largely tributary to the Erie alone have got to be taken care of. 10

Q Do you know anything about the necessary expenditures for locomotives?

A I haven't taken that into consideration.

Q Generally speaking, what is the tendency now in the purchase of locomotives?

A You mean as to the kind of locomotives we are going to buy? 20

Q Yes.

A The tendency is to buy larger locomotives all the time.

Q Do you know in a general way whether a large proportion of your locomotives or whether a large proportion of your tractive power has got to be replaced in the next few years?

A I wouldn't say a large proportion of it, but we have to make very expensive purchases of motive power in the next ten years. 30

Q To take care of the heavier car equipment, passenger and freight?

A Yes, sir. We have to purchase a very large number of locomotives, although I cannot say just how many we have estimated on now, and of a type that are costing us from \$25,000 to \$28,000 a piece as compared with locomotives that served the purpose ten years ago which cost us \$15,000 or \$17,000 a piece. 40

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Our average price for a locomotive now is about twenty-five thousand dollars, the type of engine we have to buy.

10 *Mr. Hervey.* It seems these last items, several of them are the ordinary purchases that we would expect a road would have to go on and do, nothing extraordinary about them at all, the witness does not testify to that. The question of double tracking and some other things of that kind, signals and so on, are all matters which seem to me were pertinent to show the commission that some extraordinary expenditure was to be made or was contemplated, but these last several items that have gone into the record, the witness is simply saying, we are going to spend money in the future because business is going to increase, about the same ratio they spent it in the past. I don't see it is at all pertinent.

20

Commissioner Donges. It is in now.

Mr. Minard. Our opinion about that is—

Commissioner Donges. It is in, Mr. Minard.

Q Mr. Lincoln, on the general situation as involved in the different items which you have mentioned, what, in your judgment, what have you to say with regard to your opinion of the necessity as against the expenditure of three millions or more for the elimination of grade crossings in Paterson?

30

A Well, from the point of view of the operating department there is only one answer to that. The list of capital expenditures that I have referred to I should regard as of far more importance both as safety measures and from the standpoint of affording better facilities for operation and increased earnings.

Q From the standpoint of safety, why do you say that they are of greater importance?

40 A The double tracking alone is an element of safe-

F. B. Lincoln, direct.

ty in the protection of a very much greater number of people all over the system than the mere elimination of some grade crossings in the specified locality, necessarily.

Q Doesn't that go to practically all of the expenditures that you have referred to there? In all those cases is there not a great number of people whose safety is involved than there are at a grade crossing? 10

A Most assuredly, because the question of additional tracks and additional terminal facilities and the signalling of the operation and the strengthening of the equipment all apply to the entire patronage of the Erie Railroad as against possibly a few people who may be affected by certain grade crossing eliminations.

Q On the standpoint of service, there is no doubt in your mind that the company would be enabled to render more adequate service in proportion to the number of these expenditures that it is able to make? 20

A Assuredly so.

Q From the standpoint of savings, can you give us an illustration of what is to be accomplished by these changes in track, involved in double tracking. For instance, I assume that double tracking will involve, in some cases, elimination of curves and grades, is that true?

A Yes, quite largely. 30

Q Can you give an illustration of how savings are—a concrete illustration of how savings are accomplished in that direction? Have you had any experience along that line?

A I have had a good deal of experience in the effect the reduction of grades and increasing of operating facilities has had on the expense of operation. The reducing of grades necessarily increases the train load, which reduces the cost of operation on all railroads. I have had some personal experience in that 40

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line where the immediate effect was an increase, with a very small expenditure, was an increase of perhaps ten or fifteen per cent. in the average train load on the property; an expenditure of \$7,000 resulting in an earning of \$25,000 in a year.

Q Is that a concrete case or just an illustration?

10 A Absolutely a concrete case within my own experience. That same general condition applies on any work of the character that involves double tracking and reducing of grades and elimination of curvature.

Q Do you know how much money the company spent the last five years along the lines of these improvements you mentioned here?

A In the way of betterment expense?

Q Yes.

A Substantially \$35,000,000.

20 Q (*By Commissioner Donges.*) In the way of what expense?

A Betterment expense.

Q (*By Mr. Minard.*) These have consisted chiefly of what?

A Double tracking, renewals of bridges, purchase of increased volume of equipment. Those are the three principal items, double track, new bridges and new signals, increased equipment.

30 Q Then the items mentioned as necessary expenditures in the future are simply the completion of a general plan along the lines that you have discussed?

40 A Yes, sir. We now have, duly authorized by the Board of Directors, capital expenditures for necessary added facilities, \$22,000,000 to expend. That is to say, the authorities under which these expenditures are to be made cover thirty million dollars of estimated cost. We have spent eight million of that and a very considerable share of that work in spread out as under way. We have \$22,000,000 to spend under existing authorities. The most of those are deferred,

F. B. Lincoln, cross.

that is to say, although authorized they have been held up. They have been authorized so far as our files are concerned and our records are concerned, the authorities have been passed to the operating and engineering departments to make the expenditures, but the actual work has been held up by executive order simply for lack of funds; otherwise all of that work would be under way or completed. 10

Q All that work has been, as you stated a while ago, passed upon as to the necessity for its being done?

A Absolutely every bit of it.

Q (*By Commissioner Treacy.*) Is any part of that thirty millions authorized for the elimination of grade crossings?

A Yes. There are a very few grade crossing eliminations in that list. I don't recall exactly how many there are. 20

Mr. Minard. I will give you the details of those presently; another witness will do that.

Q (*By Mr. Minard.*) Were you through, Mr. Lincoln?

A Unless you have some further questions.

Q Have you any information there as to the revenue per ton mile covering the past year?

A The revenue per ton mile?

Q Yes, on the road.

A Yes. 30

(Question read.)

Witness. The revenue per ton mile, 1914, shows a decrease of 6.2 per cent., as compared with 1913. In other words, a decrease in the average revenue received per ton mile.

Cross examination by Mr. Merrey.

Q Mr. Lincoln, you put the work of double tracking which you wish to do on the road ahead of the 40

F. B. Lincoln, cross.

removal of grade crossings, on the ground of safety?

A Yes.

Q Safety to what?

A The public.

Q The general public?

A The general public.

10 Q What has been your experience in the last year on the road, so far as safety to the public was concerned on signal track parts of the road?

A As to accidents that have occurred?

Q Yes. Have you had any accidents in which any of the public have been injured because the road was not double tracked?

A We have.

Q Whereabouts?

20 A We had one in March, I think it was, where a passenger train ran into a freight train on a single track, killed the locomotive engineer and injured a large number of passengers, which would not have occurred if the railroad had been double tracked at that point.

Q How many people were injured in that?

A I don't remember exactly, ten or fifteen.

30 Q Have you kept any records of the number of people who have been injured on your road for some time past, say a period of ten years, because of the lack of double tracking?

A We have kept no record from that particular standpoint, but we have an exact record of all the people injured on the property for ten years.

Q Haven't you been advertising during various years that you have not killed a passenger?

A Yes, we are pretty proud of that record.

Q You have had that record several years?

A Yes.

40 Q Notwithstanding the fact you had a great deal of single track?

F. B. Lincoln, cross.

A Yes.

Q Did you ever have a year you did not kill a great many people on grade crossings?

Mr. Minard. On one grade crossing?

Q On all grade crossings and on the grade crossings in question.

A I could not say as to the grade crossings in Paterson, but I should say off-hand there never has been a year when we have not killed people on the total grade crossings on the Erie Railroad. 10

Q As a matter of fact, don't you have a great many more casualties on grade crossings than you do on your trains by reason of not having double track?

Mr. Minard. You ask us to eliminate all grade crossings?

Mr. Merrey. I am asking the witness a simple question. 20

(Question read.)

A I should say that we injure a great many more trespassers in that way than we do on our trains.

Q Don't call them trespassers; people, the public. You haven't any record or haven't any knowledge yourself how many people you have killed and injured on the Paterson grade crossings in the last year?

A Not of my knowledge at the moment. We have a record, of course. 30

Q You pay no attention to it?

A I pay attention to it, to the extent that those cases are all reported to me over the entire road the minute they occur.

Q Do you keep any record to know how many they amount to so when you make a statement that the elimination of single track road is more important than the elimination of grade crossings you are sure of your ground? 40

F. B. Lincoln, cross.

A Yes, I think the records are in such shape that that statement will be susceptible of proof.

Q Do you admit you kill more people and injure more people on your grade crossings than you do on your trains?

A Yes.

10 Q Why do you say that there is greater necessity for the saving of life and limb of the public generally in eliminating these single track portions of your road than in eliminating the grade crossings?

20 A For the reason that in the operation of passenger trains on single track the lives of a great many people are in constant jeopardy and those people are defenseless against that jeopardy on their own part, because they have to ride on these trains, whereas the average traveler on the public highway has an absolute and perfect defense in himself against accident
30 in any crossing if he will observe the law and be careful in going over the crossing. There is no possible risk to anyone on the highway if they will take proper precautions, under any circumstances I ever heard of.

Q So you have gone on the theory that anybody who gets hurt on your grade crossings is a trespasser and the company has no duty it owes to him?

30 A Not necessarily. I don't go as far as that, but I do say no one has ever been hurt on a grade crossing in any case I ever heard of, where, if they exercised proper precaution, they could not have avoided the accident.

Q You have been looking at it entirely from the standpoint of the company?

A No, because I am a very frequent traveler over grade crossings.

40 Q But when you make this statement as to the necessity of eliminating this single track first, double

F. B. Lincoln, cross.

tracking; you are looking at that from the standpoint of the company.

A No, I am looking at it from the standpoint of proper operation and from the standpoint of elimination of risk for the people so far as passenger service is concerned.

Q You know people do get killed on grade crossings in great numbers every year?

10

A Yes, undoubtedly.

Q And you think their lives are not as important as those that travel on the trains, is that the idea? The fact that they are probably careless is no reason they should be protected, because they could not get hurt unless there was some degree of carelessness?

A They certainly could not.

Q (*By Commissioner Donges.*) Did you ever know of accidents occurring on single track road by reason of collision of trains or other ordinary causes of such accidents unless there was negligence on the part of some individual? It usually is the result of negligence on the part of someone.

20

A The largest proportion of them, yes, can be traced to that.

Q (*By Mr. Merrey.*) In other words, where you depend on the human element, as you have to do in the operation of a railroad, you are going to have sometime when it breaks down and there is carelessness?

30

A Yes.

Q And if you have a certain number of people passing over a grade crossing there will come a few times when some of them let down and are a little careless; that is as sure as fate, isn't it?

A Yes.

Q So as a matter of fact, as time goes on and people are just as careful as they usually are and just as careless, you are going to have a great many more

40

F. B. Lincoln, cross.

casualties on grade crossings than you will from the operation of your single track?

A I should hope so.

Q Do you think it is at all possible to eliminate that carelessness or that percentage of carelessness from the ordinary person who uses the grade crossing?

10 A Do I think it is possible to do that?

Q Yes. In other words, don't you think that a certain number of people are going to be careless at one time or other if they cross often?

A No, I don't think that necessarily follows. I think that is a matter of education.

Q That may do some of it, but you cannot educate all that carelessness out of the human system; you cannot do it with your railroads, can you, with your employees, can you?

20 A No.

Q You find no matter how you train them and educate them, at some time or other they will break down. That is the same thing with regard to the person who crosses the grade crossing; there comes a time when he is going to forget and be careless, isn't that true.

A Yes.

30 *Mr. Minard.* It seems to me merely like an argument between the witness and counsel based on the theory that there is an obligation—

Commissioner Donges. The witness was asked questions. Object to the questions instead of making a statement.

Mr. McCreary. I didn't know there was any obligation on the part of the railroad company to prevent people from being hurt at grade crossings.

40 *Commissioner Donges.* If there is no objection, you may continue.

F. B. Lincoln, cross.

Q Did you have in mind when you said that was more important, the fact that any accidents occurring upon your single track, which would probably be due to the carelessness of some employee, that the company is made responsible in the courts for damages, whereas on grade crossings you are rarely made responsible?

A No, I didn't have that in mind at all, I hadn't thought of it. 10

Q You find that accidents on grade crossings are less costly to the company than they are on the operation of the road?

A Well, that may be true from a financial point of view.

Q You know that is true?

A I presume so.

Q You didn't have that in mind however when you made that statement? 20

A I did not, because that phase of it never entered my head.

Q You also said you had in mind the fact there was less damage to the property of the company; did you mean by that that on accidents on single track you smashed up a lot of cars whereas when a person was injured at a grade crossing very little damage was done to the train?

A I don't recall saying anything about damage to the property. 30

Q You did speak about great damage being done to your property in case of accidents on your single track.

Mr. Minard. Did you or did you not say that?

Witness. I don't recall any such statement.

I don't see the exact application, therefore I do not recall making the statement.

Q You still say that so far as experience is concerned you are likely to have more accidents, casual- 40

F. B. Lincoln, cross.

ties on this single track portion of your road than you are at grade crossings?

Mr. Minard. I object to that.

Commissioner Donges. He is an intelligent witness, quite able to say what he testified to. You have a right to object to the question.

10

Mr. Merrey. I am asking him if he still thinks something.

Commissioner Donges. If there are objections let them be made to the board and they will be ruled on. Don't get into argument.

Mr. Minard. Objected to as a misstatement of the witness's testimony.

Commissioner Donges. If the witness didn't say that—

20

Mr. Merrey. He didn't quite say that. I think it is a fair enough question.

Mr. Minard. If he admits he did not say that then my objection is good.

Commissioner Donges. Answer the question.

Witness. I think, Mr. Counsel, you misrepresented me. I did not make any such statement as that.

Q What statement did you make about that?

A You asked me—

30

Q But in the beginning, on the examination by Mr. Minard you said you placed this expenditure first; tell us what you did say about it being of greater necessity.

Mr. Minard. Objected to for the reason that the record will show what he did say and is more reliable than the witness's cross examination.

Commissioner Donges. It is proper cross examination to ask him again what he said.

40

Witness. My recollection of the wording of my original statement would be, that I regarded

F. B. Lincoln, cross.

the necessity of double tracking the railroad as of the most vital importance from the standpoint of safety, that I have put it down as first in my list of expenditures contemplated in the line of their relative importance and as a whole on the property we regard the requirement of double tracking as of the first importance beyond all other things at the present time.

10

Q Now then, I asked you if you find more danger on the single track part of your road than you do on the grade crossings so far as the general public is concerned, whether they are passengers or whether they are trespassers or people crossing grade crossings.

A That is absolutely a matter of judgment, because there are no statistics to answer that kind of a question, but I do say there is a far greater risk to a greater number of people in the movement of passenger trains over single track than the number of people involved in this in going over grade crossings.

20

Q How is it that for a great number of years past—I take it you admit that is true—that there have been more injuries on these grade crossings and on the grade crossings probably in question here than there has been on this single track road?

A We have minimized that risk to the best of our ability by careful operation.

30

Q Then the single track road if operated carefully would not produce the number of accidents that these grade crossings do?

A That I should not say; I would not answer that affirmatively.

Q Then you don't know?

A I don't know.

Q Then you don't know as a matter of fact from a point of safety it would be best to double track or eliminate the crossings?

40

F. B. Lincoln, cross.

A I say in my judgment that is unquestionably so.

Q Your judgment then is not based on statistics, a study of the situation thoroughly.

Mr. Minard. Judgment is never based on statistics, or else you never need to exercise judgment.

10 *Commissioner Douglas.* He may answer the question.

(Question read.)

A My judgment is based upon a very careful study of the situation on our property and that is my conclusion and my best judgment.

Q Do you think it is a thorough study when you have not taken into mind the actual experience of your road so you know the number of accidents you have upon the single track and upon the grade crossings?

20 A I do know those number of accidents. They are all matters of record. I haven't them here off-hand to cite, but those matters have been given consideration.

Q You don't know whether you have more accidents on your single track or upon the grade crossings, do you?

A Yes.

30 Q Where do you have the most accidents?

A On grade crossings; I said that some time ago.

Q Then you think it is still more important to eliminate the single track than to eliminate the grade crossings?

A Yes, I do.

Q You spoke about you need more tracks between Jersey City and Suffern?

A Yes.

40 Q And it would cost three and a half million; is it your intention to put in six tracks?

F. B. Lincoln, cross.

A The present plan contemplates two more tracks, two freight tracks.

Q How many tracks have you between Jersey City and Suffern now?

A Four.

Q All the way?

A Yes.

Q So that will mean six?

10

A Yes. It will be six tracks all the way. That is substantially what it would work out.

Q And in order to make the system six track between Jersey City and Suffern it will cost three and a half million?

A Yes.

Q You spoke about rendering the situation more safe in Paterson if you did that. You run very little freight through Paterson now?

A More safe to the citizens of Paterson because they are very vitally concerned on the traffic out across the meadows as now handled. 20

Q You consider that a point of danger, on the meadows?

A I consider that a point of danger, more or less risk involved in handling that dense suburban traffic mixed in with freight trains.

Q The system contemplates a low grade freight line?

A Yes.

30

Q Not adjacent to the present line?

A No, it diverges just the other side of the Hackensack bridge.

Q (*By Commissioner Tracy.*) Where?

A Just west of the Hackensack bridge.

Mr. Merreg. The map which they presented to the commission last Thursday shows it, I think.

Q (*By Mr. Merreg.*) The object of that is to save expense by having a lower grade, is it not?

40

F. B. Lincoln, cross.

A That is one of the objects, yes, sir, improved operation.

Q The expenditure you speak of in the passenger terminal, Jersey City; does that include anything with a view to the electrification of the road?

A No, except as it would fit in with an electrified railroad later.

10 Q Have you taken that into consideration at all, the possibility of electrification?

A Not in these figures.

Q Would that passenger terminal accommodate such a road?

A Yes.

Q Is it planned in view of the possibility of change?

20 A Yes, the buildings, the layout of tracks would lend themselves to electrification later. That is to say, our development would be of a character that would permit of fitting electrification to it.

Q Has it been studied out in conjunction with the tubes at New York City?

A Yes.

Q If you had tubes to New York City and direct connections, the terminal would not be necessary, a large terminal would not be necessary, would it?

30 A That is another factor, another feature altogether. That is not within the scope of this present plan. That would cost a great deal more than this contemplated development.

Q I understand that three-fourths of your passenger business is done within this district very near to the City of New York.

Mr. Minard. He said three-fourths of the passenger cars.

Mr. Merrey. I understood that, but I presumed the other thing followed.

F. B. Lincoln, cross.

A I would not care to go on record on that question because I don't know as to the division of revenues.

Q In the planning of this terminal then you have not taken into consideration the possibility of running your train direct to New York City by a tube?

A Yes, all of the possibilities, I think, have been pretty well canvassed, Mr. Merrey.

10

Q In making a terminal that would cost seven million?

A Yes.

Q If you put in a tube or if you connected with the tubes now in wouldn't your terminal requirements be very much reduced?

A I am not prepared to answer that question, sir; I haven't gone into that study of it.

Q This equipment you speak about, buying new passenger cars, new freight equipment and all that, is in the same proportion that you have been buying for a number of years past, except there is an increase of business or expected increase of business?

20

A No, it is not on the proportion we have been buying. If we had bought in the past ten or fifteen years in that ratio we would not have so much to buy now. As a matter of fact, we are pretty badly behind on passenger business and that is one reason why we have got to make rather extraordinary expenditures in the very near future. We cannot expect to take the *pro rata* share of expenditure on this year, it is impossible, we haven't the funds to do it. It simply means we are again deferring a very necessary requirement and piling up a burden which we will have to face a little later.

30

Q You buy these cars on car trust certificates?

A Some have been bought that way, others have been bought outright in the past. I think it is a rea-

40

F. B. Lincoln, cross.

sonable assumption if we buy any more we will have to buy them on the car trust.

Q A little more expensive, I suppose?

A No, not particularly in the long run. Those car trusts are worked out on an equitable basis of interest accruals.

10 Q (*By Mr. Minard.*) What have you to say about the dangers of grade crossings if the public use as much caution in using the grade crossings as you use in operating a single track?

A I think there would be very few people hurt on grade crossings, Mr. Counsel.

Q You spoke of the low grade—that line on the map was referred to as the low grade line outside the present right of way; that would nevertheless take the freight trains away from the tracks you propose to use for passenger trains?

20 A Certainly, that is the primary consideration.

(Adjourned until Wednesday, November 4th, 1914, at the State House, Trenton, N. J., at 2.00 o'clock, P. M.)

30

40

Robert C. Falconer, direct.

SEVENTEENTH HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Trenton, N. J., Wednesday, November 4, 1914.

PATERSON GRADE CROSSING ELIMINATION, }
ERIE RAILROAD COMPANY. }

Before the following commissioners:

R. W. E. Donges, Esq.

T. J. Hillery, Esq.

J. J. Treacy, Esq.

For the petitioner appears E. F. Merrey, Esq.

For the respondent appear D. E. Minard, Esq., and
G. S. Hobart, Esq.

10

Commissioner Donges. My impression was the
cross examination of Mr. Lincoln was completed;
is that true, Mr. Merrey?

20

Mr. Merrey. I understood so.

ROBERT C. FALCONER, sworn on behalf of re-
spondent.

Direct examination by Mr. Minard.

Q Mr. Falconer, what is your official position
with the Erie Railroad Company?

A Superintendent of construction with the duties
of the chief engineer.

30

Q Your functions then are really what is generally
those of the chief engineer of a railroad company?

A Yes.

Q What is your jurisdiction in that matter?

A My jurisdiction extends over all of the Erie
Railroad lines, including the New York, Susquehanna
& Western and all leased or affiliated lines.

Q And you have charge of all construction work
of the entire system?

40

A Yes.

Robert C. Falconer, direct.

Q Do you also participate in the consideration of these improvements with regard to their necessity for the road?

A Yes.

Q And in the main you are familiar not only with the nature of the improvements but with the reason for their being made?

10 A Yes.

Q How long have you been in the railroad business?

A The railroad business alone about eleven years.

Q How long have you been an engineer?

Mr. Merrey. Wasn't this all gone into by Mr. Falconer before?

Mr. Minard. He has never testified.

A Nineteen years.

20 Q During that time have you been engaged in practical engineering work continuously?

A Continuously, yes.

Q How long have you been with the Erie Railroad?

A Nine years.

Q Have you been in any other department of railroading than engineering?

A I have been in the operating department for one year as division engineer.

30 Q And then you came into headquarters engineering department?

A Yes. I was originally in the engineering and construction department; then left that department and spent one year in the operating department and came back to the construction department.

Q How long have you been fulfilling the duties of chief engineer?

A Since February 7th, 1913.

Q And before that what was your position?

40 A Principal assistant engineer.

Robert C. Falconer, direct.

Q For how long?

A About six months.

Q How long a time—for how long a time have you been familiar with the work of construction and the reason for this work in the construction department of the Erie?

A Well, I have been familiar with all of the work only since my appointment as superintendent of construction, but previous to that time during my entire service with the Erie, I have been familiar with the necessity in the plans of considerable portions of the work. 10

Q In connection with this case or in any other connection, have you gone over the system alone or with other officials for the purpose of determining what improvements were essential to be made within a given period?

A I don't know exactly how to answer that question. I have not actually travelled over the system with them personally to determine what is necessary but these questions come up constantly and we periodically prepare a list of improvements which we think are essential. 20

Q Have you prepared, or has a list been prepared in your department of the given number of improvements to be made in a given time?

A Yes, we have prepared several such lists. 30

Q Is there one now in existence, the current list?

A Yes. I have a list here which I prepared on the basis of a list which was prepared last fall, about a year ago.

Q And the improvements mentioned in such a list, are the improvements mentioned in such a list authorized to be made?

A Some of them have been authorized and the work help up, some of them are now authorized and 40

Robert C. Falconer, direct.

under process of completion, some of them have never been authorized.

Q Have all of them been passed upon as to their necessity?

A Yes, by the officers of the company, by the Board of Directors.

10 Q Those which have been authorized, I understand from previous testimony, are those which have been approved by the Board of Directors as to the necessity for the work?

A Yes.

Q Have you such a list with you?

A Yes.

Q In the first place, have you a list of the improvements made by the railroad company for a given period of time?

20 A I have not a list of all the individual improvements but I have here a statement of expenditures for additions and betterments.

Q For the general improvement of the road?

A For the general improvement of the road from 1906 to 1914, inclusive.

Q Aggregating how much money?

A \$55,727,039.

30 Q And this list is so arranged into columns as to indicate what proportion, if any, of the expenditure is charged to capital account and what proportion is charged to income?

A Yes.

Q Or paid for out of income?

A Paid for out of income, yes, sir.

Q And this list shows in a general way what the improvements were for, doesn't it?

A Yes.

Mr. Minard. I will offer that list for the information of the board.

40 *Commissioner Donges.* It will be marked.

Robert C. Falconer, direct.

(Statement entitled "Expenditures, additions and betterments—road 1906 to 1914, inclusive," received and marked Exhibit R-128.)

Q Mr. Falconer, what have you to say with regard to whether the list which you have of necessary improvements is or is not a carrying out of a general plan for the improvement of the system which was begun with these expenditures of fifty-five millions or more? 10

A This is a carrying out of that same system of improvements, plan of improvement.

Q As to any or all of these proposed improvements, do they represent the completion of those already begun in that list?

A Well, they represent largely the completion. There are many minor things which are not included in my list, of lesser cost, of less importance, which would have to be constructed or improved in order to complete the scheme in its entirety. 20

Q Are there any items in this list that you are about to discuss that are necessary for the purpose of bringing into use facilities toward which money has been already expended and the work is unfinished?

A Yes.

Q Mr. Falconer, referring to that list, will you proceed to mention the features which you consider most important for the improvement of the system to make it an efficient railroad as a whole? 30

Mr. Merrey. Are you offering this list now?

Mr. Minard. Not now; I want to discuss it. I am willing to offer it in evidence. I will offer it now.

Commissioner Donges. It may be marked then as Exhibit 129. 40

Robert C. Falconer, direct.

(Statement entitled "Approximate estimate of cost of construction expenditures which should be made within five years" received and marked Exhibit R-129.)

10 A We have spent a great deal of money to secure a double track railroad. The double tracking is not completed. We have spent a great deal of money to
20 reduce grades; the grade reduction is not complete. When the double tracking and grade reduction are completed they will enable the railroad to handle a much greater volume of traffic than it has in the past or than it does now, and will necessitate large improvements to our terminal facilities, not only division terminals, intermediate points on the road, but to our terminals at the ends of the railroad. The most important things aside from safety seem to be
20 the completion of the double tracking and the completion of the grade reduction and the increase in the capacity of the terminals. The order in which—

 Q Just let me ask right there—is there in your judgment, an element of safety in those things you have mentioned, terminal improvements and grade reductions and double tracking?

 A Yes. There is a very large element of safety in double tracking and in grade revision. In terminal improvements, such of the terminal improvements as
30 have to do with the handling of passenger business is an element of safety.

 Q Proceed with your list then.

 A The order of importance of these items on the list is a little different from the order in which they are placed. The item of first importance to my mind, is the completion of the work of double tracking from Marion to Lomax, which is the fifth item on the list.

 Q Proceed Mr. Falconer, and explain that double tracking and what it will accomplish and the necessity for it.
40

Robert C. Falconer, direct.

Commissioner Donger. Marion, Ohio, to Lomax, Indiana?

Witness. Yes, sir.

A We originally had a single track through this distance, 205 miles with five-tenths per cent. grades. The country was particularly adapted for low grade line which would reduce the cost of operation so that grades were reduced at the time the double tracking was done. Authority was granted for the double tracking in 1912 and seven and a half millions of dollars have been expended in the work. The work is very nearly completed and is being completed now. We have yet to expend— 10

Q (*By Commissioner Treacy.*) About two million to complete it?

A No, \$651,000 at the time these figures were made. 20

Q What is the importance of the completion of that work, in your judgment?

A It is very necessary to complete it because of the density of traffic out there on that division, and to reduce operating expenses, and to increase the safety.

Q How much is there to be double tracked yet in order to make the division double track?

A There remains only less than ten miles now.

Q Out of 205 miles on the division? 30

A Yes.

Q And the completion of those ten miles which will cost the amount you stated, you will then have a double track division?

A Yes, from Lomax. There still remains thirty-six miles of single track between Lomax and Griffith. Griffith is right in there (indicating). That is the item of next importance, the double tracking of that and the grade reduction between Lomax and Griffith. 40

Robert C. Falconer, direct.

Q (*By Commissioner Treacy.*) That is about thirty-five miles?

A Thirty-six miles.

Q (*By Mr. Minard.*) How much will that cost?

A \$2,051,000.

Q (*By Commissioner Treacy.*) There is about twenty-five miles left of the other part of the division?

10 A Ten miles.

Q It is the ten miles between Marion and Lomax?

A Yes, between Marion and Lomax, that has not been completed. There is really less than that. They are finishing it up very fast. I cannot give you the absolute figure, but there is less than ten miles.

Q (*By Mr. Minard.*) With regard to that stretch between Lomax and Griffith, is that work being done?

A No, that is not authorized.

Q Has any work been done on that part at all?

20 A We have made the surveys and we have had authority to buy part of the right of way, but no work, no actual construction work has been undertaken.

Q Do you know why?

A We didn't have the funds.

Q Proceed with your list. Are there any grade reductions?

A I would like to say there is a very important grade reduction in both directions. The ruling grade on that portion of the line is now five-tenths per cent.

30 Q From Lomax to Marion?

Q A No, from Lomax to Griffith, and it is proposed to reduce the grades to two-tenths per cent. westbound and three-tenths per cent. eastbound. The operating division containing this stretch of track is seventy-seven miles long and extends from Huntington, Indiana, to Hammond, Indiana, and now that whole division must of necessity be operated on a five-tenths per cent. grade basis and pusher engines used on the
40 single track portion of the line. On the basis of five-

Robert C. Falconer, direct.

tenths per cent. grade a H-21 engine, which is our most common type of freight engine in that territory, can haul fifty-three forty-ton cars, whereas if the grade is reduced as contemplated, the same engine and crew would haul seventy-five forty-ton cars eastbound and ninety-four westbound.

Q (*By Commissioner Treacy.*) How many now?

A Fifty-three. We almost double the westbound train, thereby cutting in two the item of labor and very materially reducing the item of coal and engine repairs, all those things are approximately cut in two when we can increase a train. 10

Q (*By Mr. Minard.*) The eastbound train will be increased about fifty per cent.?

A Yes.

Q Have you got the cost of that work?

A Yes, the cost was estimated at \$2,051,000. 20

Q What have you to say as to the grade reductions and the difference of the train haul in that district from Marion to Lomax?

A The same thing applies. We had the same rate of grade, five-tenths per cent. originally, and we are reducing to two-tenths per cent. westbound and three-tenths per cent. eastbound between Huntington and Lomax, and two-tenths per cent. both ways between Huntington and Marion.

Q (*By Mr. Merrey.*) Where is the operating division east of Huntington? 30

A Runs from Huntington to Marion.

Q (*By Mr. Minard.*) Proceed with the list, Mr. Falconer.

A The next item, the item that seems to me to be of next importance, is the grade reduction and double tracking from Steamburg to Jamestown.

Q Just indicate that on the map.

A Jamestown, New York. Steamburg is right there (indicating). We have completed the double 40

Robert C. Falsinger, director.

track and grade reduction from Salamanca to Steamburg, finished it up last year.

Q What is the necessity for that work?

A The additional track is necessary on account of the congestion. The grade reduction is necessary on account of—as a matter of economy in operation. We have already expended five million on the Meadville division east.

Q What is the advantage to be gained from the Steamburg to Jamestown change?

A We will reduce grades from eight-tenths per cent. to two-tenths per cent. eastbound and three-tenths per cent. westbound.

Q And what will be the effect on the train load?

A A H-21 engine on an eight-tenths per cent. grade will haul thirty-nine forty-ton cars up the grade, whereas on a three-tenths per cent. grade westbound it would haul seventy-five and on the two-tenths per cent. eastbound it would haul ninety-four. That is an increase of practically double on the three-tenths per cent. and nearly three times on the two-tenths per cent. grade. The additional track on the ten mile stretch which is now single track will also furnish relief which is badly needed.

Q What is the cost of that work, the estimated cost?

A That is estimated to cost \$2,600,000.

Q Has any part of that work been done?

A Not of this Steamburg to Jamestown.

Q But this portion is a portion of the scheme from Jamestown to Salamanca, part of which is carried out, is that right?

A Yes, in there it is a portion, yes, from Jamestown to Salamanca, but it goes through beyond Jamestown, from Meadville to Salamanca. That is the whole operating division.

Robert C. Falconer, director.

Q Is all the rest of the division now double track except this ten miles?

A Yes.

Q Is any part of this work under way, this ten miles?

A No.

Q Has anything been done about it yet?

A Only surveys and estimates.

10

Q What is the reason the work was not done or undertaken?

A We did not have the funds. Let me make a correction; this work is more than ten miles long. We have only ten miles of single track in this stretch but the grade reduction extends a good deal farther. Some of our double track will have to be revised as to grade.

Q What is your next item?

A The next item is a little stretch of single track on the Alleghany division east of Salamanca, between mile post 401 and CY tower, east of Carrolton, only about four and a half miles long. No grade reduction is contemplated at that point. The grades are good now, but the alignment is very bad and we only have a single track.

20

Q How much will that cost?

A Estimated to cost \$514,000.

Q Is that another division from the Salamanca to Jamestown division?

A Yes, it is on the Alleghany division.

30

Q What other portion of the Alleghany division is a single track; any?

A No, if we consider the Genesee River Railroad as one track and the old main line as another we can consider the whole Alleghany division as double tracked. We have two tracks to all points excepting this one.

Q Then this small piece of work here would enable the use of the double track on the whole division?

40

Robert C. Fahrner, direct.

10 A It amounts to that, yes. The Genesee River Railroad is a low grade freight line extending from Cuba Junction on the main line to Hunts Junction on the Buffalo division and it is used for freight only, the freight trains passing over this railroad and thence by the Buffalo division to Howell. The old main line passes over two high summits, one near Alfred and one east of Cuba, and the Genesee River Railroad avoids both of them. The old line is used for passenger business and such local freight as must of necessity go that way. All other freight goes by the Genesee River Railroad. This gives us two tracks, although it is not exactly the same as a double track railroad, because they go by different routes.

 Q So far as handling of traffic is concerned you have the same advantage as two tracks?

20 A Practically. We separate the freight traffic from the passenger traffic and the passenger traffic is not very dense, so that we accomplish a great deal in the way of safety as well as facility in operation.

 The next change of importance, or the next improvement in the order of importance, as I see it, is the grade reduction from Buchanan Junction to Elenango on the Meadville division, west.

 Q What will that grade reduction accomplish?

30 A We have at present a single track between these points with grades, ruling grades of about one per cent. in each direction. We now operate some west-bound freight trains over the Bessemer & Lake Erie shown in purple on the map between these points, as this railroad has lower grades than ours. The Bessemer & Lake Erie throughout a large portion of this distance is also a single track railroad, and cannot take care of our traffic in both directions. We of necessity operate our eastbound trains over our own line, notwithstanding the fact that the grades are
40 so bad.

Robert C. Falcus, director.

Q What will be the result of this grade reduction so far as hauling power is concerned?

A A comparison of the trainloads of the H-21 engine would be as follows; on one per cent. grade, the present grade, the engine can haul thirty forty-ton cars, whereas on a two-tenths per cent. grade it could haul ninety-four and on a three-tenths per cent. grade would haul seventy-five.

10

Q In other words, on the two-tenths per cent. grade you would carry as many cars as you now carry in three trains?

A Just as many, a little more.

Q And two and a half times the number on the three per cent. grade?

A Yes, on the three-tenths per cent. grade.

Q What is the cost of this work?

A \$1,204,000.

Q Has it been undertaken?

20

A No.

Q Has it been authorized?

A No.

Q Has it been decided upon to do it?

A Well, we have had schemes for six or seven years to do this work but we never have had the money to devote to it, so I have been advised.

Q Proceed with your list.

A There are in addition to the items named, two smaller items which I included in the first part of my list, in the first group in my list, one the Pennsylvania detour at Belfast, New York, costing \$100,000. This is a new piece of new track.

30

Q Where is Belfast?

A On the Genesee River Railroad at the point where the Genesee River Railroad crosses the Genesee Valley, crosses the valley of the Genesee River.

Q About half way between the ends of the Genesee River Railroad?

40

Robert C. Falconer, direct.

A Yes. When we built the Genesee River Railroad, we, in crossing the Pennsylvania, we agreed to construct a concrete arch to let them under our embankment which is about seventy-five feet high across that valley, and this concrete arch was to be wide enough for a double track and of sufficient height. We built the arch and when we built the embankment

10 the soil was so treacherous and the arch failed, so we cut their railroad in two. We then cut a hole through our embankment to the west of the arch and put a temporary detour through there and they have been running through this temporary detour ever since, but they have been insisting, and rightly so, that we construct their railroad in a permanent and satisfactory manner, and we are under obligations to do so, and that is this item of \$100,000 which is chargeable

20 to the cost of the Genesee River Railroad and which of course, we have to pay.

Q (*By Commissioner Donges.*) You have track-age rights only over the Genesee River Railroad?

A No, we own the Genesee River Railroad.

Mr. Merrey. It is a railroad they built, owning the stock of the railroad.

Mr. Minard. I don't know much about the details of that, but as I understand it, the company was organized and the Erie took all the

30 stock of the company, the same as they did to get the Bergen archways.

Witness. The Erie furnished all the money.

Mr. Minard. They organized a local company for some legal reason, to build that road, then took the stock. It was done that way, as I understand it.

Commissioner Donges. That is one of the lines that should be shown in red then, under the legend.

Robert C. Falconer, direct.

Mr. Minard. That is my understanding of it. I may be wrong.

Witness. There is an agreement with the Genesee River Railroad, as I understand it, whereby we pay them trackage rights which consists simply of the cost of maintaining the railroad. The Erie Railroad Company furnished all the capital to build it and owns all the stock.

10

The double tracking of the Ferrona branch is a small item amounting to \$386,000. The Ferrona branch is a railroad called the Sharon Railroad, extends from New Castle, Pennsylvania, to Sharon, Pennsylvania.

Q Is that in green?

A That is in green, yes, sir. There are two portions of it that are very badly congested, the northern end through Sharon and the southern end at New Castle. It is desired to establish passenger service on that railroad which it has not now.

20

Q (*By Mr. Minard.*) Isn't it true, Mr. Falconer, that the Erie did maintain passenger service at New Castle, Pennsylvania, some years ago?

A I don't know.

Mr. Minard. I know that is true, because I have been to New Castle in the last few weeks on that matter or a similar matter regarding some crossings. The railroad company had to discontinue passenger service down there because conditions were such as to make it unsafe to continue. The railroad company had to turn its passenger traffic over to the Pittsburg & Lake Erie Railroad Company, because we did not have facilities there to handle it.

30

Q How much does that cost?

A The length at Sharon which we propose to double track, that is the Erie, would cost \$386,000. The Pittsburg & Lake Erie Railroad under an agree-

40

Robert C. Falconer, direct.

ment propose to double track the end at New Castle and furnish the money for it under an agreement where they will be eventually recompensed, and that I have not included in my list.

Q What is next?

A The next group consists of additional tracks and grade reduction in addition to the above. In
10 other words, items that are not so absolutely essential as those in the first list.

Q Right there, what is the total on that first list that you just completed now?

A The total estimated cost of the first list is \$7,806,000.

Q In your judgment, what is the nature of the importance of that list of work?

A This first list?

Q Yes?

20 A I think it and the improvement of the necessary terminal improvements; those two are of prime importance.

Q What in your judgment, is their importance with relation to the elimination of grade crossings at Paterson?

A I think they are much more important than the elimination of grade crossings.

Q Do you consider they are more important for the benefit of the traveling public as well as for the
30 railroad company?

A Yes, I do.

Q (*By Mr. Merrey.*) You mean by traveling public, those that travel over your line?

A Yes.

Mr. Minard. All the public at large, I will make the question that way.

Q (*By Mr. Minard.*) What is your view of their importance with regard to the ability of the railroad
40 company to adequately handle its interstate business?

Robert C. Falconer, direct.

A They are of prime importance to enable the railroad company to handle its interstate business. The business of the railroad company is very largely interstate and all of these improvements, every single one of them, and the terminal improvements, are all necessary to aid in handling interstate business.

Q In your judgment, if the railroad company was required at this time to spend three millions or more for the elimination of grade crossings in Paterson, would its ability to handle the improvement, its duty with regard to interstate business be impaired? 10

A In my opinion it would. In my opinion that three million or whatever it is, should be expended in making some improvement that would enable the railroad to earn a greater income and it might thereby be enabled to set aside sums to carry out work which is not non-income producing. The elimination of grade crossings in Paterson or any other city produces no income, adequate, when compared to the expenditure. The saving in expenses is a very small fraction of one per cent. of the cost of the elimination, as a rule, and it will be so in Paterson. In other words, if the Paterson elimination is undertaken, the company will be burdened by fixed charges equal to the interest on the cost of construction and will save practically nothing in operating expenses, whereas if this same amount of money is expended at a point where operating expenses are reduced, such as grade reduction or additional tracks where they are necessary, the saving in operating expenses will help to pay for such improvements at a later time. The credit of the company is impaired by expenditures which do not improve, which do not increase its revenue. The credit of the company is improved by expenditures which do increase its revenue and the company, as I see it, cannot make expenditures of such magnitude as the Paterson grade crossing elimination without borrowing money. 20 30 40

Robert C. Falconer, direct.

Q Proceed with your list of improvements which in your judgment are necessary. I understand that you connect up the terminal improvements, that is the necessity for terminal improvements, with double tracking and grade reduction which you have already mentioned?

A Yes.

10 Q Suppose you proceed with them and discuss it in that connection?

A I connect the terminal improvements for the reason that as the double tracking is completed and the grade reduction is completed our business increases. It has been found true that wherever we have made an improvement enabling the railroad to handle more business that the business has followed in every case. Now then, our terminals have already reached their capacity as they are at present developed and
20 we are working under difficulties at present. If we complete our double tracking and grade reduction we certainly will have to increase our terminals simultaneously.

Q Right now with regard to handling of passenger traffic, what is your opinion about the present necessity of improving the passenger terminals at Jersey City?

A I think it would be a very desirable thing to do. We have about reached the capacity of our present
30 passenger terminal. I don't see how we could increase the number of trains or the number of people handled there very materially without better facilities.

Q Proceed with your list of terminal facilities necessary?

A The first item on the list is the revision of the Jersey City terminal, including a new office building, that is the Jersey City passenger terminal and the facilities freight and otherwise in the immediate vicinity which would have to be changed at the same time.
40 That is estimated to cost six million.

Robert C. Falconer, direct.

Q Have you considered a number of plans in that connection?

A Yes, there have been a number of plans considered.

Q Did you consider any plan that would cost seven million, to which Mr. Lincoln referred?

A Yes.

Q This plan for six million, has that received any preference? 10

A No plan has been adopted finally. There are a number that are receiving favorable consideration.

Q Proceed with the list of other features there? .

A We have at Weehawken a terminal improvement which consists of the entire remodeling of the yard to increase its capacity to provide receiving tracks sufficiently long so incoming trains will not have to be cut at Willow avenue. It embraces the extension of all the piers to the pier head line, double decking and widening pier A, the construction of new fire proof covered pier double decked, and the construction of two open piers for handling heavy freight. Our present facilities are so small that the freight is only handled at excessive cost. 20

Q Do you know what that excessive cost is over and above what it would cost with an adequate terminal?

A I do not.

Q What is proposed to spend to bring those facilities up to where necessary? 30

A Four million. The next item is a very small one, a new mill on the Long Dock that was discussed in Mr. Crawford's testimony, estimated cost \$42,000. This mill is owned by the Erie Railroad Company and it is in such bad condition that we will either have to abandon it or renew it within the next five years. The mill is leased to a feed company. It is especially valuable to us on account of its close proximity to the grain elevator. 40

Robert C. Falconer, direct.

Q Does it or does it not enable you to handle grain through the elevator that otherwise you would not be able to handle?

A Yes, it does.

Q Grain in different condition?

A Yes.

Q (*By Commissioner Donges.*) This is not the mill leased to the Long Dock Mills & Elevator Company?

A Yes.

Q (*By Mr. Minard.*) What is the next item?

A The Duane street improvement.

Q What is the nature of that?

A That consists of extending the existing piers to the pier head line, renewing the present timber sheds built in 1880, cutting off the piles under the timber sheds at low water and erecting a new sub-structure between low water and the present flooring and putting in new flooring; estimated to cost \$500,000.

Q What is the necessity for that improvement?

A We lease this pier from the city and are under obligations to keep it in repair and return it to the city at the end of our lease is as good condition as when we leased it and all additions and improvements above, I believe it is the water line—I am not sure whether it is the water line or the floor line, I think it is the water line—are to be paid for by the railroad company and become the property of the city on the expiration of the lease.

Q (*By Commissioner Donges.*) The tenure is for what length of time?

A I don't know exactly but I think this lease has about twenty years to run yet. I am not sure about that figure.

Q (*By Mr. Minard.*) Is it true that in order to maintain our facilities at Duane street we have got to make this improvement?

Robert C. Falconer, direct.

A Yes. Duane street is very badly crowded now. On one of these piers we handle practically all of the fruit from California that comes to New York and the other one we handle our east and westbound freight. The fruit pier is very badly congested.

Q Proceed.

A The Twenty-eighth street storage warehouse, estimated cost \$1,190,000. It is thought that the construction of a storage warehouse at twenty-eighth street will result in increased shipments to that point, increased revenue, by reason of the facility offered the public of storing their goods, and will reduce the cost of operation. 10

Q How much is estimated for that?

A The construction of this warehouse is necessary, because we are unable with present facilities to handle business consigned to our 28th street station. 20

Q The cost of that?

A \$1,190,000.

Q I understand some improvement there is necessary in order to handle present, regardless of contemplated, business?

A Yes, business is badly overcrowded now.

Q What is the next item?

A The next item is the Harlem Terminal, 150th street. That was estimated to cost \$200,000.

Q What is the necessity for that? 30

A We are at present occupying jointly with the D., L. & W. Railroad, a terminal at 135th street. We will be forced out of this location shortly on account of the city's program for constructing subways, which will so interfere with the operation of this joint yard, that the D., L. & W. which controls it will be only able to handle their own business, consequently we will have to provide a similar station at some other point, which we have selected at 150th street. 40

Robert C. Falconer, direct.

Q (*By Commissioner Treacy.*) What is that yard used for?

A Freight, inbound and outbound. We take over freight either by barge or car float.

Q Transfer to what roads?

A To deliver to the public and receive from the public; a freight house there.

10 Q You mean, to deliver to the public in New York City?

A Yes.

Q In that vicinity?

A Yes.

Q You transfer the freight cars there instead of delivering your freight at Weehawken or Jersey City terminals?

A Take the freight cars right over there and handle them at 150th street.

20 Q (*By Mr. Minard.*) The next item.

A Bulkhead shed on Pier 7, East River; \$10,000; that is a small item.

Q What is the purpose of that?

A On account of increased business our present bulkhead shed at pier seven is inadequate. We are handling westbound business at that point at an extra cost. The construction of the new bulkhead shed will relieve the situation.

Q What is next?

30 A Pier 36, East River, \$170,000.

Q What is the purpose of that?

A Our present pier facilities on the East River are inadequate and this results in the crowding of the present pier seven, so that the cost of handling traffic is much greater than it should be.

(*Informal discussion.*)

Mr. Minard. Suppose we have this marked.

(Statement entitled "Memorandum, re various improvements, received and marked Exhibit B-130.)

Robert C. Falconer, direct.

Q Mr. Falconer, I will ask you to call our attention to any other feature of this Exhibit R-129 which you think requires an explanation or discussion by you?

A Well, under the second group, entitled, additional tracks and grade reduction necessary in addition to the above.

Q Can you discuss those briefly, in view of the fact that the statement is already in evidence as to cost and so on? 10

Mr. Merrey. It won't help any if that is on the statement.

Witness. That is not on the statement.

Mr. Merrey. Very well.

A I don't think it is necessary to discuss the Penhorn Creek Tangent Line, except to say it is a short line across the meadows for passenger business, in order to give additional space for development of Bergen yard; a more direct route for passenger trains from Hackensack River bridge to the west end of the Bergen archways. 20

Q Will it shorten or improve passenger facilities as they are now?

A It will both shorten and improve them.

Q Will it enhance the safety of the operation?

A Yes, it will eliminate two curves. I may say that work was authorized and the work about three-fourths done when we stopped for lack of funds, and it is still uncompleted and has been for over a year. 30

Q And you think it will cost \$80,000 to finish it?

A That is the estimate.

Q And put the whole work in operation?

A Yes.

Q The next item.

A Grade reduction and two additional tracks from Croxton to Suffern, estimated to cost \$3,560,000. 40

Robert C. Fulconer, direct.

Q Those are the ones discussed by Mr. Lincoln the other day, are they not?

A Yes.

Q You consider them necessary from the standpoint of passenger operation as well as freight?

A Yes, necessary, but not so necessary as the items in the first list.

10 Q Is there any other item here you desire to call attention to particularly?

A Grade reduction and two additional tracks from Suffern to Newburgh Junction, giving us four tracks from Newburgh Junction. From Newburgh Junction to Port Jervis we have four tracks most of the way now. We had two tracks on the old main line and two tracks by way of Erie & Jersey Railroad, as far as Graham. From Graham down to Port Jervis we only have three tracks. There are quite a number of
20 passenger trains from Middletown to Newburgh and so forth that are in the nature of suburban trains, although they are suburban trains, and makes this territory between Suffern and Newburgh Junction more or less congested with the freight business, and that condition is getting worse every year. Four tracks are desirable now and they will be absolutely necessary before very long. There is a grade reduction to be accomplished in there at the same time and a very decided improvement in the alignment which
30 will add to the safety of the railroad.

Q Is there any other item here that you want to mention particularly?

A There is an item, Columbus to Concord, grade reduction, \$2000,000. This is grade reduction through Corry, Pennsylvania. Corry is at the top of a hill and low grades on both sides. We cannot quite reach the summit. We will have to cut down our tracks through Corry in order to reduce a pusher grade. We are operating a pusher engine there now but it is only
40 a short grade and we can get along with it for a while.

Robert C. Falconer, Director.

Youngstown to Cleveland, grade reduction, \$4,700,000, is a very important item. That is over the Cleveland and Mahoning Valley Railroad, shown in green on the map. We lease it on a long term basis and as I understand it, the improvements have to be paid for by the Erie Company.

Q Is it true, Mr. Falconer, that that is our ore line principally? 10

A It is.

Q And our tonnage is unusually heavy over that line?

A Very, very heavy.

Q Therefore the advantage of this grade reduction would yield very large if it could be done?

A It would. A very great saving in operating expenses would result from this improvement. Here is some memoranda I made on that point.

Q This memoranda that you are referring to now is additional data on several of the items mentioned in R-129? 20

A Yes.

Q And the data which you have in mind with relation to each of these details is mentioned under the heading of the given subject, is it not?

A Yes.

Mr. Minard. We can save that much time if we will put that right in.

Commissioner Donges. That may be marked. 30

(Memorandum regarding various improvements, received and marked Exhibit R-131.)

Witness. The other items on this list are of lesser importance.

Q (By Commissioner Donges.) All regarded by you, as I understand your testimony, as being essential to the operation of the road in the line of improvements that ought to be made?

A Yes, sir. 40

Robert C. Falconer, direct.

Q You have here several items aggregating \$1,200,000 under head of extensions to yards and terminal facilities at division points. They are all mentioned here with regard to their location, are they not?

A Yes.

10 Q And the amount you estimate it would cost to carry this out?

A These amounts are only approximate.

Q In a general way as applicable to all of these points, is it not true that the extension of the yards has become imperative on account of the increased size of trains?

A Yes, it is true.

Q Isn't it also true that in some cases the trackage facilities are so small at these yards they cannot now take care of the trains, the length of trains which come in?

20 A That is true.

Q Isn't it true, Mr. Falconer, that at certain points there are no trackage facilities now to hold the whole train operated at the present time?

A It is true.

Q These changes then are imperative immediately in most cases?

A Yes.

30 Q (*By Commissioner Dwyer.*) Have these extensions to yard and terminal facilities been authorized?

A None of these on the list have been authorized. We have made a number of such extensions which are completed.

Q (*By Mr. Winard.*) Isn't it true, Mr. Falconer—
Mr. Merrey. I have not objected to this, but every question that counsel has put has been very leading, practically testifying himself.

Mr. Winard. All right.

40 Q Is there any case, Mr. Falconer, where these yard facilities—where the trackage space is so small

Robert C. Falconer, direct.

that the length of the train is shortened on that account, because of the inability of the terminal to handle a larger train if it was carried?

A No, I don't know of any such case, but I do know that difficulty is experienced and time is lost in making up trains on the main track sometimes or in making them up and getting them out of the yard. At Hammond we are very badly crowded.

10

Q Are there any cases where there is not room in the yard to assemble a long train and it has to be done on the main track?

A The train is assembled on two or more tracks in the yard and when it is ready to pull out they couple up the several pieces of the train, occupying a part of the main track to do the work, which results in delays.

Q Does it result in any interference to traffic on the track?

20

A Yes, undoubtedly it does.

Q Is there any other item here—for instance here on page two, bridges and buildings; have you any memorandum discussing these bridges in detail and the necessity for them?

A No, I have none.

Q In a general way, do you consider their renewal or repairs necessary?

A Yes, absolutely necessary. All of the bridges listed, all individual numbers, are absolutely necessary.

30

Q Do they have any relation to the safety of operation of trains?

A They have a very important relation to the safety of operation of trains.

Q I see here an item, bridge program for 1913 and 1914, is that the bridge program for the last fiscal year?

A Yes.

Q What does that indicate there, \$438,000?

40

Robert C. Falconer, direct.

A That covers repairs and renewals to a number of bridges, others than those listed above, which are included on this general program.

Q Does that indicate or does it not, that that amount of work of the program for the last fiscal year fell short of being done?

A It was none of it authorized.

10 Q For what reason, do you know?

A We did not have the money to carry it out; I say none of it was authorized, I am mistaken; \$230,000 was authorized to be expended before January 1st, 1915, and I presume the balance of it will be authorized in the first part of 1915.

Q How do you make up your bridge program for a given year?

A Do you want just the details of how it is done?

20 Q Is there a department which goes out and looks the bridges over and inspects them, and considers the necessity of repairs within the year to come?

A We have bridge inspectors constantly going over the line.

Q Are they under your supervision?

A Part of them are, a number of them are under the supervision of the operating department.

Q Is that bridge program made up and submitted to the executives?

30 A Yes.

Q And do they appropriate the amount of the program or as much of it as the earnings of the company will permit, or how do they do it?

40 A They, recognizing the necessity of bridge work, they authorize as much as they can set aside for that purpose, as I understand. We sometimes don't get our authority the year we ask for it and we, in such cases, have to take such steps as are necessary to secure the safety of the bridges, even without authority, but generally we get our program the following year.

Robert C. Falconer, direct.

Bridge work is something that cannot be put off indefinitely.

Q Here are other items, yearly station renewals, averaging \$100,000 a year; what does that represent?

A That represents renewal of small stations.

Q Passenger stations?

A Passenger stations and freight stations.

Q (*By Mr. Merrey.*) In this vicinity?

10

A Over the whole railroad. There are some items in here; there is one new freight station at Akron, Ohio, estimated to cost \$233,000.

Q Going on down here, I see there is a list of automatic signals and interlocking here. This statement shows the amount of doing the work and the location of each one. Have you anything to say about the necessity for this work?

A The interlocking?

Q Yes?

20

A The automatic signals?

Q Yes?

A As a matter of safety for the traveling public.

Q It is a matter almost entirely of safe operation of trains, is it not?

A Very largely so. The automatic signals allow a more dense operation of trains safely, but the prime object in installing them is safety.

Q What is the purpose of the interlocking?

A Interlocking is for the protection of railroad crossings at grade. 30

Q What is the effect of interlocking?

A As a matter of safety it prevents—

Q Does it or does it not prevent a train from running into another?

A It does prevent one train from running into another.

Q (*By Commissioner Donges.*) When you say grade crossing, you mean crossing by another railroad of your track? 40

Robert C. Falconer, direct.

A Yes, sir.

Q (*By Mr. Minard.*) You have here a statement regarding grade crossings, Erie Railroad's proportion of cost of eliminating grade crossings covered by existing agreements, orders of courts and commissions?

10 *Commissioner Donges.* First let me ask, whether the list, automatic signals, and the interlocking, the sum of \$669,700 has been authorized by your record?

Witness. No, the items marked A are those now or at one time authorized.

Q (*By Commissioner Donges.*) But the work has not yet been started?

A The work in some of these items has been started and nearly completed.

20 Q (*By Commissioner Treacy.*) Although not authorized?

A When authorized, but in some other cases the work has not been started and the authority temporarily withdrawn. We will take for instance, interlocking at North Judson; the work was authorized, but it has not been completed. The interlocking at S.J. tower is under way now, cost \$12,000 to complete it. From Leavittsburg to Kent the work is nearly completed; \$42,709 represents only the cost needed to complete.

30 Q (*By Mr. Minard.*) Does the letter A in front of any item on this list mean, authorized?

A Yes, it means the item has been authorized at some time; the authority may have been withdrawn.

Q (*By Commissioner Donges.*) That is to say the money may not have been appropriated for the purpose?

A No.

40 Q (*By Mr. Minard.*) This list here relating to grade crossings at the bottom of page two, I understand those are crossings where the railroad is under

Robert C. Falconer, direct.

obligation either by agreement or by orders of courts or commissions to do the work; is that right?

A Yes.

Q And that aggregates as shown here \$3,317,000?

A Yes.

Q (*By Commissioner Donges.*) In the case of Buffalo for example, by agreement?

A Yes.

Q (*By Mr. Merrey.*) That is complete?

A No, not complete in Buffalo by any means.

Mr. Minard. That is the case testified to the other day where Buffalo was advancing the money.

Q (*By Mr. Minard.*) Do you know how the money is being furnished for Buffalo?

A We are paying for it as the work proceeds.

Q In what proportion?

A The work on the railroad right of way is paid for entirely by the railroad company. The work which is on the street or which is common to the street and right of way, as, for instance, bridges covering railroad track and the abutments, are paid for sixty-five per cent. by the railroad company and thirty-five per cent. by the city. The property necessary for streets or for construction purposes is paid for on the same basis, sixty-five and thirty-five. The damages consequential damages are paid for fifty-five per cent. by the railroad company and forty-five per cent. by the city.

Q (*By Commissioner Donges.*) That is by agreement?

A By agreement. However, they had the power and still have to make us do this work and while we agreed, we did so because we could not avoid it.

Mr. Merrey. This is a new work to the one that the comptroller testified to the other day?

Mr. Minard. That is a different work.

Robert C. Falconer, direct.

Mr. Merrey. This is a second work evidently at Buffalo.

Witness. We have been—the grade crossing elimination work has been going on for several years.

10 *Mr. Merrey.* Mr. Crawford testified the other day that there were a number of obligations of the company outstanding held by the City of Buffalo and the railroad was paying a certain amount of interest.

Witness. That was done under another agreement sometime before, yes.

Q (*By Mr. Minard.*) Is it not true, Mr. Falconer, that the Legislature of the State of New York passed an act a year or so ago —

20 *Commissioner Donges.* I suppose the act speaks for itself, better than Mr. Falconer can, Mr. Minard?

Mr. Minard. The act may speak for itself, but what I was trying to get at is not in the act.

Commissioner Donges. You are asking whether an act did not provide certain things.

Mr. Minard. I will change the question.

Q Is there a grade crossing commission in the City of Buffalo?

A Yes.

30 Q Is it in connection with that commission that this work is being done?

A All of it, which is assigned to Buffalo.

Q You referred to their having the power to do certain things. Was it the power in this commission you referred to or some other?

A The power in this commission.

Q Is there any other improvement here that you want to call attention to particularly?

40 A Yes. The second item, Youngstown, Ohio, estimated cost \$1,730,000. That has been included under

Robert C. Falconer, direct.

the heading of grade crossing work for the reason that the court had ordered us to do the work but I wish to explain that a very large part of that work is a part of our grade reduction scheme which we would carry out whether we eliminated the grade crossings or not. We are not only eliminating grade crossings but we are reducing our ruling grade through Youngstown at the same time, so all of this \$1,730,000 is not chargeable to grade crossing elimination. 10

Q (*By Commissioner Donges.*) Is it included in the item under the second sub-division, \$4,769,000?

A No, it is not.

Q (*By Mr. Minard.*) Do you know by what authority this work has been ordered for Youngstown?

A Ordered by the court.

Q And was there a trial fixed in this matter a week or so ago? 20

A You are referring to Himrod avenue.

Q That is another one?

A Yes, that is included in that sum total, \$1,730,000.

Q Do you know whether that proceeding was carried out when it came to trial?

A I believe the case was postponed.

Q Do you know why?

A I think the city wanted to have a meeting of the parties interested, the various railroads interested, with the city officials to see whether it could not be amicably settled out of court. 30

Mr. Merrey. I don't see that is evidence in this case.

Mr. Minard. I thought if Mr. Falconer knew, I wanted in the record the reason why the case was postponed.

Q Is there any other item you want to call attention to particularly?

A No. 40

Robert C. Falconer, direct.

Q There is another subject here, Erie Railroad's proportion of cost of eliminating grade crossings in regard to which proceedings are now pending; none of those cases have been determined, have they?

A No.

10 Q And of course, this is an estimate only of what it would cost if we were ordered to do them on the basis now contemplated?

A Yes. The estimate of the Erie Railroad's proportion only, on the basis which we think is likely to be adopted. Of course, that is a matter of guess to a certain extent.

Q With the exception of certain states where fixed by law?

A Yes.

20 Q Is there any other State in which you have anything to do in railroad work where there is not a portion paid by the State or by the public?

A Well, in Pennsylvania the portion is fixed by the Public Service Commission and it may be entirely all put on the railroad, I suppose in certain cases; I don't know. In no other case, no other State, with the exception of New Jersey.

Commissioner Treacy. What difference does it make whether the public are required to pay anything or not?

20 *Mr. Minard.* Frankly it makes this difference, that sooner or later I think this State will come to consider—

Commissioner Donges. We have to act on the law as it stands.

Q Mr. Falconer, referring to the list as a whole, is there anything on this list which does not affect the company's ability to render adequate interstate service?

A The list as a whole?

40 Q Yes?

Robert C. Falconer, direct.

Commissioner Donges. You mean by that, every item is?

Mr. Minard. Yes, that is what I want to know.

Commissioner Donges. On the same basis, I presume, that if you had no tracks over New Jersey from the terminal points, you would not be able to render interstate service?

Mr. Minard. Not exactly on the same basis, 10
because that would be obviously—that would be an obvious proposition but some of these are not obvious.

Mr. Merrey. It means a lot of things affected, may be economical, and several other things. You may say that about everything you have got and everything you have not got.

Mr. Minard. Inasmuch as Mr. Falconer is supposed to answer we will let him decide.

Mr. Merrey. The question is whether you have 20
any right to ask that question.

Commissioner Donges. If not objected to, let the witness answer it.

Witness. I see nothing on this list, with the exception of the grade crossing elimination at the end, the two groups of grade crossing elimination work which don't either directly or indirectly give greater facility for the handling of interstate business.

Q (By *Commissioner Donges.*) You mean by 30
that that every improvement made anywhere along the line is some assistance in the operation of trains over the entire line?

Mr. Minard. No, Mr. Falconer—

Commissioner Donges. Let Mr. Falconer answer.

A No, not exactly that. Every improvement 40
which tends to increase our facilities for handling through business past that point. For instance I see

Robert C. Falconer, direct.

one—no I don't. For instance—well, I can hardly think of an improvement which does not indirectly affect interstate business, a revenue producing improvement.

Q Would stational improvements at intermediate points affect interstate business?

10 A It might. For instance, at Jamestown, an important town, a new station might slightly increase our business, our passenger business.

Q Then isn't it simply; any improvement anywhere over the system of any character is a change in the direction of improved service whether it be intrastate or interstate?

20 A Yes, with the exception of the grade crossing elimination. I cannot see that the grade crossing elimination either adds to our business or reduces our operating expenses or makes it more desirable to travel or ship by our road as against another road.

Q Only to the extent that damages incident to accidents at crossings and the cost of maintaining protection; wouldn't they be elements that ought to be considered?

A Yes, but the cost of maintaining the protection is so much less.

Q But they are factors?

30 A Yes, they are factors. I wish to say however, that this list contains in the main, items which are very important to the handling of interstate business and most of them have a direct bearing on the handling of such business and not an indirect or a far-fetched one. For instance, our grade reduction, our double tracking, strengthening our bridges, increase of our individual terminals, increase of the terminals at the ends of the railroads, terminal facilities, are very important to interstate business.

Q And equally important to the traffic within the States in which they are located?

40 A Yes.

Robert C. Falconer, cross.

Q (*By Mr. Minard.*) Do you know what per cent. of the cost of eliminating grade crossings, the total expense of accidents and protection amounts to?

A I haven't any definite figures. I know the amount we pay for damages is very slight compared to what would be the cost of eliminating the grade crossings, compared to the interest on the cost of eliminating the grade crossings.

10

Q The cost of damages is very slight as compared with the interest on the cost of eliminating grade crossings?

A Yes; there are probably exceptions.

Q (*By Commissioner Donges.*) Of all the grade crossings on your line?

A Yes. There are probably exceptional crossings where we have passed considerable more in damages, but as a rule that is very slight.

Q That is to say, more in damages than interest on money required to eliminate, to separate grades at that point?

20

A There may be such. They certainly are very few.

Cross examination by Mr. Merrey.

Q You said your terminal facilities in Jersey City were crowded, that is the passenger terminal?

A Both passenger and freight.

Q You added the Susquehanna terminal to the Erie a short time ago, didn't you?

30

A Yes, we brought the Susquehanna trains into Jersey City.

Q They take up a considerable portion of the terminal?

A Yes; we added two tracks when we brought them in.

Q If the Susquehanna ran in, as it used to, another terminal, would you still be crowded so far as passenger terminal is concerned?

40

Robert C. Falconer, cross.

A Yes, we would in one respect; we would be crowded at the terminal tower where the interlocking is just west of the station. That is a congested point.

10 *Mr. Minard.* I don't think that statement ought to go by, the inference that if we did not have the Susquehanna here we would have more room. I think the commission knows as a matter of record, we left the Pennsylvania because we were notified to leave, the same as the Lehigh Valley and we had to go somewhere.

Q The readjustment, the rebuilding of your terminal facilities at Jersey City are principally for the passenger service, are they not, caused by increase in passenger business?

A Not entirely.

20 Q Nearly all caused by increase of passenger business at that point?

A Yes, I think that is largely true, although our space in Jersey City is so valuable that we cannot much longer use it as it is being used, and we will have to rearrange our terminal so as to make more of it available for freight, if possible, and at the same time increase our passenger facilities.

Q As I understand the greatest amount of passenger service is intrastate at the Jersey City terminal?

30 A Yes, I presume so. I have no figures on it. I understand—

Mr. Minard. I think practically none of it is intrastate.

Commissioner Donges. I think Mr. Lincoln testified that your heaviest traffic on the rails was between Jersey City and points within the State of New Jersey.

40 *Mr. Minard.* That may have been the effect of what he said, that may have been one interpretation of it. My recollection of that testimony

Robert C. Falconer, Cross.

is, that seventy-five per cent. of the passenger business was done on this end in commuter district, out of New York. Of course that is all to New York, so that is interstate.

Mr. Merrey. How do you know it is in New York?

Mr. Minard. If it is from Paterson to New York it is interstate. 10

Commissioner Donges. I think the statement was, it was what is called the commuter district.

Mr. Minard. That is my understanding; not that it was intrastate business.

Commissioner Donges. Whatever Mr. Lincoln's testimony is, it stands as given.

Q Do you know anything about the cost to the railroad company for damages in grade crossing accidents?

A No, I have no figures. 20

Q You spoke a little while ago about the amount of the damages being less than the interest on the cost of the elimination; did you speak with any knowledge of the facts?

A Two or three years ago I got some figures, approximate figures on what that cost was.

Q Have you any idea?

A I don't remember the figures. I got them to get an idea of how much it was costing us per year, as compared with what it would cost us if the crossings were eliminated and we were paying the interest on the money, and the idea in my head is, all I am testifying on, that was a very small per centage. 30

Q That is, the company rarely pays damages, any grade crossing damages; that is the conclusion you came to?

A Very rarely, I imagine so. I have really very little to do with the grade crossing accidents, so I am not—my testimony is not really worth much in that respect. 40

Robert C. Falgout, cross.

Q How many other things does that remark refer to?

A It applies to accident on grade crossings only. You are asking me questions about them.

Q You did testify about the cost of accident on grade crossings and now you say you have very little knowledge of it?

10 A It is handled by the legal department. Of course they don't come to me, unless we ask for the information.

Q You are not taking into consideration the number of people crossing grade crossings every day; you haven't had that brought to your attention, have you?

A I don't understand your question.

Q I say, you have not had it brought to your attention the number of people who cross the grade crossings of the railroad every day?

20 A If you mean that we do not have a man out at each crossing counting the men or people that cross, my answer is, we do not have such a man, and I don't know how many people cross the grade crossings.

Q Have you ever had an estimate made?

A On all grade crossings on the system?

Q Yes, or any of them?

A On all or any of them?

Q Yes.

A We have had counts made on a great many.

30 Q You are not familiar with the result?

A Yes, I saw nearly all of the results, practically all.

Q Did you consider the importance of the elimination of grade crossings to the public, in crossing the crossings every day when you gave the testimony which you have?

A I did.

40 Q You still believe the items that you set down here are far more important, taking all the traveling public into consideration, those who cross the cross-

Robert C. Falconer, cross.

ings and those who travel on your trains, these other items of double tracking and so on, are more important?

A I do. I don't think the travelling public, as you say, are the only public to be considered. There is another public, a greater public, which is interested in the service that the railroad can give.

Q That is always a question of money to them? 10

A No, not entirely. It is a question of time, it is a question of money, it is a question of the facility that we can give.

Q (*By Commissioner Donges.*) In other words, your view is that it is really more important to the public, as well as to the railroad, more important to the public that they should be transported quickly with a saving than that persons at grade crossings should be protected from the danger of collision?

A No, I have not said that. 20

Q Is that your view?

A Well, that is hardly a fair—

Q In other words, don't you view it—isn't your view that of an operating man? Don't you view entirely the question of operation of trains and the questions incident to operation of trains as of more importance than the safety of people passing over the crossings?

A No, that is not my view. I am a member of the public, I cross a grade crossing every day in my life. 30
When I get to the grade crossing, I never fail to stop, look, and listen. Probably the reason I do that is because I recognize more clearly than the general public does, the danger on the grade crossing, but there isn't a man with the same mind in the United States that is not capable of realizing the danger on a grade crossing and it is the duty of every such man to stop and look and listen and see whether a train is coming before he goes across the crossing. If he fails to do so, it is his own fault. The man however 40

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Robert C. Falconer, cross.

who buys a ticket and gets on the train, he has no help, he has no way of helping himself, he puts himself at the mercy of the railroad company. If the railroad company—if the engineer runs into another train and he is killed, he blames the railroad company; he could not have helped it, the passenger could not have helped it, and I say, the passenger on the
10 train is defenseless and his safety should be looked after first. Now then, when you take into consideration the great number of people who pass a crossing on a train, pass a given crossing on trains, as compared with the number of people who pass on foot, some crossing on foot or in wagons, I think you can realize my point, that it is more important to protect the people on the trains than it is those on the ground.

Q (By Commissioner Donges.) I say, it is to you, a question of operation?

20 A If I had no connection with the railroad, I would feel it was more important for the railroad company to protect me while I was on their train than it was when I am on the ground.

Q That is all incident to the operation of the train?

A Yes.

Q So I say, if I get your view of this, that matters that are incident to the operation of trains are of greater importance, whether it be for the safety of
30 the passengers or economy of time or money in such operation or from whatever point of view, the question of one of operation?

A Yes.

Q And that is of greater importance than to—adopting your view of the situation—to protect the man who perhaps does not do all he might do to protect himself at the crossing? If I get it that is your view.

A Yes, now as to—

Robert C. Falconer, cross.

Mr. Minard. Wait a minute. I don't like to have that—

Commissioner Donges. I am trying to get his view, he is an intelligent man.

Mr. Minard. That wasn't his view at all.

Commissioner Donges. Let him say so.

Mr. Merrey. I think the witness is perfectly able to take care of himself. 10

Commissioner Donges. I certainly am not trying to cross examine the witness, or get anything but his view.

Q (*By Mr. Merrey.*) I would like to ask Mr. Falconer if he has ever considered the passenger on the trolley car who crosses one of these grade crossings and who cannot be blamed for an accident that may happen?

A The passenger on the trolley car is in substantially the same position as the passenger on the train. 20

Q Yes; so that a passenger on the trolley car may be injured or killed without any fault on his part, at one of these grade crossings?

A Yes.

Q Have you any idea how many people pass these grade crossings in a day on trolley cars, the crossings in Paterson, I mean now?

A I have seen the count, I don't recall the number.

Q You spoke in answer to Commissioner Donges concerning the number of passengers on trains who pass a grade crossing and those who pass over the crossing, in a manner that led me to believe that you thought more people passed on the train than crossed any other way? 30

A I don't know how they compare. With some few of the crossings, Market street for instance, it may be that Market street, the people on the ground exceed those on the trains. It may be at some other street crossings. I don't recall the figures, as I say. 40

Robert C. Falconer, cross.

Q How many people pass through Paterson daily on Erie trains?

A I cannot tell you.

Q I understood Mr. Lincoln to say it averaged about fifty-five thousand a day, that was going into the Jersey City terminal.

10 *Mr. Minard.* I think that is better from the mouth of Mr. Lincoln anyway. He is qualified to testify to that.

Q So in making your comparison you would have to add the number who cross at all these crossings, to compare them with the number who cross in the train, would you not, to make the basis of a fair comparison?

20 A I suppose so, if all the crossings which were necessarily involved in one group of elimination, but there is a very large proportion of those people who are not in any danger at all. They pass across the tracks between the time of trains. They are not all in danger. Most of the people pass over perfectly safely, in no danger at all.

Q In answering Commissioner Donges then, you did not take into consideration that there were probably five or six times as many people using these crossings daily, as there were crossing over them in trains of the Erie Company?

30 A I don't know what the proportion is. You stated that proportion.

Q You were under the impression that a great many more people passed in the trains?

A As a general grade crossing elimination proposition, yes, and it is true as a general proposition.

Q Do you not think that a man no matter how careful, at times will let down a little and be careless?

40 A It is equally true of the locomotive engineer.

Robert C. Falconer, cross.

Q That is human nature. So if 100,000 people pass a grade crossing in a day, there is bound to be a certain percentage of them who may be careless?

Mr. Minard. I object to the question as immaterial, for the reason that the railroad company—

Commissioner Donges. That is argumentative.

By Mr. Minard.

Q In your discussion of the importance of these items, here, did you discuss them from the standpoint of train operation by the railroad company or from the standpoint of the safety and convenience of the passengers in the train?

A You mean that list?

Q Yes.

A I discussed them from both, that is, I had both in mind. I discussed them largely from the question of operation by the railroad company. 20

Q But not entirely so?

A Not entirely so.

Q When you speak of discussing them from the standpoint of operation, the quality of the operation is or is not the quality of the operation a factor in the safety of the passengers, whether it is a careful operation or a safe operation?

A Yes, it is a very important factor.

Q When you say that you are discussing it from an operating standpoint, do you mean you are discussing it from the railroad company's operating standpoint or from the public's operating standpoint? 30

A So much of my discussion as related to increasing train loads was largely from the railroad standpoint. The public are interested in our being able to increase train loads indirectly, because we offer them better facilities, but the railroad company is more directly interested in that. In the question of safety of operation, the public is equally as much in- 40

Robert C. Falconer, cross.

terested as the railroad company, perhaps more so; pretty hard to say which is.

Q (*By Commissioner Donges.*) Which is more concerned in safe travel?

A Yes, sir.

Q (*By Mr. Minard.*) In other words, the railroad company can stand a fatal accident but a victim
10 would not stand more than one?

A That is so.

Q Your attention was called to the people who pass in trolley cars, Mr. Falconer, and it was stated that these passengers in the trolley cars were also helpless; is or is there not any agency in control of the trolley car, to protect the passengers in that car?

A Yes, there is.

Q Are there any additional precautions at the grade crossing where trolley cars pass?

20 A There are at important grade crossings.

Q What are the forms of this protection?

Mr. Merrey. I don't think that is important.

Mr. Minard. It is.

Commissioner Donges. We will let it in.

Q You was discussing the condition of passengers in the cars. What do these consist of, the precautions?

30 A The usual precaution consists of a derail on each side of the track so arranged that the conductor must get off the car; the car must stop and the conductor get off and cross the track ahead of the car and throw the derails so the car can proceed, otherwise the car would be derailed before it reached the crossing.

Q Is there any need for anybody on the highway to be in danger at a grade crossing?

A In my opinion there is no need for anybody being in danger. I must except the trolley car by reason of—
40

Robert C. Falconer, cross.

Commissioner Treacy. People in an automobile, people being driven in automobiles, except the driver and in other vehicles?

Mr. Mervey. Cases where two trains are crossing, a lot of other cases where the Supreme Court—

Witness. The person who is driving the automobile, no reason for his being in danger. The passengers in the car may have no control over it. 10

Q (*By Mr. Minard.*) In everyone of the cases mentioned, the street car or the automobile or any other vehicle that has been mentioned here, is there any danger if the person in whose charge they are is careful in crossing the track?

A If the person in whose charge they are uses the ordinary and proper precaution there is no danger.

Q (*By Commissioner Donges.*) You mean, Mr. Falconer, if I get your idea, that grade crossings— if the person approaching the crossing will use measures that will inform him of the approach of the train that all accidents are avoidable? 20

A Exactly.

Q May I ask this question, whether in your discussion of these various questions you have considered the importance to the public generally, those traveling upon the highway, by not having traffic and other passage over the grade crossings impeded by the passing of trains? 30

A Yes, I have considered that.

Q You regard the elements and factors which you have discussed as being more essential to operation and to the public interest in such operation, than to cease the interruption of travel on the highway?

A Yes.

Q And you would say in your judgment, it was more important than the two elements of interruption to travel on the highways, coupled with some danger to the traveling public; I mean highway travel? 40

Robert C. Falconer, cross.

A There might be individual cases, of course, where in my opinion, it might be to our advantage to eliminate a grade crossing. As a general proposition, I think it much more important to carry out these improvements for double tracking and grade reduction and so forth, than the elimination of grade crossings.

10 Q Then it would, to carry out any scheme for the general elimination of grade crossings?

A Yes, in nearly all cases. There may be a few—there are exceptions to all rules—there may be a few individual cases that would be exceptions to that.

Q And they would be because of the damages that are likely to be paid by the company together with what other elements, if any, would enter into your consideration?

20 A No, I think it would be the matter of congestion of traffic on the crossing.

Q That is, travel over the highway?

A Both railroad and highway.

Q (*By Mr. Merrey.*) Then you think that there are some crossings that it would be well to remove, from the standpoint of the general public?

A Yea, I think it would be well to remove them all, but I think these other things are of more importance and should be done first.

30 Q Do you know which is the most traveled crossing on your system now, of grade crossings?

A Do I know what is the most traveled crossing?

Q Yes.

A I don't know, I am sure.

Q Wouldn't Market street, Paterson, about approach that, if it is not the most traveled crossing?

A I am not at all sure it is.

Mr. Minard. I can tell you; Jamestown, New York, has a great deal more people than Market street, Paterson, crossing.

Robert C. Falconer, cross.

Q Which is the most important crossing on your system in New Jersey, so far as bulk of travel is concerned?

A I presume Market street is, in New Jersey.

Q (*By Commissioner Donges.*) Market street, Paterson?

A Yes.

Mr. Minard. We have put in for three days, 10
a lot of data. I don't want to delay the thing
a minute but I think if we could simplify this
data in some memorandum which we could submit
in a couple or three days after we get the
testimony, it might benefit the commission.

(Informal discussion.)

Commissioner Donges. This case will go to
conference, subject to the submission of briefs by
Tuesday, November 17th.

Mr. Merrey. On points brought out in the ad- 20
ditional testimony.

Commissioner Donges. Mr. Minard will submit a brief touching on the financial question only, to the Board and Mr. Merrey, and Mr. Merrey will submit his, if he desires to do so.

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Discussion in re Petition for Further Hearing.

BOARD OF PUBLIC UTILITY COMMISSIONERS

Newark, N. J., Friday, February 3, 1915.

PATERSON GRADE CROSSING ELIMINATION,
ERIE RAILROAD COMPANY.

10 Before the following commissioners:

R. W. E. Donges, Esq., T. J. Hilliery, Esq., J. J. Treacy, Esq.

F. H. Sommer, Esq., General Counsel.

For petitioner, City of Paterson, appears E. F. Merrey, Esq.

For respondent, Erie Railroad Company, appear G. S. Hobart, Esq., D. E. Minard, Esq., and H. A. Taylor, Esq.

20 For various switch owners appears William B. Gourley, Esq.

For Public Service Corporation appears L. D. H. Gilmour, Esq.

Commissioner Donges. The question, as was pointed out in the report of the board, is confined to the one matter of determining what time is to be allowed in the order for doing the work.

30 *Mr. Hobart.* If the commission please, before that matter is taken up we desire to present certain facts which may make it unnecessary to go into that question, and we ask leave to file a petition for a further hearing on the matter which has been drafted, and if the commission please, I shall be glad to present it at this time, and if the commission desires, I will be glad to read it.

Commissioner Donges. You may state as fully as necessary what the petition contains.

Mr. Hobart. Perhaps I need not read it fully, but follow the paragraphs as I read.

Discussion in re Petition for Further Hearing.

Paragraph One states the conclusion of the board in regard to certain matters in connection with the proceeding.

Paragraph Two: "Respondent, Erie Railroad Company, represents that it infers from the said report that it is the intention of this board when it issues its order upon said report, to direct that the expense of the elimination of certain grade crossings shall be paid by this respondent, except such portion of the expense as may be legally chargeable to the Public Service Railway," and certain other companies. 10

Paragraph Third: "Respondent therefore respectfully calls the attention of the board to the fact that its answer and amended answer, and the undisputed testimony offered on its behalf at the hearings show that this respondent is not the owner of the right of way upon which said railroad tracks are constructed and over which this respondent runs certain trains, but that the fee of the same, and the franchise to operate a railroad thereon, are, and for many years past have been, owned by two other companies, part of said right of way and franchises being owned by a corporation organized under the laws of the State of New Jersey known as the president and board of directors of the Paterson & Hudson River Railroad Company, and part thereof being owned by a corporation organized under the laws of the State of New Jersey known as the Paterson & Ramapo Railroad Company; the testimony shows that this respondent runs trains over said right of way of said companies by virtue of certain leases made under date of September 9th, 1852," and so forth; "the testimony further shows that this respondent does not own or control the fee of any of the right of way or property where said grade crossings are proposed to be eliminated, except that it owns or controls certain 20 30 40

Discussion in re Petition for Further Hearing.

property adjacent to said right of way," and so forth, "upon which are located certain side tracks," and so forth.

10 Fourth. "Respondent further shows that it does not own any of the right of way upon which such trains are run, but that it runs trains over the crossing in question only as lessee under the two leases above referred to, and in so far as the obligation to the State is concerned, it runs the same only as an agent of said Paterson and Hud-
son River Railroad Company and Paterson and Ramapo Railroad Company, and that the obligation to the State of New Jersey and the people thereof for the operation of said railroad, is imposed by their respective charters solely upon the Paterson and Hudson River Railroad Com-
20 pany and the Paterson and Ramapo Railroad Company; and that therefore the said two companies, and each of them, are the companies operating such railroad, within the meaning of Chapter 57 of the Laws of 1913, upon which this proceeding is based. Wherefore, this respondent urges and insists that any order made by this board should direct that said two companies should eliminate said crossings, and bear the expense thereof as their respective interests may appear, and that no part of the expense thereof
30 should be borne by this respondent, except so much, if any, as it may be legally chargeable with under Section A of said statute."

Commissioner Donges. What is the period for which the leases are drawn.

Mr. Hobart. During the life of the charter of the original company.

Mr. Merrey. Or any extension thereof?

Mr. Hobart. Or any extension thereof, no time limit is expressed in the charter of the original company, but there are certain terms under
40

Discussion in re Petition for Further Hearing.

which the leases are forfeited all the terms terminated.

Commissioner Donges. So that as long as the right to operate the roads exists the Erie Railroad Company has the right to operate under the leases?

Mr. Hobart. Under the leases, and solely under the leases. Each lease is forfeited under any act of the Erie Railroad Company, failure to pay taxes or consent of the parties or consent for the taking over of the road, if they have the right, that terminates the leases. 10

Commissioner Donges. The Erie has rights which are equal to those of the lessor?

Mr. Hobart. That is the conclusion which I wouldn't admit in quite that broad term. The only rights we have are the rights expressed in those leases. 20

Number Five, "Respondent further urges and insists that if this board should find this respondent is one of the companies operating said railroad, or any part thereof, within the meaning of said statute, then and in that event any order made by this board with respect to the elimination of said crossings, or any or either of them, should direct that said crossings be eliminated jointly by said two companies and the Erie Railroad Company, so the cost will be apportioned among them by the appropriate proceedings." 30

Six, "Respondent further says that from said report it appears that the board has decided to adopt a plan for the elimination of said crossings which will cost approximately \$2,950,000.00; and the board has decided to divide the work into five sections, and so on, said five sections numbered from "A" to "E," sections "A," "B" and "E," the cost of eliminating, according to the estimate of this respondent, would be approxi- 40

Discussion in re Petition for Further Hearing.

10 mately \$2,400,000.00, are on the right of way of the Paterson and Ramapo Railroad Company; that sections "C" and "D," the cost of eliminating which, according to the estimates of this respondent, would amount to \$980,000.00, are on the right of way of the Paterson and Hudson River Railroad Company. Then, without going into the figures in detail set forth in the same paragraph, that these costs amount to more than the total assessed valuation of the two properties and therefore to compel this respondent to pay more than the present value of the property, for the portion of those other properties, in the event of forfeiture, would amount to taking the properties of this defendant without due process and would be confiscation.

20 *Commissioner Donges.* By the terms of the leases, with which I do not pretend at this moment to be thoroughly familiar, is there a provision that whatever expenditures are made by the lessee shall be repaid by the lessor at the termination of the lease?

Mr. Hobart. Yes, sir. That is why they ought to be made joint parties.

Mr. Merrey. They are.

30 *Mr. Hobart.* And they ought to be made; they should be ordered to do the work and fight it out among themselves.

Commissioner Donges. Doesn't the statute provide that the company operating the road be ordered?

Mr. Hobart. Yes.

40 *Commissioner Donges.* In this proceeding didn't the Erie Railroad, by its answer and in its testimony, agree that it was the company operating the road? That is my present impression, it did. There is no issue raised on that point.

Discussion in re Petition for Further Hearing.

Mr. Hobart. There is no doubt that the Erie Railroad runs certain trains over that road.

Mr. Sommer. Also there is no doubt the other companies do not.

Mr. Hobart. No; the proof is they do.

Commissioner Donges. Wasn't it agreed expressly that under the lease the Erie Railroad Company was operating the entire line? 10

Mr. Hobart. No. The same points are raised in both answers.

Mr. Merrey. Doesn't your lease show you took over the entire equipment of the other two roads at a certain valuation, all the rolling stock they had?

Mr. Hobart. No. I would refer to the terms of the leases to be clear on that point. Of course, the point which we desire to call attention to, which has been already raised, but we desire to raise more specifically, the companies charged with the duty of operating those particular lines are these particular companies. We are operating as lessee; that duty rests on the original company rather than on the respondent. 20

Commissioner Donges. The Erie Railroad Company and each of the other roads are co-respondent; that the Erie Railroad Company is under no obligation under the terms of the Grade Crossing Act to eliminate. 30

Mr. Hobart. Yes, sir.

Commissioner Donges. As the operating road?

Mr. Hobart. Yes, sir.

Commissioner Donges. And owes no duty whatever to the public of the State, if that theory is right.

Mr. Hobart. Not the State directly. The duty is owing by the original lessor company, because those companies owed the duty to run the road. 40

Discussion in re Petition for Further Hearing.

10 *Commissioner Treacy.* Under your objection and your contention, Mr. Hobart, all that a railroad company operating or desiring to operate a road would need to do would be to first organize a dummy corporation, then have that corporation take title to the land and then lease it to some operating company. Your original operating company is a small one, a hundred thousand dollars, but the operating company is a hundred million dollars corporation, and the operating company could escape any obligation to the State and the lessor company would not have the means apparently of complying with the laws of the State.

20 *Mr. Hobart.* That may be one possible result of the argument. It isn't very apt in this case, because neither company has the means.

Commissioner Donges. Certainly the lessor company—there would be some doubt about the ability of the lessor companies to make the improvements.

Mr. Hobart. There is much more doubt about the other company.

Mr. Merrey. There wouldn't be any doubt if they were turned over to the company.

30 *Commissioner Donges.* Did I understand a moment ago you said the order should either place the duty on the two lessor companies, the Paterson and Ramapo and the other company, the Hudson River Railroad Company, or upon those two companies and the Erie?

Mr. Hobart. Yes, jointly.

Commissioner Donges. Upon what theory would you suggest that the three roads be ordered to do the work?

40 *Mr. Hobart.* Because if the Erie can be considered the operating company at all it can only be such because of the terms of this lease. In

Discussion in re Petition for Further Hearing.

other words, it is acting as agent of the lessor company in so doing. And if this particular piece of track is owned by each of the three companies, it is shown in particular detail, it isn't for this board to decide how much, if any, should be apportioned among the three companies.

Commissioner Donges. It isn't?

Mr. Hobart. I don't think so. That is a matter for the Court of Equity or Court of Law, as the fact develops. 10

Commissioner Donges. You think the order of this board should be that these three companies, as operating companies—

Mr. Hobart. Yes.

Commissioner Donges. —pay the expense of altering the grade.

Mr. Hobart. Only in the event the board decides it should limit its order to those. Passing that, if that is decided against them, I submit this should be against all three of them. 20

Commissioner Donges. I am trying to get the idea you have in mind, in which you say an order involving all three roads should be passed.

Mr. Hobart. It is on the theory that the Erie Railroad Company is operating as agent under the terms of the lease.

Commissioner Donges. If it is operating as agent is it customary to bind an agent to pay the debts of a principal? 30

Mr. Hobart. Under the statute oughtn't they to be required?

Commissioner Donges. Under the statute ought they to be required?

Mr. Hobart. They really, in a sense, evade the question.

Commissioner Donges. Isn't it directly involved? You say the Erie Railroad Company is merely the agent of the other two companies. 40

Discussion in re Petition for Further Hearing.

Mr. Hobart. That is all it is, from our viewpoint; absolutely so; which is absolutely liable to be terminated.

Commissioner Donges. Only by its own fault.

Mr. Hobart. No, terminated by consent, by itself, or act of the State.

10 *Commissioner Donges.* That involves action on the part of the Erie?

Mr. Hobart. No, action by the State.

Commissioner Donges. And the other afterward?

Mr. Hobart. Yes.

Commissioner Donges. And then only on payment, of course, of a sum which would be adequate to compensate it?

Mr. Hobart. Yes.

20 *Commissioner Donges.* The State, of course, wouldn't confiscate. So practically the only way that these charges—the only way the companies, any of them, could lose, is either by their assent or their default.

Mr. Hobart. There may be circumstances, where under the terms of the lease, over which we have no control; terminated by act of the parties.

Mr. Merrey. That is the only way by which you could lose.

30 *Mr. Hobart.* And the State of New Jersey.

Commissioner Donges. Assume the taking over by the State were followed by the State making compensation.

Mr. Hobart. The difficulty is, under the terms of the lease the State is only required to pay the value of the original company; the cost of three million dollars without adding a cent to the real value.

40 *Mr. Sommer.* Is that true in a rate case?

Discussion in re Petition for Further Hearing.

Commissioner Donges. Is it true in a capitalization case?

Mr. Hobart. We are only discussing this case.

Mr. Sommer. If that is true the Erie ought not to ask for capitalization.

Mr. Hobart. To issue stock for three million dollars or bonds to make these improvements, that would be an entirely different proposition. 10

Commissioner Donges. You state the two companies owning the property in fee are entitled or bound to pay the cost of all improvements made by the operating company; why should the board now join them at this time, place on them any part of the expense of eliminating this crossing?

Mr. Hobart. The practical answer is because they have not three million dollars to reimburse us. That is one.

Commissioner Donges. If the lease provides, at the termination they should pay for such improvements as are put on the property, how can you burden them with any expense now? 20

Mr. Hobart. That is a matter for the court, how much to pay. We ask that question be raised by the board so the court can pass on the question, whether these other two companies should contribute in whole or any part of the eliminating of these crossings.

Commissioner Donges. At this time?

Mr. Hobart. Yes. We want to guard against the possibility of anything happening, or the forfeiture of the lease at the termination of the terms of it. 30

Paragraph Number Seven: "Respondent further says that the conclusion of this board, above referred to (d), to the effect that this respondent contemplates spending larger sums than would be required for the purpose of eliminating the crossings in question, in making other improve- 40

Discussion in re Petition for Further Hearing.

10 ments and the position of the board, above referred to (e), that it is not satisfied that this respondent will not be able to secure the necessary funds to eliminate the crossings in question, indicate that the uncontradicted evidence submitted to the board by this respondent was not understood and that the board has mistaken the company's desire to make needed improvements for its ability to secure or expend the sums required therefor; that as a matter of fact, the respondent does not now and at the time of the giving of the testimony in this proceeding did not contemplate the spending of larger sums than would be required for the elimination of these crossings, nor indeed any considerable sums, in making other improvements, for the reason, as the evidence submitted shows, that the respondent did not at that time have, nor has it now, nor can it at the present time obtain, the necessary funds or any considerable part thereof beyond what is actually required for the continuance of safe operation on its railroad, either for the making of such other improvements or for the elimination of the crossings in question."

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30 *Commissioner Donges.* Do I understand by this clause you deny the testimony submitted by the Erie Railroad that the estimate of the proposed expenditures involved a greater sum than would be involved—

Mr. Hobart. Not at all.

Commissioner Donges. That is what the board said, that the company said they proposed to spend larger sums of money. No such money had been proposed?

Mr. Hobart. Not proposed to spend, but would like to spend it if we had it.

40 *Commissioner Donges.* Do you mean to say your testimony on the program of the Erie Rail-

Discussion in re Petition for Further Hearing.

road, it was not said that these things were appropriated, some of which the board of directors have sanctioned—

Mr. Hobart. Yes.

Commissioner Donges. And that the appropriations were made?

Mr. Hobart. As soon as we had the money. We contemplated the expenditure of it. You can't contemplate it until you get it. 10

Commissioner Donges. If the board of directors has authorized it, there isn't any doubt but what it is contemplated?

Mr. Hobart. A good deal of doubt. The testimony was we hadn't it and weren't likely to have it.

Commissioner Donges. Isn't it only a matter of time when you will get it?

Mr. Hobart. It may be one hundred years. 20

Commissioner Donges. It is a matter of time then?

Mr. Hobart. In that sense it is. Continuing: "that as shown by the evidence heretofore submitted, this respondent's net income available for expenditure on improvements during the fiscal year ending June 30th, 1914, was \$662,295.87, being its entire net income less such amounts as were required to be devoted to sinking and other reserve funds under prior existing mortgages. That the results of the company's operations for the six months following June 30th, 1914, indicate that the amount of income available for expenditure on improvement will not exceed, if it equals, the amount available during the preceding year, and even this result can be obtained only by the exercise of the most rigid economy in operation and postponement of expenditures actually required. That the company has already, during the six months ending De- 30 40

Discussion in re Petition for Further Hearing.

10 cember 31st, 1914, been required to expend for necessary improvements, principally in the interest of safety in operation, such as the furnishing of additional ballast, heavier rails and tie plates and reconstructing and strengthening bridges, safety appliances and steel underframes on cars and locomotives, over \$700,000.00, and expenditures of this character must continue to large amounts. Your respondent is also under legal obligation to spend large sums for improvements under existing contracts, or orders of the courts or of public authorities, as set forth in section 8 below. Your respondent has no capital funds outside of its income to devote to these purposes except the remaining proceeds of certain capital obligations heretofore issued, amounting to approximately \$300,000.00, all of which is required by an obligation heretofore incurred, to be devoted to a particular work now in the course of construction, under order of the public authorities; that your respondent has no additional capital obligations available for issue and disposition for the purpose of securing new capital funds over and above what is required for the payment of capital obligations about to mature."

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30 Paragraph Eight. "Respondent further says that it will be required during the remaining portion of the year ending June 30, 1915, by obligations already incurred under orders of public authorities, or contracts heretofore made, to expend for improvements the amount of \$885,900.00, as shown more in detail on Schedule "A" attached hereto; but during the next twelve months this respondent will be obliged to expend under similar obligations the amount of \$2,052,400.00, as shown more in detail on Schedule "A" attached hereto."

Discussion in re Petition for Further Hearing.

Commissioner Donges. Schedule "A" was the information—

Mr. Hobart. Beg pardon?

Commissioner Donges. The statements contained in Schedule "A" were in the testimony before this board?

Mr. Hobart. I am not sure whether all of them were or not.

Mr. Taylor. May I ask a question? To whom, in your opinion, should we look for the money expended under these legal obligations, incurred in these grade crossings in Paterson?

Commissioner Donges. The board didn't state from what source the company would take it, but simply said there appeared in the testimony matters for which the company was contemplating expending larger sums of money, and it seemed to the board it might possibly be this was more important work.

Mr. Taylor. I assume you did not have in mind, in making your statement, obligations we were only under legal obligations to carry out?

Commissioner Donges. No.

Mr. Hobart. And where do these appear in the testimony? They aren't in the testimony of the witness as they now appear; that is the total amount required for this purpose; it is practically all in item C. There does appear certain amounts were spent in six months and certain other amounts in the course of a year, and so on. That is the purpose of it. Of course, this incidentally has a very important bearing on the time, which is the one matter suggested for this morning.

Ninth. "Respondent further says that during the next twelve months, repairs and renewals of bridges on its railroad will be absolutely necessary for the safety in the operation of its railroad

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Discussion in re Petition for Further Hearing.

at an estimated cost of \$1,094,825.00." In other words, what is put down in Schedules "A" and "B" are only items that we can't possibly avoid. A large number are things required by orders of the court and other commissions. The second set are required, otherwise there is the danger of a capacity of a bridge going down, and changes which must be done, otherwise we would have to stop the railroad.

The next paragraph says: "Respondent further says that the various improvements set forth in the evidence heretofore presented by it in this proceeding should be made, and that in particular the sum of upwards of \$12,000,000, as set forth more in detail in Schedule "C" attached hereto, should be expended at once upon improvements and betterments of its railroad and property for the purpose of enabling it to render safe, adequate and proper service in the transportation of the traffic in interstate commerce which is now offered to it," and so forth.

The next paragraph, paragraph eleven: "Respondent further shows that from and by the report of the said board, it appears that it is the determination of the board that the heaviest burden of expense for the elimination of said crossings will fall upon this respondent, but said report does not announce any determination of the board as to what, if any, other persons or corporations will share in the cost of such eliminations, or to what extent they or either of them should so share; this respondent respectfully calls the attention of this board to the provisions of Section 2, Chapter 37, Laws of 1913. Respondent shows that the Public Service Railway Company is a street railway, and as such, uses the crossings at Market street, Broadway and River street, three of the crossings involved in

one comprehensive plan or scheme which the board has adopted in its report as a general plan covering all of the crossings involved in this proceeding; and this respondent respectfully urges and insists that said Public Service Railway Company should be chargeable with ten per cent. of the total cost of eliminating all of said crossings involved in said plan or scheme so adopted by said board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company or made necessary by reason of changes in, or the removal of, property, constructions, tracks, wires, poles or other appurtenances thereto, which may be necessary to conform its property or constructions to any order which this board may make in this proceeding. 10

Twelve. "Respondent further says that in and by said report the board finds, among other things, that the crossing of each of the streets involved in this proceeding and the railroad tracks of this respondent at the same level, is dangerous to public safety, and that public travel on such highway is impeded thereby; these conclusions are predicated upon the finding of the board that a large number of freight trains, passenger trains and drill engines pass daily over said crossings, or some of them, thereby endangering public safety and impeding public travel; that inasmuch as this respondent cannot assume the cost which would be imposed upon it by an order of the commission requiring it to eliminate the grade crossings in question, this respondent urges that if the board concludes that under existing circumstances such an order must be made, an opportunity should be given this respondent to present plans whereby the number of trains or engine movements, or the manner of the same, 20 30 40

Discussion in re Petition for Further Hearing.

or both, over said crossings, may be changed so as to remove the danger and impediment to public travel."

Commissioner Donges. What do you mean by that?

10 *Mr. Hobart.* Reduce the number of trains passing over the crossings. If the crossings are dangerous because one hundred trains pass over them, certainly they are not nearly so dangerous as ten trains or five trains, or comparatively few trains.

Commissioner Treacy. They wouldn't be dangerous at all, if no trains passed over them.

Mr. Hobart. I suppose not. It is all a question of degree.

Commissioner Donges. Would it necessarily stop the danger to remove some of the trains?

20 *Mr. Minard.* It would depend on the board's decision.

Mr. Hobart. I wouldn't say. We think this danger can be substantially reduced by reducing the train movements over these crossings. I would not say the trains, but the train movements over these crossings. "Wherefore, this respondent, expressly reserving, and not waiving, any and all objections heretofore made, and saving all legal rights or defenses heretofore asserted or claimed, respectfully prays that further hearing be granted for the purpose of considering the following matters, and taking testimony thereon so far as may be necessary.

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"(a) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company as the railroad companies operating the railroad over the crossings in question within the meaning of Chapter 57, Laws of 1913.

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Discussion in re Petition for Farther Hearing.

"(b) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent jointly, so that the cost thereof may be apportioned between and among said companies by appropriate proceedings.

"(c) Whether this respondent is financially able to carry out the terms of any order made in this proceeding if the heaviest burden of the cost thereof falls upon it. 10

"(d) Whether such order would impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

"(e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the total cost of eliminating all of the crossings involved in said plan or scheme adopted by the board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company under Section 4 of said statute. 20

"(f) If the board reaches the conclusions that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this respondent will submit." 30

We ask leave to file this petition with the board.

Commissioner Donges. It may be filed and the board will consider the petition. You may 40

Discussion in re Petition for Further Hearing.

proceed on the question then which we are called upon to deal with to-day.

Mr. Gourley. In regard to the plan for the switches; the engineer agreed that the plan adopted, the switches be omitted; the plan adopted shows the sidings omitted.

Commissioner Donges. Inadvertently omitted?

10 *Mr. Gourley.* Not inadvertently, but it was not put on.

Commissioner Donges. On the original?

Mr. Harder. It was on the original.

Mr. Minard. We would like to know which one.

Mr. Gourley. Augur & Simon.

Mr. Minard. That is the one Mr. Merrey contended was not in use.

Commissioner Donges. Do you concede—

20 *Mr. Minard.* We don't concede to it. We will have to have our engineer's consideration on it.

Mr. Merrey. Isn't it a fact though by the change of the grade it is practically out of the zone of the change? Those switches not being used, as it is shown on the plan. I don't think any order of the board will interfere with it at all.

Commissioner Donges. It is not within the zone?

30 *Mr. Gourley.* Provided in the plan.

Commissioner Donges. It is not within the zone affected, it would not be put on there—

Mr. Minard. Our position on that is we are anxious to preserve all the sidings we can.

Mr. Gourley. This is quite practicable because the other switches are so low from those sidings; it is omitted from the plan adopted.

Commissioner Donges. If it is not affected by the change in grade.

40 *Mr. Gourley.* That is quite satisfactory.

Discussion in re Petition for Further Hearing.

Commissioner Donges. That seems to be the situation.

Mr. Minard. Right at this point it becomes appropriate to say if the board finds it necessary to make the order imposing the greatest proportion of the expense on this company, this company will reserve the right to reconstruct and perhaps reorganize and change entirely the switch service in Paterson. That will be a matter incident to our necessity under any order that is made. 10

Commissioner Donges. The plan here provides for the general plan of elimination.

Mr. Taylor. I would like to say a word in connection with what Mr. Minard has said, and in regard to the last point made in our petition which was the service there to avoid this elimination. I think the board must appreciate this is a very serious matter to the Erie Railroad Company. While we have no desire whatever to modify in any way which would be in the slightest degree objectionable to any of our patrons in Paterson, the present service which is afforded in Paterson, either passenger service or private siding; if it comes to the alternative of expending the amount of money which would be imposed on the railroad company by this elimination under the board's order or modify our service in Paterson so as to minimize the danger of the public crossings, we must insist on our proposition that we be given an opportunity to formulate plans of that sort and give it serious consideration. 20 30

Commissioner Donges. You have had an opportunity to do that.

Mr. Taylor. Not exactly in the same way. Of course that is an alternative which we wouldn't 40

Discussion in re Petition for Further Hearing.

wish to consider or resort to until everything else has passed, except as a last alternative.

Mr. Merrey. You mean to say you think it possible you would reduce your service, number of trains in Paterson?

10 *Mr. Taylor.* I don't mean to say that we would reduce the number of trains to Paterson, but I say we could materially reduce the number of train movements or engine movements involved over the crossing.

Mr. Merrey. That is one?

Mr. Taylor. All of them.

Commissioner Donges. That comes under your petition.

Mr. Taylor. It has a bearing on the side track proposition.

20 *Mr. Gilmour.* I would like to ask whether, so far in this proceeding there has been any consideration by the board of the part of the cost the Public Service Railway Company must assume to pay?

Commissioner Donges. Yes, that will be provided for in the order.

30 *Mr. Gilmour.* While the railway company has been a party to these proceedings all along with the other companies, there have been no copies of any of the findings transmitted to the railway company excepting the notice of this hearing this morning. We did get certain plans, maps, which were transmitted to the company with the information that they were tentatively considered as a method of eliminating those crossings.

Commissioner Donges. When did you receive those?

Mr. Gilmour. About two weeks ago.

40 *Commissioner Donges.* They weren't tentative plans; they were the plans approved by the board.

Discussion in re Petition for Further Hearing.

Mr. Gilmour. Then I understand that those plans have been approved by the board as the method of eliminating the crossings, and those plans contemplating putting a reverse curve in the railway, in the tracks of the Public Service Railway, where they go over the Erie Railroad at River street.

Commissioner Donges. I think that is true, but they speak for themselves. 10

Mr. Gilmour. The plans that we received made no change in that condition and it makes a very material disadvantage to the railway company.

Commissioner Donges. That was testified to by your expert.

Mr. Gilmour. And ought to be considered.

Commissioner Donges. And was considered by this board. 20

Mr. Gilmour. And ought to be considered in connection with the amount of work the railway company is supposed to do—

Commissioner Donges. I think the statute fixes the amount the railway company has to do.

Mr. Gilmour. No; the statute fixes a limit.

Commissioner Donges. The limit is ten per cent.?

Mr. Gilmour. Yes; not to exceed ten per cent.

Commissioner Donges. The board has considered that and will provide for it in the order. 30

Mr. Minard. May I inquire whether that point has been considered as exclusive of all costs which may be necessary to conform their property to the change in grades?

Mr. Gilmour. Certainly not.

Commissioner Donges. We don't propose to get into a discussion of that now. That point has been considered by the board.

Mr. Minard. That is all I ask. 40

H. J. Harder, direct.

Commissioner Donges. There is no good threshing over and arguing that case over again now, on those points.

Mr. Minard. We are prepared on the question then.

Commissioner Donges. We will hear you.

Mr. Merrey. Who will you hear first?

10 *Commissioner Donges.* The railroad company, we will hear them.

Mr. Minard. We are defendant, or respondent.

Commissioner Donges. We will hear you, Mr. Merrey.

H. J. HARDER, resumes the stand for petitioner, City of Paterson.

Direct examination by Mr. Merrey.

20 Q Have you examined the plans adopted—have you studied the plans adopted by the Public Utility Commissioners for the elimination of the grade crossings in Paterson?

A Yes, sir.

Q Have you formed an opinion as to how long the work will take?

A I have, in doing the work in two sections, yes, sir.

30 Q Tell us how long you think it would take them to make the change of the entire—under the plan including the entire work, that is beyond Madison avenue?

A From a point 1,530 feet west of Madison avenue to the Passaic River I have estimated that it would take about three years.

Q That is for the entire change?

A Yes, sir.

Q Section A?

40 A Section A, from the beginning of Cedar and First street to six hundred feet west of River street, two and a half years.

H. J. Harder, cross.

Q That is the main section?

A That is right through the middle of the town, yes, sir.

Q You have then ascertained other operations of this kind?

A I secured the time that was spent in eliminating Lackawanna tracks at Newark, the Pennsylvania tracks at Rahway, the Erie tracks at Jersey City, and the Pennsylvania in Elizabeth, and arrived at my conclusion from the time taken for these other eliminations of like character. 10

Q Was there any reason that would cause delay in the plan adopted by the commission or make it a very difficult proposition?

A I don't understand.

Q Any operation in rock cuts, or matters of that kind, that would delay it longer than usual?

A No, there is no rock cuts. 20

Cross examination by Mr. Minard.

Q In considering this time period you used the Newark, Rahway, Jersey City and Elizabeth cases as a basis of computing?

A Yes, sir.

Q Did you, in connection with these cases, get the detail of the number of cubic feet excavation, fill or concrete?

A No, I didn't go into all that.

Q Did you get the number of train movements necessary to take into consideration in the construction of the work? 30

A No.

Q Did you take the number of tracks necessary to be kept open to carry on the railroad work done in that time?

A In the case of Rahway I did.

Q Any others?

A No. Let me tell you; I got this information from the engineers in the different cities. I simply 40

H. J. Harder, cross.

asked them for the length of time it took and the distance that has been affected.

Q When did you begin your time, with the beginning of the work or the beginning of the plan?

A I imagine upon the beginning of the work.

Q Then the whole information you have on this subject is not based on any information on those details, is that true?

10 A No. I got this information from what I considered authoritative sources. The engineer in each town; I have used that.

Q Do you know whether that includes the time of making the plan or letting the contract?

A I only know it took so long.

Q Your information under your understanding did not include the time of making the plans or letting the contract? Did you assume that?

20 A I did assume the time it took to do the work.

Q Just doing the work. You got your information from the city engineer's office of the resident city?

A Yes, sir.

Q Did you get it from the city engineer personally or simply from their records?

A I got—I had a letter from the engineer in Rahway and in Elizabeth and a direct communication from Mr. Van Kowen in Jersey City and a letter from Mr. Howell, engineer of highways in Newark.

30 Q Do you know whether in those cases the engineer who gave you the information was the engineer in charge of the work?

A I don't know.

Q Did you have any other source of information for detailing the length of time required?

A No other.

Q Is the Rahway work done yet?

A It is still under way.

40 Q Your figures of time on the Rahway work were up to the present time or estimated in the future?

H. J. Harder, cross.

A Mr. Marshall, the engineer, advised me that it would take three years to complete the work. It was substantially finished in the city, but they were eliminating outside the city.

Q How long would that part of it take?

A Over two years, three years.

Q Do you know the estimated elevation of the changes?

10

A In Elizabeth the elevation was twenty-five feet.

Q That is only the estimated elevation?

A The only one I know the height.

Q Do you know whether in any cases other changes had to be made incident to the track elevation?

A No.

Q You know none of those elevations were made under this act?

A I don't know that.

20

Q Do you know that in some of those cases the actual work of making the elevation was carried on by the railroad company, but the other changes which are included in this act were carried on by the other people, the city in some instances?

A I only know what I asked these engineers and what they told me.

Q That is the only source of your conclusion that it would take three years for the section you mentioned and two and a half years for the other section?

30

A By comparing it with the time they gave me, yes.

Q Did you employ any mathematical process to reach that conclusion?

A No, I didn't; just averaged it.

Q You didn't consider the amount of work to be done on this job in order to base a determination of the length of time?

A I took the average.

40

H. J. Harder, cross.

Q You took four cases from somewhere else and struck an average?

A Yes.

Q You added the length of time of all those four together and then divided them by four?

A Yes. All of which were more difficult than this would be?

10 Q You think so?

A Yes.

Q You don't know how much more?

A No.

Q How many crossings were involved in each of the cases?

A I think I said awhile ago I don't know the number.

Q You don't know how many sidings there were?

A No.

20 Q Do you know whether any freight yards depended on that construction work, while the work was carried on, depending on the track being changed?

A I have no personal knowledge of local conditions.

Q Do you know what amount of work was necessary in order to enable the railroad company to make those passenger stops at the stations that might be involved in the proceedings?

30 A I have no knowledge of the conditions existing during the work.

Q Didn't you prepare what engineers call a program for your work?

A A program.

Q Yes.

A I prepared those plans.

Q Do you know what a program is for carrying on the work?

A I have an idea what you mean.

H. J. Harder, cross.

Q Do you know what an engineer calls a program for the work?

A I never used anything like that.

Q You never have?

A We don't use it in new work.

Q You don't use it in new work; show what is the first step, how much concrete fill, what is the second step, how much is involved in that, how long would it take; allow certain days for bidding and starting of the work; you didn't prepare that? 10

A I didn't go into that.

Q You have the length of track involved in each of the other cases?

A Yes; that is the way it is involved, the length of the track and the time it did take in these other situations.

Q Just tell us by what process you reached your conclusion as to the length of track involved. 20

A In Newark the Lackawanna elevation was 2.23; they had a lot of delay, Mr. Howell tells me; some legal complications and trouble with the canal.

Q You have all those but the trouble with the canal?

A You have some property along the line. The Lackawanna took five years in Newark. In Rahway two miles, and it took three years; Jersey City, 1.45 miles, and it took two years; in Elizabeth, 2.8 miles, and it took three years. 30

Q I understand you have taken the length of the railroad, not knowing the number of tracks involved?

A The tracks of the railroad?

Q Yes, two, four or six.

A In Rahway there are six tracks; in Jersey City four; in Newark two tracks; and Elizabeth I am not sure of.

Q So the number of tracks hadn't any influence on your determination of the length of time? 40

H. J. Harder, cross.

A No. Now, in Paterson the elevation from a point fifteen hundred—the proposed change from 1,530 feet west of Madison avenue to the river is a mile and sixty-five hundredths; I allowed three years, because it is more time than any allowed here.

Q That is the only reason you allowed it, because it is more time than any other?

10 A I estimated it would be a fair allowance from these other distances.

Q What is that?

A I estimated it would be a fair allowance because of these other distances.

Q Then what you have said is merely an estimate based on your information given from other sources and involves no calculation of this one?

A No, sir, that is what I said in the beginning.

20 Q Are you familiar with the report which the board has filed in this case?

A I have read it.

Q You wanted to divide the work up into different sections than the board did?

A I didn't.

Q You divided it into two sections?

A The board divided it into four.

Q Five?

A Five.

Q Why did you divide it into two instead of five?

30 A I didn't.

Q The first section you mentioned—you say you mention two sections—

Mr. Merrey. That is the whole work.

Q You say you divided it into two sections—

Mr. Merrey. He didn't; I object to that. That is the entire work.

Commissioner Donges. He said he divided it into two sections. He may tell how the sections are made up.

40

H. J. Harder, cross.

Witness. To arrive at an estimate of the time we started at 1,530 feet west of Madison avenue, just at the beginning of one of the sections—

Q Beginning of which section?

A I think C.

Q This report shows Sections A, B, C, D and E?

A Yes.

Q Section A is Market street to Lafayette; is that included in your first section? 10

A Part of it. Yes, all of it.

Q B includes Keen, Warren and River streets; is that in your first section?

A Yes.

Q C includes Straight to Market street; is that included in the first section?

A Yes.

Q D includes the elimination of Madison; is that in your first section? 20

A No; I didn't consider D at all. I started west of Madison.

Q You didn't include Madison avenue at all in your estimate?

A No; I understood that was to be left out.

Q Does your estimate include Section E, Fifth avenue, if River street is eliminated?

A That is my total length.

Q Your total length then is based on all of the crossings involved in the proceeding except Madison avenue? 30

A Yes.

Q Why did you leave out Madison avenue?

A I understood it was to be left out.

Q Who told you it was to be left out?

A I don't know. I heard it somewhere.

Q Some one told you to leave it out?

A I think I heard Mr. Merrey say that.

Q Did he give you any reason for having to leave it out? 40

H. J. Harder, cross.

A Wasn't that the section to be started west of Madison, because there was rock at Madison west and east of it?

Q We are asking your reasons?

A These plans show.

Q Is that the reason, because there was rock?

A No; the section on this plan starts 1,520 feet
10 west of it.

Q Did anyone tell you why you were to leave it out?

A It seems to me I heard that; I am not sure.

Q At any rate you have not included it?

A Not included.

Q Are you prepared to give me an estimate of what the length of time would be if you included Madison avenue?

A Only guess at it.
20

Q But it would materially extend this period?

A Yes.

Q Especially if it is rock, as I understand?

A I understand it is rock.

Q Then that would materially extend this time, would it not?

A Yes. If this proposed improvement was carried south of Madison avenue.

Q The excavation work on rock is slower?

A Yes.

Q Where blasting and that sort of work is required?
30

A Yes.

Q You aren't prepared to make an estimate on the same authority your estimate is made as to how long it would take?

A No. I told you in the beginning the only information I got was from the different cities of the work that had been done.

40 *Mr. Minord.* That is all.

H. J. Harder, cross.

By Mr. Mervey.

Q Mr. Harder, as you know, and as Mr. Minard ought to know—

Mr. Minard. I object to any question as to what I ought to know.

Q Section D includes the elimination of Madison avenue on the commission's plan?

10

A I would have to look at it. Section D includes the elimination of Madison avenue.

Q Under the commission's plan that is provided for by a bridge, eliminating that street?

A Yes.

Q There isn't any rock-cut there, is there?

A The rock cut would be there if the track were lowered as we proposed.

Q As the city proposed?

A Yes.

20

Q Not as the commission proposes?

A Not now, because the commission's plan doesn't disturb the track there.

Q So your estimate of three years included everything except Section D?

A Yes; starting 1,530 west of Madison avenue and taking everything west of that.

Q The plan of the commission doesn't interfere with the grade of the railroad at that point?

A No.

30

Q Simply provides for raising the street?

A Yes.

Q If that was started at this time would it take anything like three years to make that change?

A From where do you mean?

Q Just Section D; the elimination of the grade crossing at Madison avenue, taking it up over the Erie Railroad as the commission proposes?

A Not as the commission proposes.

40

H. J. Harder, cross.

Q That wouldn't add any time at all to your estimate of three years?

A Simply building a bridge and approaches.

Q This other section you propose of starting 1,500 feet west of Madison avenue was for the entire rest of the work outside of the Madison avenue change?

A Yes.

10 Q You said you had spoken of two sections, that is Section A alone?

A Section A alone, between Cedar and Essex street for 1,500 feet west of River street.

Q As directed by the commission?

A As directed by the commission.

Q If Section A was to be separated from the other work and done at one time you say it would take two and a half years?

A Yes.

20 Q And let the other work follow after that if it was so stated?

A Yes.

By Mr. Minard.

Q Why didn't you base your estimate of the time on the sections as decided by the commission so you could get the length of time on each section?

A I had no particular reason for not doing it that way.

30 Q You read the commission's report?

A Yes.

Q You read they decided it should be done in sections?

A Yes.

Q A, B, C, D?

A It might be done in sections, they said.

Q I understood that to be the determination of the commission—

40 *Commissioner Donges.* The work might be done that way.

Robert C. Falconer, direct.

Commissioner Treacy. Might be done that way; not should be done that way.

Q Why didn't you adopt the divisions the commission said in which it should be done?

A I haven't any reason, except this we did adopt included those.

Q Isn't it true the section you took, the length of time lend themselves to no appropriate comparisons with other cities and that is the reason you adopted it that way? 10

A That isn't true.

Mr. Minard. As I read the report, it said it should be done.

Commissioner Treacy. It should be permitted to be done. It may be done, if you so desire. It doesn't say you must.

Mr. Minard. Is there any other conclusion in determining which way it shall be done? 20

Commissioner Treacy. You are to determine that now.

Commissioner Donges. Is there anything further, Mr. Merrey?

Mr. Merrey. No, sir.

Commissioner Donges. Do you desire to submit anything?

Mr. Minard. Yes.

ROBERT C. FALCONER, sworn on behalf of respondent, Erie Railroad Company. 30

Direct examination by Mr. Minard.

Q You have been sworn in this case and appeared as a witness?

A Yes.

Q Have you considered, or had considered, the question of the time and method of performing the work of eliminating the grade crossings mentioned 40

Robert C. Falconer, direct.

along the line indicated by the commission's report in this case?

A Yes; and I have had it considered.

Q Have you gone over the result of that conclusion?

A Yes; but not in minute detail.

10 Q In sufficient detail to explain and outline the proposition of the board?

A Yes, I think so.

Q Proceed, will you, with what you have prepared on that, beginning with Section A?

A Do you mean as to a program?

Q Yes, length of time.

A Or simply length of time?

Q To do this work?

20 A Section A itself, after all the specifications and plans were made and after the contracts were let, would require, we estimate, three years to complete.

Q And how long will it take to make the survey and prepare the plans necessary for advertising for bids, for instance?

A It will take about a year.

Q How long would it take to advertise for bids and let the contracts?

A Well, it would probably take about three months for each section, for each contract.

30 Q Is that included in the year you have figured on?

A I don't think it is. I am not quite positive about that. It doesn't so indicate here.

Q What is that?

A It doesn't so indicate here, and in my opinion it should not be included. I believe a full year will be required to make the survey and to prepare plans, exclusive of any time required to take bids and let the contracts.

Robert C. Falconer, direct.

Q Mr. Falconer, have the details of the various steps and quantities of material, and so forth, been estimated in your department?

A Approximately.

Q Who estimated them?

A Mr. Brameld.

Q He is an engineer in your department?

A Yes, sir. 10

Q He is here to testify to those?

A Yes.

Q On Section B what time do you think it will take to carry out the work proposed for Section B?

A We estimate that Section B, done by itself, would require about one year and three months.

Q Inclusive or exclusive of the preparation of plans and the letting of contracts?

A Exclusive of the preparation of plans and letting of contracts. 20

Q What period of time for making surveys, preparing plans, and letting contracts on that section will be required?

A The survey and plans are all included in the year, that could all be made within a year. There would be about three months more required for the letting of the contracts on Section B. There would be about three month's time required for the letting of contracts.

Q (*By Commissioner Donges.*) Do I understand, in your estimate of one year, Mr. Falconer, you had included surveys and plans of actually doing the work? 30

A My estimate of one year for surveying and plans includes the survey and plans of the whole work.

Q (*By Mr. Minard.*) All five sections?

A Yes. We would have to make most of the plans for the whole work before we could begin on any, in order to have them fit together. Of course, there 40

Robert C. Falconer, direct.

would be some details that could be left until later; the main plans would have to be done at one time.

Q (*By Commissioner Donges.*) Your estimate of three months for letting the plans is in addition to the one year and three and a half months, or is that included?

10 A No, in addition to that. There is about three months required to send out specification on a big job like this and give the contractor ample time to make his bid, consider it and get it approved and let the contract, and it sometimes takes more than three months; where commissions and cities are involved, there is sometimes delay.

Q (*By Mr. Minard.*) On Section C how long, in your judgment, would it take?

20 A Exclusive of surveys, preparation of plans and letting of the contract, we estimate one year and eight and a half months, about.

Q Section D is Madison avenue; what estimate have you made as to the time it will take to do that work?

A Well, the estimate is made for six months, but I don't think it can be completed in all its details in six months.

Q (*By Mr. Merrey.*) How long would it take to complete it in all its details?

30 A I think it would take from nine to ten months.

Q (*By Mr. Minard.*) That, of course, is on the assumption the surveys and plans will be made within the year you spoke of awhile before?

A Yes.

Q What conclusion do you reach as to the whole job, doing the work in sections?

A Doing it one section at a time, and following one section immediately by another?

40 Q Yes; if you can do it without any intermission between the sections?

Robert C. Falconer, direct.

A If we continued without any interruption in the work, but letting the contracts for the succeeding section just before the previous one was finished, it would take, in my estimation, about eight years.

Q How long have you been engaged in construction work of large magnitude?

Mr. Merrey. May I just ask if this is the position of the railroad company on this question? 10

Mr. Minard. That is our evidence we offer.

Mr. Merrey. Is that your position?

Mr. Minard. That is the evidence.

Mr. Merrey. Do you take that position or intend to show by others it will take longer?

Mr. Minard. We aren't through with this testimony.

Mr. Merrey. I may shorten things.

Commissioner Donges. What Mr. Merrey asks is whether, on the estimate of Mr. Falconer as to the length of time likely to be required, you are willing to rest that phase of this case. 20

Mr. Minard. I don't know of any other testimony to the contrary than that at the present time.

Mr. Merrey. We will consent, if the commission feels like making this order, that a year is a reasonable time to prepare their plans for the whole work and three years for the first section. We think that is about as fast as the Erie could be expected to do that work. Other roads might do it quicker. 30

Commissioner Donges. As far as the time is concerned, you are willing to rely on this testimony?

Mr. Merrey. Yes; a year for the plans and three years for the first section, and the time mentioned in the others.

Commissioner Donges. That relieves you of any other testimony on that point. 40

Robert C. Falconer, direct.

Mr. Minard. No, we have testimony to show what section should be done first.

Mr. Merrey. What section do you want done first?

Mr. Minard. Our evidence will show that.

Mr. Merrey. Section A ought to be done first.

10 *Mr. Minard.* Our position is this: If an order is made as indicated by this report it ought not to be like the butt end of the corn put in the sheller first; it ought to be the little end, so we can start the work and carry it through. The most favorable condition under which we could start would be beginning with the small end of the proposition first.

Mr. Merrey. That is, from the financial end of it.

20 *Mr. Minard.* Certainly. Obviously from the financial end of it. If the commission is inclined to make the order as indicated, we certainly don't want to choke to death on the first dose.

Commissioner Donges. My recollection of Mr. Brameld's testimony was when he stated this work might be done in sections, but the work ought to be done beginning with Section A first. He gave the designations of the sections in accordance with his judgment.

Mr. Minard. I presume he gave them—

30 *Commissioner Donges.* He gave the order the work should be done, beginning with Section A.

Mr. Minard. From an engineering standpoint. We are discussing it from a financial standpoint now.

Mr. Merrey. Considering it from the standpoint of danger, Section A is certainly the most dangerous. Section E there isn't so much danger.

40 *Mr. Minard.* That may be true it is not so dangerous. With all due respect to the danger at the crossings we have got to do the things we can and not the things we can't do.

Robert C. Falconer, direct.

Commissioner Donges. You have already submitted your testimony on the financial side of the case.

Mr. Minard. Surely.

Commissioner Donges. The single question that the board wanted the parties interested to be heard on to-day is how long a time will be required to do the work on each of these sections. 10

Mr. Minard. That question will depend very largely in the beginning—

Commissioner Donges. If you have no money you will never begin; we will take that to be true; you needn't prove that; if you never get the money you will never do the work.

Mr. Minard. Sometimes you can get a smaller amount when you can't get a bigger.

Commissioner Donges. Is that all?

Q In your judgment, which of the sections, if an order is made and the burden of the expense falls on the company, which of the sections ought to be done first? 20

Mr. Merrey. From a financial or an engineering standpoint?

Mr. Minard. From the only standpoint which makes it possible to do any of them.

A In my opinion Section D, involving the Madison avenue elimination only. This section is not affected by any work on any of the other sections, the expense is the lightest, and it will furnish at least some relief to the City of Paterson, and it is the section which the railroad company can nearest afford to undertake. 30

Q Now, in your judgment what is the next section in order?

A Well, I think that either section B, I think it is, involving the River street crossing—

Q I will give you a diagram and you can refresh your recollection (handing witness diagram). 40

Robert C. Falconer, direct.

A Yes; Section B, involving the Keen, Warren and River street, or Section C, from Straight to Market street, either one of these could be undertaken.

Q Then whatever of Section C or B is done first or second, then the next one ought to be third?

A I think so. I think it will work out perfectly feasible in that.

10 Q (*By Commissioner Donges.*) Which one do you say?

A The other one, either B or C, whatever you took first, the other should be second.

Q You think either could be second?

A I think so. I don't see now any practical difficulty of taking either first.

Q (*By Mr. Minard.*) When you say practical difference between them, from what standpoint do you mention that practical difference?

20 A From an engineering standpoint. There is a difference in the cost, and considering the difference in the cost it would be preferable to undertake Section B before you undertake Section C.

Q Now then, you would then— Your notion would be to take Section A last then?

A Yes.

Q Section A would be the fourth one and last section to be done?

A Yes.

30 Q Is that entirely practical from an engineering standpoint, that arrangement?

A Yes.

Q (*By Commissioner Donges.*) Have you taken them in the order in which the burden would fall lightest on the company?

A Yes.

Q Section D, the cost is \$319,000 odd, according to the Erie Railroad estimate; and Section B, \$491,000; Section C, \$652,000; and Section A, \$1,666,000?

40 A Yes.

Robert C. Falconer, cross.

Mr. Minard. Pardon me; the estimate of Madison avenue, according to the city's plan it would be still lower, this plan as substituted.

Commissioner Donges. Yes, it would be \$192,000.

Mr. Minard. Yes.

Commissioner Donges. No, I think \$127,000.

Mr. Minard. Whatever the amount is. 10

Commissioner Donges. It is a saving of \$192,000. On Section B, \$339,000, as shown on Schedule D.

Cross examination by Mr. Merrey.

Q Section D is entirely independent of the rest of the work, isn't it?

A Yes.

Q How long would it take you to prepare a plan for that work and have it actually constructed? 20

A Actually constructed?

Q Yes.

A To prepare the plan—make surveys, prepare the plan and construct it would take, depending on the time of year when we began our survey, would take from a year to sixteen months.

Q If you had the money you could do it in a year without any trouble?

A It would depend on the time of the year we started to make the survey. If we got our survey and plan done in the middle or beginning of the winter we would have to wait until next spring to do the construction work and then lose four months of winter. If we got the preparing of the plan done and the contracts let, ready to begin work at the beginning of the season, then we would do it in a shorter time. The season of the year makes a difference in the estimate of time. 30

Q You could do it in less than a year? 40

Robert C. Falconer, cross.

A I don't think we could. I am satisfied we wouldn't do it in less than a year.

Q What would prevent you making surveys now, in this weather?

A We have to locate all those property lines with extreme accuracy and I can't say we have surveys of Paterson which show any property lines, even on our right of way.

Commissioner Donges. I can't hear.

Witness. Our maps of Paterson—

Mr. Minard. A little louder.

Witness. Our surveys of Paterson, this part of the line, are very old and they are very incomplete. We can't say with any accuracy even our own right of way line or our own tracks, and before any work can be started, it will be necessary to make an accurate survey showing not only our own right of way line, track, buildings, everything, but also with equal accuracy the dividing lines and the street lines of all property within the zone lines to be affected.

Q How long would that take you?

A It depends altogether on the condition of the city records and whether we can locate the city records to give us that information.

Q Suppose the city engineer was to give you that information to-morrow; you would have some time?

A We would still have to trace it out on the ground and check the survey. We found in many instances that the city maps are not correct, any more than our own. It is the actual distance we want, not what they ought to be.

Q What city maps do you refer to?

A I haven't any in mind, but in many cases the city maps are not correct.

Q You mean maps made by private individuals?

Robert C. Falconer, cross.

A No, I mean city tracings furnished by the city engineer's office, which give the widths of the various lots and the lengths of the blocks, and you couldn't measure them on the ground and make them agree with the map.

Q You mean in this case?

A No, I don't know anything about Paterson. I don't know anything about how good your records are in Paterson. 10

A I simply say if we could get the information we would still have to check it and locate those points.

Q Why is it necessary for you to locate property lines?

A Because they are affected by the construction work. The damages are affected. We must know whether or not we are encroaching on property; we must know where the street lines are in order to build the sidewalks and sidewalks and curbs. We can't build hit or miss. 20

Q You don't know whether that information is all on the ground or not?

A No, I don't know anything about it.

Q You are making your statement if there is no information there you will have to get it yourself?

A We will have to get it, yes; we will have to make the survey. We are making a survey of Youngstown, checking with the city engineer, and the city engineer is changing his plans to agree with our survey, because he admits his own plans are wrong, his maps. 30

Q All other sections are connected together, are they not, really part of one project?

A Yes, in the sense they are connected together in that they—in that if done separately they will overlap.

Q Have you considered whether you could start Section B ahead of Section A?

A Yes. 40

Discussion.

Q The estimates that were given to the commission were not based on that idea, were they?

A No—I am not quite sure about that. I didn't make the estimate personally. I prefer not to answer that question.

Q All the important crossings are embraced in Section A, are they not, the ones used most?

10 A River street is a very important crossing. That is not in Section A.

Q That is in Section B?

Mr. Merrey. That is all.

Mr. Minard. That is all.

Mr. Hobart. If the commission please, in view of the city's consent, it will take eight years to do this, we don't care to submit further evidence on that point. It seems unnecessary; but we do desire to call the commission's attention to our position that none of the
20 work should be ordered done at this time in view of the situation shown in the petition already presented this morning and especially paragraph seven, and we say no work should be started for at least a year to see where we are coming out in these terrible times of financial depression. If the commission wants, we are prepared to-day to offer evidence in support of this part of the petition, supplemental to the evidence on the same subject which is already before the commission. If the board should, however, finally
30 decide that all work be started at once, the plans prepared and the work started, and so on, then we would like to have the board consider further the question whether the board wants all the work done or would order some portion done and then reserve the future decision whether the following sections shall or not be done, as circumstances develop.

Commissioner Donges. You mean one section be done within the time to be fixed that the time within which the next section be taken up, be deferred?

40 *Mr. Hobart.* Yes.

Discussion.

Commissioner Douglas. Consideration of that question be deferred until some future time?

Mr. Hobart. Yes.

Mr. Merrey. When I said I would consent to the time mentioned, nobody considered doing anything else but Section A first; in fact, I don't see how the commission could consider anything else. Section A is the heart of this work; it includes the important crossings. That is the work we are really anxious to have done; there is nothing outside—perhaps with the exception of the River street crossing—we would be willing to wait until a year from now, and they would have eight years to do that. Something may develop in that time. It seems to me the order should go for the entire work, Section A first. They will have to spend very little money in this first year. All they will have to spend is for the cost of preparing these plans, which is not very great. They say in this petition they don't expect to make as much money this year as last. Of course, I notice in the newspapers they are doing a little better this year than last. We realise this is a year of depression. It can't last forever. The experience has been in the past years these periods of depression pass away. It is certain within a year or so times are going to change; this railroad is going to have money. If something should happen between now and a year the commission could take care of it. I think the order ought to go to prepare their plans within a year and they be prepared to go ahead with the first section for the three years thereafter and then they start—

Commissioner Treacy. Go ahead and complete it.

Mr. Merrey. Go ahead and complete it, four years have it completed.

Commissioner Douglas. In other words, adopt Mr. Falconer's suggestion as to time?

Mr. Merrey. We submit that. We don't concede to this bridging charge.

Discussion.

Commissioner Donges. Madison avenue?

Mr. Merrey. Madison avenue, and the street at the present time is not used as extensively as the other crossings. Madison avenue is going to be used in the future. It will develop, in six years probably there will be a great deal more necessary than there is now, because the city is growing that way.

10 *Commissioner Donges.* Is there anything further?

Mr. Hobart. I think I have already stated if the commission desires further consideration on the question, I am not asking for delay.

Commissioner Donges. On the question of finances?

Mr. Hobart. Yes.

20 *Commissioner Donges.* The board is of the opinion opportunity was afforded you to present your testimony fully on that point and the only question the board desired to hear you to-day was on the question of time.

Mr. Hobart. Yes, the question of time depends in a sense on the financial ability; there have been changes in other matters which come in since the last testimony.

Commissioner Donges. The question of the time is the question of what time you can do the physical part of the work in.

Mr. Hobart. Of course, the petition is on file.

30 *Commissioner Donges.* The board will consider that.

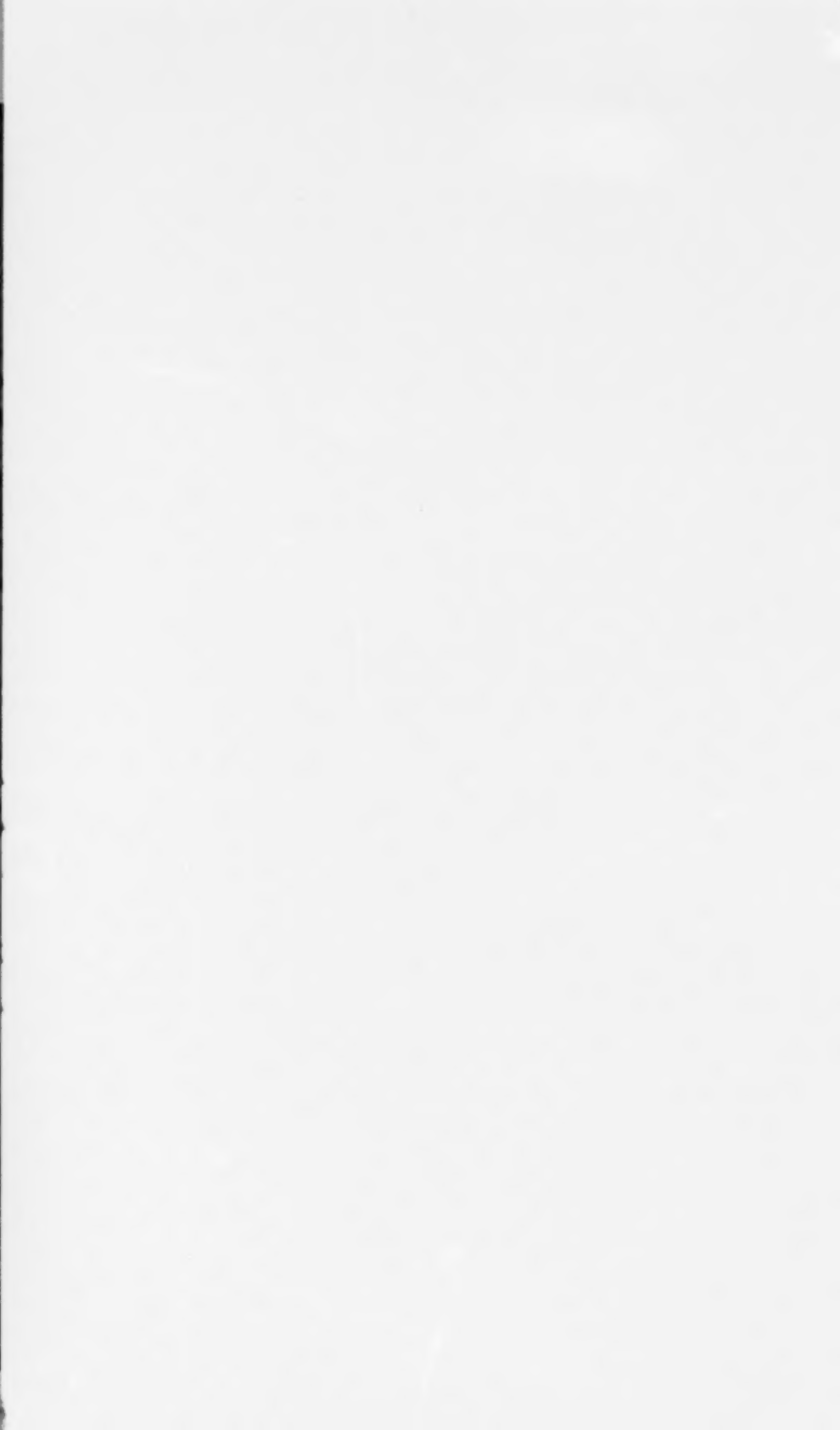
Mr. Hobart. I was going to ask the board's consideration that if there should develop any matter therein that the board desired testimony on we are prepared at any time or any place to go ahead. We are prepared to-day.

Commissioner Donges. The board will consider that, but limits the taking of testimony to-day to the single point.

Mr. Merrey. Are you through?

40 *Commissioner Donges.* Is that all?

Mr. Hobart. I think that is all.



REPORT OF THE BOARD OF EXAMINERS

IN THE MATTER OF THE ESTATE OF JAMES A. HARRIS, DECEASED.

NAME OF THE DECEASED	NAME OF THE ESTATE	NAME OF THE ESTATE
JAMES A. HARRIS	JAMES A. HARRIS	JAMES A. HARRIS
JAMES A. HARRIS	JAMES A. HARRIS	JAMES A. HARRIS
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JAMES A. HARRIS	JAMES A. HARRIS	JAMES A. HARRIS

IN THE MATTER OF THE ESTATE OF JAMES A. HARRIS, DECEASED.

VOLUME TWO EXHIBITS (Pages 100 to 127)

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- COLLINS & COBBIN**
Attorneys at Law, New York City, and Western
Union Telegraph Company.
- FRANK BERGER**
Attorney at Law, New York City, and Western
Union Telegraph Company.
- HUMPHREYS & HUMPHREYS**
Attorneys at Law, New York City, and Western
Union Telegraph Company.
- JOHNSON & JOHNSON**
Attorneys at Law, New York City, and Western
Union Telegraph Company.
- EDWARD HERRMANN**
Attorney at Law, New York City, and Western
Union Telegraph Company.
- FRANK H. SOMMER**
Attorney at Law, New York City, and Western
Union Telegraph Company.
- CHARLES SCOTT**
Attorney at Law, New York City, and Western
Union Telegraph Company.
- WILLIAM J. LEWIS**
Attorney at Law, New York City, and Western
Union Telegraph Company.

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R-121	E. R. R. Co., estimate of revenue which will be obtained from increases already granted in Cen. F. A. territory. This will include the few in trunk line terri- tory which the Commission permitted to be made in order to make effective the increase in C. F. A. territory— based on the fiscal year ended June 30, 1914	675	1545
R-122	E. R. R. Co., estimate of revenue which will accrue to E. R. R. Co. from ex- tension to trunk line territory of in- creases in rates granted to C. F. A. territory by the Commission in its re- port—based on fiscal year ended June 30, 1914	680	1545
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R-126	Statement entitled "Erie Railroad Com- pany, statement showing amounts in- cluded in Income Account of E. R. R. Co., derived from Pennsylvania Coal Co., as dividends for years ending June 30th"	700	1577
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PSR-3	Statement of comparison between costs as estimated by the P. S. R. Co., City of Paterson, and the E. R. R. Co.....	637	1413
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EXHIBITS.

P-1

Blue print entitled "Map showing grade crossings of the Erie R. R. dated Oct. 1913, H. J. Harder, City Engr." (Key Map)

The following are maps of subdivisions of P-1:

P-1-A

Madison Avenue

P-1-B

Straight and Clay Streets

P-1-C

Cedar Street

P-1-D

Market Street

P-1-E

Ellison Street

P-1-F

Van Houten Street

P-1-G

Broadway

P-1-H

Fair Street

P-1-I

Hamilton Avenue

P-1-J

Lafayette Street

P-1-K

Franklin Street

Exhibits P-2—P-3.

P-1-L

Keen Street

P-1-M

Warren Street

P-1-N

River and Putnam Streets

P-2

Blue print entitled "Profile of Main Line from Carlton Hill to Hawthorne, March 1907, Office of Engineer of Grade Crossings."

P-3

Blue print entitled "Erie Railroad Co. Map showing track facilities at Paterson, N. J., March 1903."

Exhibit P-4.

EXHIBIT P-4.

SUMMARY.

Oct. 4, 1913.

Between hours of 5 A. M. and 11 P. M.

Location	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
Clay St.	6342	....	907	198	123	181	104	12	99
Market St.	34517	593	1901	1700	827	207	104	13	47
Broadway	9410	607	395	602	169	150	103	14	26
River St.	8947	252	1015	427	351	137	104	13	31
Total	59216	1452	4218	3927	1470	675	415	52	203

CLAY STREET.

Oct. 4, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
5 to 7 A. M.	1675	....	30	7	10	10	10	4	2	
7 to 9 A. M.	287	....	135	31	10 of order	Gates out	15	1	18	
9 to 11 A. M.	228	....	142	27	20	18	10	1	9	
11 A. M. to 1 P. M.	1080	....	108	36	31	16	9	2	12	
1 to 2 P. M.	235	....	64	10	7	18	6	2	11	
2 to 4 P. M.	525	....	126	37	18	20	14	..	7	
4 to 6 P. M.	682	....	135	19	17	39	11	..	21	
6 to 8 P. M.	790	....	90	23	8	28	15	..	8	
8 to 11 P. M.	840	....	77	28	12	32	14	2	11	
Total	6342	....	907	198	123	181	104	12	99	

Exhibit P-4.

EXHIBIT P-4 (Continued).

MARKET STREET.

Oct. 4, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
5 to 7.20 A. M.	1050	17	76	8	14	10	3	3	2	2 horses, 1 handcar.
	1427	17	96	14	68	14	8	3	3	2 horses, 3 motorcycles.
7.20 to 9 A. M.	1140	24	104	75	28	8	4	..	..	2 handcars.
	962	23	139	53	40	10	9	..	..	"
	1100	39	185	148	59	11	4	..	3	1 handcar.
9 to 11 A. M.	332	31	167	109	54	11	5	1	4	
	1485	43	133	172	83	9	..	..	4	
11 A. M. to 1 P. M.	2231	23	168	126	102	10	4	..	4	
	735	24	78	42	31	11	5	1	..	1 handcar.
1 to 2 P. M.	820	11	78	41	59	6	3	..	5	1 handcar.
	2265	56	195	173	56	20	7	1	2	
2 to 4 P. M.	2075	28	124	71	61	14	7	1	5	
	3020	59	128	203	43	16	8	..	2	
4 to 6 P. M.	2575	24	62	83	62	9	4	..	3	
	2330	48	60	107	8	17	7	..	2	Two checkers worked at this crossing.
6 to 8 P. M.	3270	32	32	45	18	10	8	1	4	
	3860	70	41	155	15	13	7	1	1	
8 to 11 P. M.	3840	34	31	72	27	8	6	1	1	
Total	34517	593	1901	1700	827	207	104	13	47	

Exhibit P-4.

BROADWAY.

Oct. 4, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
5 to 7 A. M.	329	32	28	6	11	14	9	4	2	
7 to 9 A. M.	641	64	59	43	14	27	16	3	7	
9 to 11 A. M.	732	73	77	83	23	18	9	1	3	
11 A. M. to 1 P. M.	938	68	63	97	31	14	7	2	5	
1 to 2 P. M.	384	32	18	28	11	12	8	2	2	
2 to 4 P. M.	1356	79	41	100	26	20	14	..	4	
4 to 6 P. M.	1350	82	41	126	36	15	12	..	2	
6 to 8 P. M.	1590	76	37	58	14	15	15	..	1	
8 to 11 P. M.	2070	102	32	61	13	15	13	2	..	
Total	9410	607	395	602	169	150	103	14	26	

RIVER STREET.

Oct. 4, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
5 to 7 A. M.	1092	12	65	11	27	13	10	3	2	
7 to 9 A. M.	681	23	129	24	30	23	13	1	3	
9 to 11 A. M.	628	26	186	57	32	15	9	1	8	
11 A. M. to 1 P. M.	1287	29	160	83	78	11	8	2	1	
1 to 2 P. M.	421	16	61	25	34	8	9	3	1	
2 to 4 P. M.	867	35	144	57	56	20	15	1	5	
4 to 6 P. M.	1110	35	159	64	57	19	13	..	8	
6 to 8 P. M.	1646	34	69	53	21	15	16	..	1	
8 to 11 P. M.	1215	42	42	53	16	13	12	2	..	
Total	8047	252	1015	427	351	137	104	13	31	

Exhibit P-5.

EXHIBIT P-5.

SUMMARY.

Oct. 6, 1913.

Between hours of 5 A. M. and 11 P. M.

Location	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
Clay St.	5040	....	835	238	120	207	103	11	06
Market St.	27699	592	1750	1555	798	188	103	19	39
Broadway	7166	597	364	433	119	116	104	0	9
River St.	6857	225	1017	337	298	129	106	11	39
Total	46762	1414	3966	2563	1335	640	416	50	183

CLAY STREET.

Oct. 6, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
3 to 7 A. M.	1040	....	54	5	18	26	15	2	9	
7 to 9 A. M.	270	....	108	15	15	15	14	..	1	
9 to 11 A. M.	250	....	141	40	7	10	8	..	3	
11 A. M. to 1 P. M.	1100	....	133	50	32	26	12	..	14	
1 to 2 P. M.	90	....	33	11	1	13	1	1	11	
2 to 4 P. M.	342	....	148	28	11	21	8	1	12	
4 to 6 P. M.	525	....	164	50	9	42	15	1	29	
6 to 8 P. M.	1018	....	43	28	13	21	17	1	3	
8 to 11 P. M.	425	....	11	10	14	33	13	5	15	
Total	5040	....	835	238	120	207	103	11	96	

EXHIBIT P-5 (Continued).

MARKET STREET.

Oct. 6, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
5 to 7 A. M.	935	18	40	5	7	5	2	1	..	
	1284	14	37	9	44	8	9	..	..
7 to 9 A. M.	1813	26	136	87	64	13	5	2	1	
	1418	25	174	71	58	10	11	..	..
9 to 11 A. M.	1000	40	155	131	39	14	6	..	8	
	786	23	185	84	33	9	4	1	3	
	1970	47	51	164	114	12	5	..	3	
11 A. M. to 1 P. M.	1898	24	107	112	102	7	4	1	1	
	700	24	63	69	36	3	1	1	..	
1 to 2 P. M.	640	14	89	44	42	4	3	..	4	
	1230	25	99	52	40	8	4	1	6	
2 to 4 P. M.	1485	54	235	163	54	11	4	..	3	
	2120	57	193	197	53	20	9	..	1	
4 to 6 P. M.	1510	30	63	78	45	9	6	..	4	
	2390	59	64	110	20	23	11	..	1	
6 to 8 P. M.	2540	20	28	42	32	9	6	1	3	
	1980	52	17	105	6	14	7	..	..
8 to 11 P. M.	2000	28	13	30	10	10	6	11	1	
Total	27699	502	1750	1535	798	186	103	19	30	Two checkers working at this crossing.

EXHIBIT P-5 (Continued).

BROADWAY.

Oct. 6, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
5 to 7 A. M.	381	34	18	3	7	13	12	..	..
7 to 9 A. M.	585	68	70	46	23	19	17	3	..	
9 to 11 A. M.	513	68	68	51	9	14	8	1	4	
11 A. M. to 1 P. M.	760	70	60	71	22	11	9	..	2	
1 to 2 P. M.	334	34	23	29	9	6	4	1	1	
2 to 4 P. M.	780	89	36	81	11	9	9	1	..	
4 to 6 P. M.	990	81	82	82	21	15	13	..	2	
6 to 8 P. M.	1470	72	17	39	13	17	19	1	..	
8 to 11 P. M.	1363	90	8	31	4	14	13	2	..	
Total	7166	597	364	433	119	116	104	9	9	

RIVER STREET.

Oct. 6, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
5 to 7 A. M.	1273	15	53	6	39	13	12	1	..	
7 to 9 A. M.	822	27	120	43	44	12	16	2	1	
9 to 11 A. M.	310	26	179	53	23	15	8	1	12	
11 A. M. to 1 P. M.	1138	25	151	45	70	16	11	..	5	
1 to 2 P. M.	224	13	62	18	3	7	3	1	4	
2 to 4 P. M.	390	27	186	74	23	14	8	1	14	
4 to 6 P. M.	590	25	194	42	46	17	15	3	3	
6 to 8 P. M.	1320	36	63	33	41	20	20	1	..	
8 to 11 P. M.	590	31	9	24	16	14	13	3	..	
Total	6857	235	1017	337	298	129	108	11	36	

EXHIBIT P-6.

SUMMARY.

Oct. 7, 1913.

Between hours of 5 A. M. and 11 P. M.

Location	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
Market St.	24230	562	1734	1205	623	196	104	9	46
River St.	6932	213	906	291	369	141	104	11	26
Total	31152	774	2640	1496	993	337	208	20	72

EXHIBIT P-6 (Continued).

MARKET STREET.

Oct. 7, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Automobiles	Bicycles	Cars Driven	Freight Trains	Freight Trains	Drill Engines	Remarks
8 to 9 A. M.	1279	19	70	17	50	13	8	..	3	
	923	15	46	5	13	12	3	2	5	
9 to 10 A. M.	1880	41	160	81	41	12	5	1	1	
	1176	23	155	50	58	12	12	..	..
	815	39	178	108	24	11	5	..	..
10 to 11 A. M.	917	36	159	106	27	4	5	..	1	
	1720	40	104	123	63	13	5	1	1	
11 A. M. to 1 P. M.	2041	24	129	95	80	5	2	2	4	
	710	22	74	66	24	4	1	..	..
	619	13	61	48	27	3	3	..	..
1 to 2 P. M.	1080	25	89	44	39	9	9	..	3	
	1040	52	191	123	43	14	9	..	3	
3 to 4 P. M.	1565	23	58	40	45	11	4	2	5	
	1743	57	166	155	41	15	5	..	3	
4 to 6 P. M.	2370	23	21	13	24	11	11	..	4	
	1943	48	45	58	18	23	11	..	1	
6 to 8 P. M.	1240	48	8	40	4	14	6	..	1	
	1210	25	11	22	2	10	6	1	3	
8 to 11 P. M.	24220	162	1734	1305	623	195	104	9	46	
Total										

Two checkers working at this crossing.

EXHIBIT P-6 (Continued)

RIVER STREET.

Oct. 7, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Cats Down	Passenger Trains	Freight Trains	Drill Engines	Remarks
3 to 7 A. M.	1248	15	77	8	37	16	11	1	9	
7 to 9 A. M.	779	25	142	35	37	23	17	1	8	
9 to 11 A. M.	316	25	149	43	9	16	9		20	
11 A. M. to 1 P. M.	1081	21	127	37	60	13	13	1	1	
1 to 2 P. M.	178	10	56	23	8	4	2		2	
2 to 4 P. M.	410	28	154	34	46	17	8	1	9	
4 to 6 P. M.	850	30	153	36	43	15	11	5	1	
6 to 8 P. M.	1580	29	50	17	31	24	23			
8 to 11 P. M.	450	29	6	19	4	14	11	2		
Total	6032	212	906	291	290	141	104	11	36	

Exhibits P-7—P-8 to P-32—P-33.

EXHIBIT P-7.

Marked, afterwards excluded (see p. 77).

EXHIBITS P-8 to P-32.

Counts at Market street—summarized in P-4, P-5 and P-6

EXHIBIT P-23.

FRIE RAILROAD GRADE CROSSING.

Report of Traffic Inspector

April 8, 1913.

Keen Street Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	36
Trains westbound	18
Automobiles	11
Wagons	65
Pedestrians	531

April 9, 1913.

Warren Street Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	32
Trains westbound	21
Automobiles	18
Wagons	46
Pedestrians	500

April 7, 1913.

Franklin Street Crossing—from 6 A. M. to 12.30 P. M.

Trains eastbound	38
Westbound	23
Automobiles	6
Wagons	43
Pedestrians	582

April 10, 1913.

Fifth Avenue Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	33
Trains westbound	28
Automobiles	21
Wagons	111
Pedestrians	568

Inspector—John Flynn.

Exhibit P-34.

EXHIBIT P-34.
ERIE RAILROAD GRADE CROSSING.
Report of Traffic Inspector.

March 22, 1913.

Madison Ave. Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	18
Trains westbound	12
Automobiles	84
Wagons	222
Pedestrians	857

March 24, 1913.

Straight St. Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	37
Trains westbound	34
Automobiles	30
Wagons	115
Pedestrians	1377

March 25, 1913.

Clay St. Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	41
Trains westbound	32
Automobiles	23
Wagons	174
Pedestrians	1650

March 26, 1913.

Cedar St. Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	33
Trains westbound	35
Automobiles	16
Wagons	251
Pedestrians	1807

March 28, 1913.

Market St. Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	
Trains westbound	
Automobiles	415
Wagons	942
Pedestrians	

*Exhibit P-34.***March 29, 1913.****Ellison St. Crossing—from 6 A. M. to 12.30 P. M.:**

Trains eastbound	41
Trains westbound	17
Automobiles	55
Wagons	337
Pedestrians	1830

March 31, 1913.**Van Houten St. Crossing—from 6 A. M. to 12.30 P. M.**

Trains eastbound	29
Trains westbound	17
Automobiles	105
Wagons	348
Pedestrians	1862

April 1, 1913.**Broadway Crossing—from 6 A. M. to 12.30 P. M.:**

Trains eastbound	27
Trains westbound	15
Automobiles	144
Wagons	184
Pedestrians	3112

April 2, 1913.**Fair St. Crossing—from 6 A. M. to 12.30 P. M.:**

Trains eastbound	28
Trains westbound	17
Automobiles	24
Wagons	93
Pedestrians	729

April 3, 1913.**Hamilton Ave. Crossing—from 6 A. M. to 12.30 P. M.:**

Trains eastbound	26
Trains westbound	16
Automobiles	226
Pedestrians	1464

Exhibit P-35.

April 4, 1913.

River St. Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	32
Trains westbound	21
Automobiles	132
Wagons	292
Trolley Cars	77
“ “ Passengers	970
Pedestrians	4706

April 5, 1913.

Lafayette St. Crossing—from 6 A. M. to 12.30 P. M.:

Trains eastbound	31
Trains westbound	12
Automobiles	18
Wagons	188
Pedestrians	2440

Inspector—Wm. Dunlevy.

EXHIBIT P-35.

ERIE RAILROAD GRADE CROSSING.

Report of Traffic Inspector.

March 27th, 1913.

Market St. Crossing (West Side)—from 12.30 P. M.
to 7. P. M.:

Pedestrians	5318
-------------------	------

March 28th.

Pedestrians	6676
-------------------	------

April 7, 1913.

Franklin St. Crossing—12.30 to 7 P. M.:

Pedestrians	606
Automobiles	1
Wagons	48
Trains eastbound	26
Trains westbound	33

Exhibit P-36.

April 8, 1913.

Keen St. Crossing—12.30 to 7 P. M.:

Pedestrians	836
Automobiles	17
Wagons	66
Trains eastbound	24
Trains westbound	35

April 9, 1913.

Warren St. Crossing—12.30 to 7 P. M.:

Pedestrians	960
Automobiles	30
Wagons	69
Trains eastbound	25
Trains westbound	32

April 10, 1913.

Fifth Ave. Crossing—12.30 to 7 P. M.:

Pedestrians	766
Automobiles	17
Wagons	85
Trains eastbound	26
Trains westbound	37

Inspector—M. J. O'Rourke.

EXHIBIT P-36.

ERIE RAILROAD GRADE CROSSING.

Report of Traffic Inspector.

March 22, 1913.

Madison Ave. Crossing—from 12.30 to 7. P. M.:

Trains eastbound	20
Trains westbound	23
Automobiles	152
Wagons	259
Pedestrians	1291

*Exhibit P-36.***March 24, 1913.****Straight St. Crossing—from 12.30 to 7 P. M.:**

Trains eastbound	38
Trains westbound	44
Automobiles	51
Wagons	107
Pedestrians	1111

March 25, 1913.**Clay St. Crossing—from 12.30 to 7 P. M.:**

Trains eastbound	42
Trains westbound	44
Automobiles	18
Wagons	140
Pedestrians	1594

March 26, 1913.**Cedar St. Crossing—from 12.30 to 7 P. M.:**

Trains eastbound	38
Trains westbound	40
Automobiles	10
Wagons	176
Pedestrians	1344

March 28, 1913.**Market St. Crossing—from 12.30 to 7 P. M.:**

Trains eastbound	
Trains westbound	
Automobiles	636
Wagons	905
Pedestrians	

March 29, 1913.**Ellison St. Crossing—from 12.30 to 7 P. M.:**

Trains eastbound	24
Trains westbound	33
Automobiles	27
Wagons	187
Pedestrians	1992

Exhibit P-36.

March 31, 1913.

Van Houten St. Crossing—from 12.30 to 7 P. M.:

Trains eastbound	22
Trains westbound	29
Automobiles	168
Wagons	202
Pedestrians	1546

April 1, 1913.

Broadway Crossing—from 12.30 to 7 P. M.:

Trains eastbound	24
Trains westbound	31
Automobiles	144
Wagons	161
Pedestrians	3069

April 2, 1913.

Fair St. Crossing—from 12.30 P. M. to 7 P. M.:

Trains eastbound	19
Trains westbound	24
Automobiles	23
Wagons	68
Pedestrians	637

April 3, 1913.

Hamilton Ave. Crossing—from 12.30 to 7 P. M.:

Trains eastbound	19
Trains westbound	29
Automobiles	68
Wagons	207
Pedestrians	1794

April 4, 1913.

River St. Crossing—from 12.30 to 7 P. M.:

Trains eastbound	23
Trains westbound	32
Automobiles	147
Wagons	464
Trolley cars	78
Trolley cars—passengers	1591
Pedestrians	6207

Exhibit P-36.

April 5, 1913.

Lafayette St. Crossing—from 12.30 to 7 P. M.:

Trains eastbound	20
Trains westbound	23
Automobiles	17
Wagons	139
Pedestrians	2171

Inspector—John Kane.

Thursday March 27, 1913.

From 12.30 to 7 P. M.:

Amount of people that crossed The Erie Railroad Crossing on west side of Market Street	5318
--	------

Friday March 28, 1913.

Amount of people that crossed The Erie Railroad Crossing on West Side of Market Street	6076
--	------

April 7, 1913.

Franklin St., Crossing Erie Railroad:

606 People	
1 Automobile	
48 Wagons	
26 Trains Coming East	From 12.30 to 7 P. M.
33 Trains Going West	

April 8, 1913.

Keen St., Crossing Erie Railroad:

836 People	
17 Automobiles	
66 Wagons	From 12.30 to 7 P. M.
24 Trains Coming East	
35 Trains Going West	

April 9, 1913.

Warren St., Crossing Erie Railroad:

960 People	
30 Autoes	
69 Wagons	
25 Trains Coming East	From 12.30 to 7 P. M.
32 Trains Going West	

Exhibit P-36.

April 10, 1913.

5th Avenue Crossing, Erie Railroad:

766 People

17 Autos

85 Wagons From 12.30 to 7 P. M.

26 Trains Coming East

37 Trains Going West

Michael J. O'Rourke.

Monday April 7, 1913.

Franklin St. Crossing:

606 People Crossed

1 Automobile

48 Wagons

26 Trains Coming East

33 Trains Going West

Tuesday, April 8, 1913.

Keen St. Crossing:

836 People Crossed

17 Automobiles

66 Wagons

24 Trains Coming East

35 Trains Going West

Wednesday April 9, 1913.

Warren St. Crossing:

960 People Crossed

30 Autos

69 Wagons

25 Trains Coming East

32 Trains Going West

Michael J. O'Rourke.

Thursday April 10, 1913.

5th Avenue Crossing:

766 People Crossed

17 Autos

85 Wagons

Exhibits P-36½ to P-41.

5th Avenue Crossing—(Continued).

26 Trains Coming East

32 Trains Going West

M. J. O'Rourke

Report

From 12.30 to 7 P. M.

EXHIBIT P-36½.

Counts at Clay street—summarized in P-4, P-5 and P-6.

EXHIBIT P-37.

Counts at Market street—summarized in P-4, P-5 and P-6.

EXHIBIT P-38.

Counts at Broadway—summarized in P-4, P-5 and P-6.

EXHIBIT P-39.

Counts at River street—summarized in P-4, P-5 and P-6.

EXHIBIT P-40.

Blue print entitled "Map showing grade crossings of the Erie R. R. October 1913, H. J. Harder, C. E."

EXHIBIT P-41.

Blue print entitled "City of Paterson, N. J., H. J. Harder, C. E. 1913."

*Exhibit P-42.***EXHIBIT P-42. VALUATIONS.****Sheet No. 1—Map 90, Ward 11.****Block bounded by Railway, Crooks, Wabash and Knickerbocker Avenues.**

Lot No.	Assessed to	Land	Building	Total
Railway Avenue				
307-311	H. Tries	\$1,600	\$2,000	\$3,600
303-306	Maud J. Allen.....	600		600
300-304	I. N. Miller.....	1,600		1,600
Crooks Ave.				
245-251	U. S. Varnished Tile Co.....	1,200	18,500	19,700
253-259	Realty & Commercial Co.....	1,000		1,000
Wabash Ave.				
376-382	Realty & Commercial Co.....	600		600
Knickerbocker Ave.				
246-248	U. S. Varnished Tile Co.....	400		400
250-252	Est. Sarah Hewes	400	1,200	1,600
254-264	Realty & Commercial Co.....	900		900

Sheet No. 2—Map 90, Ward 11.**Block bounded by Railway, Knickerbocker, Lake and Dundee Avenues.**

Lot No.	Assessed to	Land	Building	Total
Railway Avenue				
295	I. N. Miller.....	\$ 400	\$2,300	\$2,700
288-294	Margaret B. Miller.....	2,150	1,000	3,150
284-287	Charles Handscheck	1,250	450	1,700
Dundee Ave.				
26-28	Mrs. Lena Funk.....	400	1,500	1,900
Lake Ave.				
2-8	J. H. Kuhn.....	1,050	1,400	2,450
10-12	C. T. Dumotz.....	500	1,400	1,900
14-16	Esther A. Meeker.....	500	1,250	1,750
18-24	Margaret B. Miller.....	1,050	3,000	4,050

Sheet No. 3—Map 90, Ward 11.**Block bounded by Railway, Dundee, Lehigh and Buffalo Avenues.**

Lot No.	Assessed to	Land	Building	Total
Railway Avenue				
268-273	Bamford Brothers	\$1,380		\$1,380
274-279	Walter Bamford	1,350		1,350
Dundee Ave.				
17-27	Walter Bamford	1,200		1,200
29-31	Realty & Commercial Co.....	400		400
Buffalo Ave.				
232-246	Bamford Brothers	1,200		1,200
248-250	Realty & Commercial Co.....	300		300

Exhibit P-42.

Sheet No. 4—Map 86, Ward 11.

Block bounded by Railway, Michigan and Pennsylvania Avenues.

Lot No.	Assessed to	Land	Building	Total
Penna Ave.				
284-310	Realty & Commercial Co.....	\$1,800		\$1,800
Michigan Ave.				
136	Citizens Land Co.....	150		150
138	S. Valentino	150		150
140-146	Citizens Land Co.....	600		600

Block bounded by Pennsylvania, Michigan, Columbia and Buffalo Avenues.

Pennsylvania Ave.				
283	Logan Hodge	200		200
285	William Campbell	200		200
287	John Elman	200		200
289	M. I. Subin	200		200
291-293	James Brunt	400		400
295	James Feury	200		200
297	E. Balzareth	200	\$300	1,000
299-307	Realty & Commercial Co.....	1,000		1,000
1/4-309	Home Land Co.....	100		100
1/4-309-315	J. J. O'Neill	700	10,000	10,700
317-319	Realty & Commercial Co.....	600		600
Buffalo Ave.				
315-229	Carolyn Nolan	900		900
Columbia Ave.				
40	S. D. O'Brien	150	900	1,050
42	Maggie Wood	150		150
44-50	Sarah Bird	600		600
52-54	Jno. Farquhar	300		300
56-64	Realty & Commercial Co.....	750		750
1/4-66	Home Land Co.....	75		75
1/4-66-72	J. J. O'Neill	325		325
74-76	Realty & Commercial Co.....	300		300
Michigan Ave.				
134-156	Jno. Schoendorf	350	500	850
158	Emma L. Ensign	150		150
160	Lansing C. Holden.....	150		150
162	Geo. McNeill	150		150
164	W. H. Kirkland	150		150
166-168	Eugenie Lake	300		300

Sheet No. 5—86, Ward 11.

Block bounded by Railway, Michigan, Pennsylvanian and Illinois Avenues.

Lot No.	Assessed to	Land	Building	Total
Railway Avenue				
220-227	William Barbour	\$1,750		\$1,750
Michigan Ave.				
129-145	Paterson Orphan Asylum exempt (Land \$1,350)			
Pennsylvania Ave.				
246-258	William Barbour	1,400		1,400
260	James Atkinson	200		200

Exhibit P-42.

Sheet No. 6—Map 86, Ward 11.

Block bounded by Railway, Illinois, Florida and Pennsylvania Avenues.

Lot No.	Assessed to	Land	Building	Total
Railway Ave.				
204- 24 -210	J. C. Hob. & Pat. St. Ry. Co..	\$1,620	\$16,000	\$17,620
24 -210-215	Henry Gordon	1,850		1,850
Florida Ave.				
22-28	Public Service Corp.....	800		800
Pennsylvania Ave.				
216 to 24 -228	J. C. Hob. & Pat. St. Ry. Co..	1,250		1,250
24 -228-238	Henry Gordon	1,050		1,050
Illinois Ave.				
31-33	Henry Gordon	330		330

Sheet No. 7—Map 86, Ward 11.

Block bounded by Railway, Maryland, Florida and Pennsylvania Avenues.

Lot No.	Assessed to	Land	Building	Total
Railway Ave.				
188-189	A. Romaine	\$ 500		\$ 500
190-194	P. Montalent	1,065		1,065
195-197	W. B. Knapp	650		650
198-199	Wilhemina & W. B. Knapp....	450		450
Florida Ave.				
11-21	Petrus Montalent	1,200		1,200
23-27	J. J. Hartgen	600		600
Pennsylvania Ave.				
186-200	Carrie F. Crane	1,600		1,600
202-208	E. M. Hartegan	800		800
Maryland Avenue				
18-32	Petrus Montalent	1,600		1,600
34-38	Carrie F. Crane.....	600		600

Sheet No. 8—Map 80, Ward 11.

Block bounded by Railway, Alabama, Pennsylvania and Maryland Avenues.

Lot No.	Assessed to	Land	Building	Total
Railway Ave.				
173-176	William Fulton	\$ 780		\$ 780
177-180	C. Verwys	800	\$1,600	2,400
181-184	Estate E. T. Bell, Jr.....	850		850
Alabama Ave.				
12-16	Alex. McDonald	450		450
18-20	A. Gogler	330	1,000	1,330
22	B. Abate	165		165
24	F. de Federico	165		165
26	S. Delvicchio	165		165
28	M. Beattie	165	700	865
30	S. Cielo	165		165
32-34	Erbert Voss	330	300	630
36-38	Jacob Bom	330	325	655
40-42	M. Cielo	330		330
44-46	A. Kaslander	330	700	1,030
48	Est. J. J. Brown.....	185		185
50-52	Hinchliffe Bros.	330		330

Exhibit P-42.

Penna. Ave.			
104-108	W. F. Hinchliffe	\$800	\$800
104	E. D. Porter	150	\$1,300 1,450
106	H. E. Page	150	150
108	F. C. Van Dyk	150	150
170-172	W. B. Reed	300	300
174-176	Est. J. J. Brown	300	300
178	Mrs. Emma Coe	200	1,800 2,000
Maryland Ave.			
11	W. F. Hinchliffe	300	200
33-35	Mrs. Fannie E. McLean	400	400
17-19	T. Di Giacomo	400	400
21-23	Est. J. J. Brown	400	400
25	A. De Capiro	200	200
27	M. De Capiro	200	200
29-31	Jos. Grimshaw	400	400
33-35	Corn'l Houman	400	1,400 1,800
37	Corn'l Houman	200	1,300 1,400
39	Jno. Griffano	200	200
41	Jno. Lawton	200	200

Sheet No. 9—Map 80, 11 Ward.

Block bounded by Railway, Kentucky, Alabama and Pennsylvania Avenues.

Lot No.	Assessed to	Land	Building	Total
Railway Ave.				
157-160	Antonio Botta	\$ 850	\$ 300	\$1,150
161-164	Bd. of Ch. Erection Fd.	870		870
165-168	William Stillman	800		800
Alabama Ave.				
Fts. 9-11	Peter Belfi	330	1,100	1,430
Fts. 13-15	G. Perona	330	200	530
Ft. 17	P. J. Flanigan	165	150	315
Ft. 19-21	A. Regelman	330	750	1,080
Ft. 23	Charles Morehead	165		165
Ft. 25-27	Eliz. Douglas	330	300	630
Fts. 29-31	L. Van Hook	330	300	630
Ft. 33-37	August Depauw	600	900	1,500
Ft. 39	H. Ingram	165	350	515
Ft. 41	Roger Walker	165	150	315
Fts. 43-47	Jas. Crooks	495		495
Rears 7-47	Bd. Ch. Erection Fund.	530		530
Penna. Ave.				
126-132	Unknown	600		600
134-140	Bd. Ch. Erection Fund.	600		600
142-148	Jas. Crooks	600		600
Kentucky Avenue				
16 to 50 and				
Rears 52-60	Bd. Ch. Erection Fund.	2,310		2,310
Fts. 52-60	Jas. Crooks	660		660

Sheet No. 10—Map 80, Ward 11.

Block bounded by Railway, Iowa, Kentucky and Pennsylvania Avenues.

Lot No.	Assessed to	Land	Building	Total
Railway Ave.				
142-145	D. Leslie & Wm. Elliott, Jr.	\$ 875	\$8,000	\$8,875
146-147	Wm. Elliott	400		400
148-149	P. S. Van Kirk	450		450
150-153	P. S. Van Kirk	850	45,000	45,850

Exhibit P-42.

Kentucky Ave.			
9-33	P. S. Van Kirk	\$1,430	
35-41	W. B. Gourley & M. Lynch.....	1,540	
63-65	Albert Vantol	200	
Penna. Ave.			
96-106	W. B. Gourley & M. Lynch.....	1,200	
108	Frank Amiraux	200	
110	Annie Doremus	200	
112-118	Albert Vantol	800	\$2,600
Iowa Ave.			
20-28	William Elliott	550	
30-38	P. S. Van Kirk	220	
34	Thomas Joyce	110	200
36-50	P. S. Van Kirk	880	
52-66	W. B. Gourley & M. Lynch.....	880	
68-78	J. L. Rusling	680	

Sheet No. 11—Map 79, Ward 11.

Block bounded by Railway, Iowa, Pennsylvania and California Avenues.

Lot No.	Assessed to	Land	Building	
Railway Ave.				
126-128	Est. Samuel Nathan	\$ 750		\$
129	V. Migliacco	215	\$ 300	
130	Est. J. J. Brown	210		
131-134	Lauretta Alfano	890		
135-137	Max Solomon	675	1,200	
Iowa Ave.				
11	F. Migliacco	110		
12-15-17	N. Festa	330		
19-21	Jno. Kuyle	220		
23-25	Wm. Alexander	220		
27-39	F. C. Van Dyk	770		
41-47	W. F. Hinchliffe	440		
49	F. Migliacco	110		
51	L. Cerignamo	110		
53-57	Pietro Macaro	330		
59-63	F. Migliacco	330		
65	F. Abate	110		
67-73	N. Rattino	440		
75	R. Mucci	110		
77	M. Cielo	110		
Penna. Ave.				
66	Jacob Sless	200		
68-70	N. Binvenite	400		
72	S. Grossi	200		
74-76	Realty & Commercial Co.....	400		
78-88	Est. J. N. Terhune	1,200		
California Ave.				
16	Hinchliffe Bros.	165		
18-20	F. Migliacco	330		
22	C. Virolo	165		
24-26	Alex. Petkethly	330	800	
28-30	Wm. Hinchliffe	330		
32-70	Realty & Commercial Co.....	3,300		
72	R. Krapnik	165		
74	J. Michalowski	165		
76-78	Mrs. S. Cauwells	330	300	
80-82	Jacob Sless	330	800	
84	A. Kamerling	165	50	
86	L. Kamerling	165	800	
88	Marie Keyser	165		
90-92	Est. Edo. Kip	330		

Exhibit P-42.

Sheet No. 12—Map 79, Ward 11.

Block bounded by Madison, California, Twenty-third Ave., and East 20th Street.

Lot No.	Assessed to	Land	Building	Total
Madison Ave.				
1119-1121	Standard Realty Co.....	\$1,300	\$3,800	\$5,100
1123-1127	Realty & Commercial Co.....	4,000		4,000
1129-1141	Wm. Walker	1,000	1,800	2,800
1143	A. Bingham	500		500
1145-1147	Realty & Commercial Co.....	1,200		1,200
1149-1153	Jno. Congdon	1,200		1,200
East 20th St.				
180-190	Realty & Commercial Co.....	1,200		1,200
California Ave.				
11-25	Realty & Commercial Co.....	1,100		1,100
Third Avenue				
13	Henry Goddard	350	700	1,050
15-14	Fred. Haymes	700	700	1,400
16-18	Meindert Boon	700	5,000	5,700
20	Wm. H. Perry	400	1,700	2,100

Sheet No. 13—Map 72, 10th Ward.

Block bounded by Railroad—Madison, Beckwith Avenue and East 19th Street.

Lot No.	Assessed to	Land	Building	Total
Madison Ave.				
1114	Frank R. Jackson	\$ 550	\$3,200	\$3,750
1116	Frank McCrane	500	3,200	3,700
1118	Mrs. B. McCauley	500	3,200	3,700
1120	B. McCauley & Ellen McCrain..	500	3,500	4,000
1122	Jos. Hand	500		500
1124	James Moran	500		500
1126 Ellem	Ellen S. Kent	500	2,800	3,300
1128	Lewellyn Realty Co.....	500		500
1130	Jno. O'Brien	500		500
1132-1/2; 1156	Colt & Fowler	6,250		6,250
1/2; 1156-1160	August Ballou	750		750
Beckwith Ave.				
126-218	Jos. Phillips	900	2,500	3,400
130	Mary Storer	350		350
132	Samuel Gore	350		350
134-136	F. R. Jackson	400	1,400	1,800
East 19th Street				
1115-1119	Jno. Gardenier	1,050		1,050
1121	Thos. Shilcock	350		350
1123	Fred. Haymer	350		350
1125-1127	Ellen Malone	700		700
1129	Peter O'Brien	350	1,500	1,850
1131	D. C. Hutcheon	350		350
1133-1/2; 1157	Colt & Fowler	6,250		6,250

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Sheet No. 14—Map 72, Ward 10.

Block bounded by Beckwith Ave., East 19th and Lewis Sts. and Railroad.

Lot No.	Assessed to	Land	Building	Total
East 19th St.				
1106-1109	Geo. Jackson	\$ 700	\$1,500	\$4,200
1110	Mary & Annie Hennessey	350	400	750
1112-1114	Mary Allen	700	500	1,200
1115	Geo. DeVries	500	1,000	1,500
1118	Agnes Francis	500	400	900
1120-1140 & On 1140-1150	Colt & Fowler	9,100		9,100
Beckwith Avenue				
104-109	Jnn. Adamson	700	2,000	2,700
110-113	Henry Kline	700	2,000	2,700
114-119	W. H. Taylor	1,700	400	2,100
Lewis Street				
200	C. Sadowski	400	1,000	1,400
207	Florence Bron	300	1,400	1,700
209-231	Wm. H. Taylor, Est.	700	1,400	2,100
233	A. H. Taylor	300	800	1,100
235	Jnn. Friem	300	1,000	1,300
237	W. Loetson	300	600	900
239	Edna Weston	350	450	800
241	Michael McElroy	300	600	900
243	Sarah Jackson	300	700	1,000
245	Henry Slater	350		350
247	Geo. Jackson	300	2,300	2,600
249-273	Colt & Fowler	4,000		4,000

Sheet No. 15—Map 72, Ward 10.

Block bounded by Railroad, Lewis, Beckwith and Martin Streets.

Lot No.	Assessed to	Land	Building	Total
Lewis Street				
200	Thomas Coyne	\$ 200		\$ 200
224	Gustave Hanziker	200		200
223	Frank R. Jackson	350	\$1,000	1,350
226	Frank R. Jackson	350	1,000	1,350
228-232	James Johnson	700		700
234	Lizzie Hyde	200	600	800
236-269	Colt & Fowler	8,000		8,000
Beckwith Ave.				
95-99	Corn'l Gallagher	1,000	1,000	2,000
94-100	B. Lockwood	1,000		1,000
Martin Street				
212	Peter Brett	300	1,200	1,500
215	Lizzie Van Riper	300	600	900
217	Margaret McTigue	350	1,200	1,550
219	Thomas McTigue	350		350
221	Jane Mahaffey	350		350
223-225	Jane Welsh	700	600	1,300
227	Timothy Draddy	350		350
229-231	Richard Town	700	2,000	2,700
233-239	Colt & Fowler	2,200		2,200

*Exhibit P-42.***Sheet No. 16—Map 72, Ward 10.****Block bounded by Martin and Gray Sts., Beckwith Avenue and Railroad.**

Lot No.	Assessed to	Land	Building	Total
Beckwith Ave. 60-60	Colt & Fowler.....	\$4,100		\$4,100
Martin Street 916-918	Colt & Fowler.....	12,000		12,000
Gray Street 507-509	Colt & Fowler.....	11,500		11,500

Sheet No. 17—Map 72, Ward 10.**Block bounded by Gray Street, Oregon Avenue and Railroad.**

Lot No.	Assessed to	Land	Building	Total
Gray Street 188-190	Hubbard Lumber Co.....	\$7,000		\$7,000
Oregon Avenue 2-10	Hubbard Lumber Co.....	7,000		7,000
14-16	Gulf Refining Co.....	3,500	\$4,000	7,500
18-20	Hubbard Estate	9,330	500	9,730

East Railway Ave.

Property of Erie Railroad Company assessed as second class by State (95 lots in plot).

Sheet No. 18—Map 72, Ward 10.**Block bounded by Beech, Madison, Straight and Clay Streets.**

Lot No.	Assessed to	Land	Building	Total
Clay Street 198-196	James Wilson	\$4,100		\$4,100
170	Katz Bros.	600	\$1,000	2,600
204	Jos. C. Hall	600		600
206	A. Van Houten	600		600
208	Catherine P. Van Houten.....	600		600
210-212	Hamilton Lumber Co.....	2,300	1,500	4,700
224	James H. White.....	600	2,300	3,000
Madison Street 217-221	Jos. C. Hall.....	1,300		1,300
219-223	James Wilson	1,300		1,300
Beech Street 212-214	Hamilton Lumber Co.....	1,300		1,300

Sheet No. 19—Map 63, 9th Ward.**Block bounded by Clay, Straight and Cedar Streets and Railroad.**

Lot No.	Assessed to	Land	Building	Total
Straight St. 410-446	McNab & Harlin Mfg. Co.....	\$28,700	\$128,000	\$156,700
448-478	Dexter, Lambert & Co.....	16,000	30,000	46,000

Block bounded by Straight, Bond, Madison and Clay Streets.

Lot No.	Assessed to	Land	Building	Total
Straight St. 445-477	Dexter, Lambert & Co.....	16,000	30,000	46,000

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Bond Street				
28-36	Catholine Lambert	\$3,600	\$3,000	\$6,600
Madison St.				
178-204	Dexter, Lambert & Co.....	11,500	4,000	15,500
Block bounded by Cedar, Madison, Bond and Straight Streets.				
Straight St.				
409-411	Sophie Parkin	2,800	3,000	5,800
413	Est. Sheehan	1,200	2,000	3,200
415	Jos. Curtin	1,200	2,200	3,400
417-419	Jno. Malin	2,400	3,100	5,500
421-423	McNab & Harlin Mfg. Co.....	2,400	2,200	4,600
425-427	Wm. Malia	2,400	1,200	3,600
429	C. Vreeland	1,200	1,000	2,200
431	Bernard Ipp	1,200	3,500	4,700
433	Louis Mai	1,200	1,800	3,000
435-439	McNab & Harlin Mfg. Co.....	3,900	14,500	18,400
Cedar St.				
40	Annie Dressendorfer	900	1,300	2,200
42	Jos. Farrell	900	600	1,500
44-46	Est. McGarrity	2,000	3,300	5,300
Bond St.				
29-35	Hamilton P. & D. Co.....	2,600	5,000	7,600
Block bounded by Madison, Cedar, Bond and Straight Streets.				
Madison St.				
144	Estate Fields	1,000	1,200	2,200
146	Mrs. Farley	1,000	1,800	2,800
148	Estate Donaldson	1,000	1,000	2,000
150	James Curley, Sr.....	1,000	1,400	2,400
152	Francis Herold	1,000	400	1,400
154	Francesco Sisto	1,000	1,600	2,600
156	Jno. Lawton	1,000	2,000	3,000
158	Pierre Castiliny	1,000	2,200	3,200
160	Mrs. Annie Frier	1,000	1,400	2,400

Sheet No. 20—Map 57, 9th Ward.

Block bounded by Cedar, Essex, Straight Streets and Ramapo Avenue.

Lot No.	Assessed to	Land	Building	Total
Straight St.				
340-346	Jno. Royle & Sons.....	\$11,000	\$45,000	\$56,000
348	Est. Latham	2,300	2,000	4,300
350	Geo. Cornet	2,300	3,000	5,300
352-358	Mary J. Hopper.....	9,200	10,000	19,200
360-384	McNab & Harlin Mfg. Co.....	29,900	66,000	95,900
386-388	Benj. Eastwood Co.....	4,600	11,000	15,600
390-392	Sam'l Nathan	4,600	2,500	7,100
394-402	Pat. B. & M. Co.....	12,500	20,000	32,500
Ramapo Ave.				
43	Est. Latham	1,200	2,300	3,500
Block bounded by Straight, Oak, Madison and Cedar Streets.				
Straight St.				
373	A. Valtz	1,800	2,000	3,800
375	Thos. W. Yule.....	1,500	2,500	4,000
377	M. A. O'Connor.....	1,500	1,600	3,100
379	Sam'l Coapland	1,500	1,600	3,100
381	Mrs. Cullen	1,500	1,900	3,400
383	F. Spitzziere	1,500	1,800	3,300
385	Jos. Venola	1,500	900	2,400

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387	Mary Leonard	\$1,500	\$1,500	\$3,000
389	John Tallia	1,500	800	2,300
391	Jno. Bollochweiler	1,500	2,000	3,500
393	McMahon & Elvin	1,500	2,500	4,000
395-397	Est. Taylor	2,640	2,000	4,640
399-401	Greton Leers	3,360	2,600	5,960
403	Est. Taylor	1,800	3,500	5,300
Cedar St.				
39-41	Ed. J. Delaney	1,600	3,500	5,100
43-45	Wm. D. Adam	1,800	4,000	5,800
Madison St.				
100-102	Est. Gibbin	2,300	2,800	5,100
104	Margaret Hoxey	1,000	1,500	2,500
106	Mrs. T. Shore	1,000	1,600	2,600
108	Gust. Levy	1,000	1,800	2,800
110	Chas. Shaw	1,000	2,200	3,200
112	Sam'l O'Hara	1,000	4,000	5,000
114	M. Byrne	1,000	4,000	5,000
116	Est. Jas. Ryan	1,000	1,500	2,500
118	Jno. Lawton	1,000	1,800	2,800
120	Est. Jno. Wrigley	1,000	200	1,200
122	Alice Wrigley	1,000	2,300	3,300
124	Annie Devoe	1,000	600	1,600

Sheet No. 20, continued—Map 57, 9th Ward.

Block bounded by Straight, Madison, Essex and Oak Streets.

Lot No.	Assessed to	Land	Building	Total
Essex St.				
30	Mary Hauschkel	\$ 900	\$3,000	\$3,900
32	A. S. Lowery	900	3,300	4,200
34	Est. Eberding	900	3,500	4,400
36	Mrs. M. Beardsley	1,200	4,500	5,700
Straight St.				
337-343	Jno. Yule, Jr.	6,400	25,000	31,400
345	Jno. Yule, Jr.	1,500	2,200	3,700
347	Emma R. Cundell	1,500	2,400	3,900
349-353	Est. Stadlet	4,500	7,900	12,500
355	Geo. Sohnle	1,500	3,400	4,900
357-359	Patrick Coughlan	3,000	2,000	5,000
361	Est. B. Eastwood	1,500		1,500
363	Arthur Reilly	1,500	1,500	3,000
365-367	Walter Welle	3,300	3,200	6,500
Madison St.				
72	Est. Perrins	1,000	4,000	5,000
74	Komer Van Dien, Sr.	1,000	1,400	2,400
76-78	Est. Teal	2,000	1,800	3,800
80	Est. Bustard	1,000	800	1,800
82	Mary Perrins	1,000	3,000	4,000
84	Thos. Rigg	1,000	1,800	2,800
86	Est. Cogan	1,000	5,000	6,000
88	Est. Latham	1,000	2,600	3,600
92-94	Mrs. H. Welle	2,300	4,000	6,300
96	Nellie Hewitt	1,000	2,600	3,600

Sheet No. 21—Map 52, 9th Ward.
Block bounded by Essex, Straight and Market Streets and
Ramapo Avenue.

Lot No.	Assessed to	Land	Building	Total
Straight St.				
276	George Cornet	\$2,000	\$4,000	\$6,000
278-280	Jno. Feeney	3,000	3,000	6,000
282-284	Carroll Estate	3,000	3,000	6,000
286	Louis Botta	1,500	5,000	6,500
288	Jno. Graglia	1,500	7,000	8,500
290	U. Botta	1,500	3,500	5,000
292	M. V. Scanlon	1,500	800	2,300
294	Wm. T. Suttle	1,500	2,200	3,700
296-298	Rocco Siena	3,000	4,200	7,200
300-322	Estate B. Eastwood	18,000	50,000	68,000
324	Mrs. M. Mennell	1,500	2,000	3,500
326	Abram Ackerman	1,500	1,500	3,000
328-332	Pat. B. & N. Co.	4,000	3,500	7,500
Market St.				
278	Henry Bremkamp	3,500	3,500	7,000
280	Adolph Moser	3,500	2,500	6,000
282	Est. Rabinwitz	3,800	2,500	6,300
284	Rachael Rabinwitz	4,500	2,500	7,000
286	Peter DeBrown	6,000	8,000	14,000
Ramapo Ave.				
1-3	James Bell Land Co.	12,000	20,000	32,000
4	Sophie Parkin	1,700	2,500	4,200
5	Estate Walder	3,000		3,000
6	H. Frudenthal	2,000	2,500	4,500
7	Mary Cogan	1,500	2,800	4,300
8	Standard Realty Co.	1,500	1,800	3,300
9	Jno. M. Kipp	1,600	1,000	2,600
10-11	Estate Carroll	2,800	9,000	11,800
12	Chas. A. Shilling	1,000	1,600	2,600
13	E. Weisner	1,100	2,800	3,900
14	A. Trapasco	1,000	900	1,900
15	Henry Smith	1,000	1,000	2,000
16	D. Vitale	1,000	1,800	2,800
17	August Koch	1,000	1,600	2,600
18	S. & J. Eastwood	900	2,000	2,900
19-35	Est. B. Eastwood	15,500	56,500	72,000

Sheet No. 21—Map 52, 9th Ward.
Block bounded by Straight, Morton, Madison and Essex Streets

Lot No.	Assessed to	Land	Building	Total
Straight St.				
301-307	Est. Wm. Devoe	\$6,500	\$6,500	\$13,000
309	Bamford Bros.	1,500	3,000	4,500
311	G. Parrotto	1,500	1,200	2,700
313	Katz Bros.	1,500		1,500
315	Cons. Brewing Co.	1,500	3,000	4,500
317	Mrs. J. Knipper	1,500	1,700	3,200
319	Louis Spetgang	1,500	1,600	3,100
321	Agnes Blixt	1,500	2,000	3,500
323	Bamford Bros.	1,500	1,000	2,500
325-327	Bushman Land Co.	3,000	5,000	8,000
329	Vincent Brnera	1,400	1,400	2,800
331	Jessie Anderson	1,500	4,500	6,000

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Essex St.			
27	Stephen Zircarelli	\$600	\$1,500
29	Bushman Land Co.	900	1,800
31-33	Frank Fasano	1,800	3,500
35	Chesnof & Sachs	1,200	3,500
Madison St.			
36-50	Bamford Bros.	8,000	35,000
Morton St.			
10-16	Bamford Bros.	4,000	3,000
Block bounded by Market, Madison, Morton and Straight Streets.			
Market St.			
292-294	William McAllister	4,500	5,500
296-298	Jane B. McGrogan	4,400	12,000
300	Samuel Schnack	2,400	5,000
302-304	Nathan Salzman	2,300	7,500
Rs. 300-304 & 306-308	Harry W. Dobson	5,600	1,200
Madison St.			
10-12	Mrs. E. Mains	2,000	2,000
14	L. P. C. Rege	1,000	2,800
Straight St.			
273-277	Wm. McAllister	2,500	3,800
279-281	Cath. Feeney	2,700	3,000
283	Jas. P. McAllister	1,500	1,100
285-295 and 16-22 Morton St.	Paragon Silk Co.	14,500	50,000

Sheet No. 22—Map 44, Ward 5.

Block bounded by Straight and Market Streets and
Park Avenue.

Lot No.	Assessed to	Land	Building	Total
Market St.				
283-287	Central Building Co.	\$24,000	\$30,000	\$54,000
Block bounded by Park Ave., Straight Street and Crosby Place.				
Park Ave.				
1-5	Est. H. B. Crosby	15,000	5,800	20,800
7-9	Mary E. Hartley	8,000	8,300	16,300
11	E. A. Cooper	7,300	10,500	17,800
13	Jno. Hemingway	3,070	5,800	8,870
Rear 13-15	Edward Ryan	4,630	11,000	15,630
Straight Street				
238-244	Est. H. B. Crosby	8,500	24,000	32,500
246-248	Julius Munzer	2,730	10,000	12,730
Block bounded by Straight Street, Park Ave. and Market Street.				
Park Avenue				
20-22	Wm. A. Bergstrom	5,500	12,000	17,500
24-26	Pub. Service Corp.	3,020	12,000	15,020
Market Street				
291-293	Sarah A. Smith	6,000	14,000	20,000
295-297	Public Service Corp.	4,400		4,400
Block bounded by Straight Street, Park Avenue and 16th Avenue.				
Straight Street				
239-245	Henry Gordon	11,760	3,600	15,360
247	Grinker Land Co.	2,680		2,680
Park Avenue				
19-21	D. Stein	9,700	6,000	15,700
23-25	James Inglis, Jr.	4,000	10,000	14,000
16th Avenue				
10-16	Tischa Gordon	4,000	32,000	36,000

*Exhibit P-42.***Sheet No. 23—Map 44, Ward 5.****Block bounded by Ellison and Straight Streets, Crosby Place and Railroad.**

Lot No.	Assessed to	Land	Building	Tax
Straight St.				
216-220	Jno. Dunlop	\$5,625		\$10.00
223	Thos. Beveridge	1,875	\$2,000	3.75
224	Jno. Dunlop	1,875	1,900	3.75
226-236	N. Y. Susq. & W. R. R. Second class R. R. property.			
Ellison Street				
236-252	Laffray, Herman & Co.	15,245	23,000	34.50
Rears 236-244	Jno. Dunlop	4,000		6.00

Block bounded by Pearl, Straight Street and 16th Avenue.

Straight St.	
223-233	N. Y. Susq. & W. R. R. Second class R. R. property.

Sheet No. 24—Map 44, Ward 5.**Block bounded by Van Houten, Ellison and Straight Streets and Railroad.**

Lot No.	Assessed to	Land	Building	Tax
Ellison St.				
235-241	Laffray, Herman & Co.	\$10,340	\$25,000	\$35.50
Van Houten				
1/2-212-216	Sulzberger & Co.	5,940	25,000	38.00
218-228	Harding Real Estate Corp.	14,370	30,000	53.75
Straight Street				
196-208	Harding R. E. Corp.	15,250	42,000	57.25

Block bounded by Straight, Ellison and Pearl Streets.

266-270	Abram Garrison	6,000	2,000	8.00
Block bounded by Van Houten Street, Ellison Street and Straight Street				
Van Houten St.				
234-236	L. Finkelstein	3,400	1,500	6.00
238-1/2-240	Jno. Stagg	3,000	3,800	6.80
1/2-240-242	Est. T. R. Paxton.....	2,960	3,300	6.26
Ellison Street				
265	William Pierce	2,000	1,200	3.00
267-269	Louis Spitz	4,000	4,500	6.25
Straight St.				
189	Benj. Grunauer	1,500	2,400	3.60
191	Herman Fishler	2,120	2,600	4.72
193	Wm. Pierce	1,875	3,100	4.64
195	Mrs. Ella Watson	1,875	2,600	4.64
197	Mary E. Hartley	2,125	2,600	4.72

Block bounded by Van Houten Street, Ellison Street and Straight Street

Van Houten St.			
234-236	L. Finkelstein	3,400	1,500
238-1/2-240	Jno. Stagg	3,000	3,800
1/2-240-242	Est. T. R. Paxton.....	2,960	3,300
Ellison Street			
265	William Pierce	2,000	1,200
267-269	Louis Spitz	4,000	4,500
Straight St.			
189	Benj. Grunauer	1,500	2,400
191	Herman Fishler	2,120	2,600
193	Wm. Pierce	1,875	3,100
195	Mrs. Ella Watson	1,875	2,600
197	Mary E. Hartley	2,125	2,600

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Sheet No. 25—Map 44, Ward 5.

Block bounded by Van Houten, Straight Street, Broadway and Railroad.

Lot No.	Assessed to	Land	Building	Total
Van Houten				
11-215	Rachael Van Houten and Mary V. H. Stevenson	\$4,350	\$1,800	\$6,150
17-221	Mary McCrystal	6,600	10,000	16,600
23-227	A. R. Turner	6,400	1,200	7,600
Broadway				
184-188	A. Van Houten	10,080	2,400	12,480
190-194	Mary McCrystal	10,500	5,400	15,900
196-200	A. R. Turner	11,100	11,500	22,600

Block bounded Straight, Van Houten and Broadway.

Van Houten				
23-235	Cong. Bnai Jeshurim. Church property, exempt.			
27-239	Chas. Bradley, Tr.	5,200		5,200
41-245	Julia T. Hopper.	6,000	200	6,200
Broadway				
196-210	Cong. Bnai Jeshurim. Church property, exempt.			
212-214	Chas. Bradley, Tr.	8,000	9,500	17,500
216-1/2 218	Julia T. Hopper.	6,000	7,500	13,500
218-220	Julia T. Hopper.	6,000	7,500	13,500

Sheet No. 26—Map 34, Ward 4.

Block bounded by Broadway, Straight Street, Fair Street and Railroad.

Lot No.	Assessed to	Land	Building	Total
Broadway				
153-157	Jennie Van Nostrand.	\$7,700	\$11,000	\$18,700
159	Jennie Van Nostrand.	3,500	5,600	9,100
161-197	Est. Wm. Gledhill.	15,000	3,500	18,500
Straight Street				
160-162	Mrs. Mary W. Gledhill.	3,000	3,000	6,000
164-166	Est. Wm. Gledhill.	2,800		2,800
Fair Street				
106-1/2 118	W. S. Rogers	2,500	2,000	4,500
118-120	Jno. H. Berdan, Jr.	2,700	4,000	6,700
122	Peter Blumenthal	1,800	3,800	5,600
124-126	H. V. H. Snyder.	3,150	4,000	7,150
Block bounded Straight, Fair and Broadway.				
Broadway				
17-211	St. Marks E. Church.			40,000
123	Dr. B. H. Rogers.	4,800	6,800	11,600
125	Est. Chas. S. Inglis.	4,800	3,800	10,600
127	Dr. Rush Neer	5,600	10,500	16,100
Fair Street				
14-150	Dr. A. S. Strickland	7,000	9,000	16,000
152-154	Peter Casper	3,600	7,000	10,600
156	Wilhelmina Maff	1,800	3,500	5,300

Exhibit P-42.

Sheet No. 27—Map 34, Ward 4.

Block bounded by Hamilton, Straight and Fair Streets and Railroad.

Lot No.	Assessed to	Land	Building	Tax
Hamilton Avenue				
114-116	Mrs. Jno. Robinson.....	\$3,400	\$2,200	\$5.60
118	Emma S. King	2,700	1,800	4.50
120	Roger W. Borden	2,700	2,600	5.30
122	Edw. Gootenberg	2,700	3,400	6.10
124-pt 126	Victor Klenert	2,150	2,500	4.65
pt 126-128	Lizzie Van Riper	3,000	4,000	7.00
Fair Street				
109- $\frac{1}{2}$ -111	Thos. Healey	2,000	3,600	5.60
$\frac{1}{4}$; 111-117	Mrs. O. W. Mills	6,800	13,200	20.00
119	Mrs. James McGrogan.....	1,800	3,600	5.40
121	Peter Casper	2,150	3,600	5.75
Straight Street				
148-154	Fred W. Kraye	3,900	8,000	11.80
Block bounded Straight, Hamilton and Fair Street.				
Fair Street				
143-145	Est. J. L. Cunningham.....	3,800	4,000	7.80
147- $\frac{1}{2}$ -149	Abram Bloom	2,700	3,800	6.50
$\frac{1}{2}$ -149-151	Geo. P. Van Riper.....	2,700	3,200	5.90
153-155	Wm. A. Hopson	2,700	3,200	5.90
Hamilton Ave.				
142-144	Jacob Konner	3,500	5,000	8.50
146-148	Sarah Edwards	3,600	3,500	7.10
150-152	Chas. R. Hopson.....	3,600	4,000	7.60

Sheet No. 28—Map 34, Ward 4.

Block bounded by Hamilton, 12th Avenue, Straight Street and Railroad.

Lot No.	Assessed to	Land	Building	Tax
Hamilton Ave.				
107	Armour & Co.....	\$2,150	\$6,500	\$9.65
109	Pat. Hebrew Relief Society... Exempt.			4.00
111	Timothy McGuire	1,800	2,600	4.40
113	Geo. W. Pollitt.....	1,800	4,000	5.60
115- $\frac{1}{2}$ -117	Henry Stencherer	2,150	3,400	5.55
$\frac{1}{4}$; 117-121	Harriet D. Russell.....	4,500	3,000	7.50
Straight Street				
100	Mrs. Zwingli Est.....	1,200	3,000	4.20
102-104	Est. Robert Hardy.....	2,400	2,200	4.60
106	Jas. Gibbs	1,100	1,400	2.50
108	Est. Samuel Holt	1,100	2,300	2.80
Rears 106-108				
110	Wm. Holt ..	700	1,000	1.70
112	Janette Kuenneth	1,500	1,900	3.40
114	G. & M. Hey.....	1,800	17,000	18.80
116	Est. Lanning	1,800	1,600	3.40
118	Theresa Lutolf	1,500	2,000	2.90
120-124	Morris Lutolf Est.....	1,500	1,400	2.90
126	Jas. Bell Land Co.....	4,500	2,500	7.00
	Hannah Frank	1,100	1,500	2.60

Exhibit P-42.

Block bounded Hamilton Ave., Straight and Godwin Streets.

Hamilton Ave.	Geo. P. Van Riper	\$2,500	\$4,000	\$6,500
43	Geo. Schiswell	3,600	4,800	8,400
45-147	Geo. Wurts	3,600	4,800	8,400
49-151	Reformed Ch.	Exempt		70,000
53-159				
Godwin St.	Jos. McCrystal	1,500	2,400	3,900
44	Geo. Schiswell	2,400		2,400
46-148	Geo. Wurts	2,400		2,400
50-152	Reformed Church.....	Exempt		4,800
54-160				

Block bounded Godwin, 12th Avenue and Straight Street.

Straight St.	David Birchenough	1,200	1,600	2,800
101	Sam'l Jacobs	1,100	1,900	3,000
103	Rebecca Munson	1,100	1,700	2,800
105	Mrs. A. R. Butler.....	1,100	1,700	2,800
107	Est. P. Dickinson.....	2,200		2,200
109-111	Eliz. Florence	950	1,800	2,750
113	Wm. Pierce	1,200	2,000	3,200
115				
Godwin St.	Eliz. Smith	1,600	2,600	4,200
117-1/2-153	Henry Columbo	1,600	5,000	6,600
119; 153-1/2-155	Marg. Hopper	1,200	2,500	3,700
121; 155-1/2-157	J. R. Pierce.....	1,600	3,100	4,700
123; 157-159				
12th Avenue	Herman Helms	1,000	1,200	2,200
1	William Pierce	5,000	13,700	18,700
3-13				

Sheet No. 29—Map 34, 4th Ward.

Block bounded Straight Street, 12th Avenue, Governor Street and Railroad.

Lot No.	Assessed to	Land	Building	Total
Straight St.				
61	Bart Maher	\$ 900	\$ 700	\$1,600
62-68	H. B. Hubener	1,400	1,700	3,100
70	Anna Crosby	800	1,300	2,100
72	A. A. Comerford.....	800	1,200	2,000
74	Immacenza Nelva	900	1,600	2,500
76	Geo. A. Myers Co.....	1,500	2,000	3,500
78	Jos. Gennero	1,200	3,000	4,200
Block bounded 12th Avenue, Straight and Governor Streets.				
Straight St.				
85-87	Jos. McCrystal	2,300	6,700	9,000
89-91	Jos. McCrystal	2,000	4,800	6,800
93	Max Miller	1,300	2,000	3,300
95	Est. A. A. Van Voorhies.....	800	1,400	2,200
97-99	Christian Dick	2,300	1,400	3,700
12th Avenue				
1	John H. Van Drehle.....	1,100	3,000	4,100
3	Collier & Stein.....	1,100	3,000	4,100
5	Collier & Stein.....	1,100	3,000	4,100
7	Est. James Shepard.....	1,100	900	2,000
9	Geo. P. Van Riper	1,300	1,500	2,800
Governor St.				
99-92	Jos. H. Van Drehle.....	1,600	2,500	4,100
94-96	Est. Jas. Shepard	1,600	4,000	5,600
98	Robt. Korbler	600	1,200	1,800
100	Mary Little	600	750	1,350
102	Harry Miller	600	1,100	1,700
104	Jno. Smith	750	1,400	2,150
106	Antonio Molteni	600	1,800	2,400

Exhibit P-42.

Sheet No. 30—Map 23, 4th Ward.

Block bounded Straight and Governor Street and Railroad.

Lot No.	Assessed to	Land	Building	Total
Straight St.				
76-82	Paterson Brew'g & Malt'g Co..	\$1,600	\$1,200	\$2,800
Block bounded by Straight, Governor and Harrison Streets.				
Straight St.				
69-83 and	P. B. & M. Co.....	13,000	72,000	85,000
84-94 Harrison St.				
and				
89-101 Governor St.				
Governor St.				
103-107	David Atkins	2,100	7,600	9,700
Harrison St.				
96-112	F. J. Day & Co.....	4,300	32,000	36,300

Sheet No. 31—Map 23, 4th Ward.

Block bounded by Harrison, Straight and Fulton Streets.

Lot No.	Assessed to	Land	Building	Total
Straight Street				
55-57	Isaac A. Hall	\$1,600	\$ 300	\$1,900
59	Isaac A. Hall.....	800	1,200	2,000
61-67	P. B. & M. Co.....	3,600	1,000	4,600
Harrison Street				
87	Pat. B. & M'g Co.....	500		500
89-111	Isaac A. Hall.....	5,000	70,000	75,000
Fulton Street				
74-76	Isaac A. Hall.....	1,000	2,000	3,000
78-96	Isaac A. Hall.....	5,000	70,000	75,000

Sheet No. 32—Map 23, 4th Ward.

Block bounded by Fulton St., Railroad, Lawrence and Summer Streets.

Lot No.	Assessed to	Land	Building	Total
Fulton Street				
67-75	P. S. Van Kirk.....	\$2,500	\$5,000	\$7,500
77-93	P. S. Van Kirk.....	4,500	2,000	6,500
Lawrence Street				
64-66	P. S. Van Kirk.....	800		800
68-86	P. S. Van Kirk.....	4,200	6,000	10,200
Summer Street				
100-114	P. S. Van Kirk.....	4,300	1,900	6,200

Sheet No. 33—Map 23, 4th Ward.

Block bounded by Lawrence, Montgomery and Summer Streets and Railroad.

Lot No.	Assessed to	Land	Building	Total
Lawrence St.				
69	Walter Van Houten	\$ 400	\$ 250	\$ 650
71-77	Walter Van Houten.....	1,600		1,600
79	P. S. Van Kirk.....	400	400	800
81-91	Walter Van Houten	2,400		2,400
93-95	Leonard Sandford	600	400	1,000

Exhibit P-42.

Montgomery St.				
30-38	A. A. Lydecker	\$2,000	\$1,600	\$3,600
30-42	Mamie DeMoy	800	100	900
30-46	Mrs. Marinus Koman	600	2,000	2,600
30	Albert G. Stagg	400	400	800
30-52	Fannie LaVine	1,000	800	1,800

Block bounded by Lawrence, Summer and Montgomery Streets.

Summer Street				
37-40	Salvatore Recca	1,000	4,500	5,500
37-43	Adolph Blundell	1,100		1,100
Montgomery St.				
37	Samuel Epstein	600	2,400	3,000
37-36	Goddard & Subin	1,350	2,500	3,850

Sheet No. 34—Map 23, 4th Ward.

Block bounded by Montgomery, Summer and Lafayette Streets and Railroad.

Lot No.	Assessed to	Land	Building	Total
Montgomery St.				
31	Jacob De Larier	\$ 400	\$ 800	\$1,200
32	Minnie Woodruff	400	1,100	1,500
37	Peter & Herman Casterline	400	1,300	1,700
39	Elizabeth Lemonier	400	1,000	1,400
41	Jacob Rilde	400	1,100	1,500
43	William Hoffman	400	1,600	2,000
45-47	Wm. Molensteg	800	700	1,500
49-51	Sarah Van Housen	700	3,000	3,700
Lafayette St.				
53	Elizabeth Mroughan	600	1,600	2,200
55	Alice Flynn	600	1,200	1,800
57-59	Ed. John Regner	1,200	3,300	4,500
61	John Knudsen	600	400	1,000
63	Alma Geilen	600	1,500	2,100
65-67	Jno. Weitzel	1,800	3,500	5,300

Block bounded by Summer, Lafayette and Montgomery Streets

Lafayette St.				
73-74	Chas. F. Goetz	1,200	7,000	8,200
75-76	Jno. Scheiber	1,300	3,600	4,900
77	Mrs. Peter Miller	600	1,400	2,000
79-81	Jos. Faltinits	1,200	3,800	5,000
Montgomery St.				
83-85	Frederick W. Ball	3,700	25,000	28,700

Sheet No. 35—Map 18, 3rd Ward.

Block bounded by Lafayette, Summer and Franklin Streets and Railroad.

Lot No.	Assessed to	Land	Building	Total
Lafayette St.				
91-93	A. H. Smith	\$1,600	\$1,200	\$2,800
95-97	A. H. Smith	2,100	4,400	6,500
Franklin Street				
101-103	A. H. Smith	2,800	2,500	5,300

Exhibit P-42.

Block bounded by Lafayette, Summer and Franklin Streets.

Lafayette Street

61-63	Michael Westra	\$1,450	\$1,500	\$2.50
65	Karyne Herman	600	1,200	1.80
67	John Schieler	600	1,600	2.20
69	Noah Kryger	950	1,200	2.15
71	Noah Kryger	600	1,100	1.70
73	John Schieler	600		.00

Franklin St.

60-64	Lillian Lapat	1,700	4,000	5.70
66-68	Serphen Pellegrino	1,000		1.00
70	Frank L. Hindle	500		.50

Summer St.

20-45	Lillian Lapat	2,300	1,500	3.80
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Sheet No. 36—Map 18, 3rd Ward.

Block bounded by Summer, Franklin Streets and Railroad.

Lot No.	Assessed to	Land	Building	Total
<u>Summer Street</u>				
28-34	Meyer & DeVogel	\$1,400	\$10,000	\$11.40

Block bounded by Summer, Franklin and Keene Street.

Franklin Street

51-79 and 1/4 48-70 Keene St. and 10-25 Sum- mer St.	Peerless Plush Co.	15,250	60,000	75.25
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Sheet No. 37—Map 18, 3rd Ward.

Block bounded by Keen, Warren and Summer Streets.

Lot No.	Assessed to	Land	Building	Total
<u>Summer Street</u>				
1-13	Sipp Machine Co.	\$4,900	\$22,000	\$26.90
<u>Keene Street</u>				
52-67	Mrs. T. J. Tiddens	2,800	5,400	8.20
<u>Warren Street</u>				
42-46	Sipp Machine Co.	2,100	3,600	5.70
48-58	Ashley & Bailey Co.	6,300	20,000	26.30
60-75; 68	J. J. Bailey	1,000	1,700	2.70
1/2; 62-64	Mrs. R. Grunauer	850	1,700	2.55
66	Peter Gorvalis	650	1,000	1.65
68	Est. M. Bonzen	650	1,300	1.95

Sheet No. 38—Map 9, 3rd Ward.

Block bounded by Railroad, Warren, Mercer and Putnam Streets.

Lot No.	Assessed to	Land	Building	Total
<u>Warren St.</u>				
20-73	Assessed on Putnam Street.			
75	Moses Amber	\$ 550	\$1,500	\$2.05
77	Ruth Sowerbutt	550	1,200	1.75
79-81	Samuel Singer	1,100	2,700	3.80
83-85	Dina Garver	800	5,000	5.80
<u>Mercer Street</u>				
22-28	Stephen Garrison	2,500		2.50
30-pt 20	Samuel Radin	800	7,000	7.80
pt 32-36	Dina Garver	1,000	9,500	10.50

Exhibit P-42.

St. No.	Assessed to	Land	Building	Total
100-104	Ashley & Bailey Co.	\$16,000	\$67,500	\$83,500
100-106	Jno. Popp	600	1,200	1,800
100-108	Dwight Ashley	600	1,500	2,100
100-110	Ashley & Bailey Co.	1,800	14,000	15,800
100-112	Louis Burghardt	2,400	3,000	5,400

Sheet No. 39—Map 9, 3rd Ward.

Block bounded by River, Putnam, Mercer and Lyon Streets.

St. No.	Assessed to	Land	Building	Total
100-114	James Tanis	\$2,000	\$3,000	\$5,000
100-116	Mike DePiano	2,400	5,500	7,900
100-118	I. D. Ashley	1,200	6,000	7,200
100-120	Dwight Ashley	1,100	3,000	4,100
100-122	Carm. Mattarazzo	1,500	3,000	4,500
100-124	Vito Ruocco	1,400	3,100	4,500
100-126	Bertla Van Lendon	600		600
100-128	Est. Edw. Van Houten	1,200	1,800	3,000
100-130	Mary E. Stagg	600		600
100-132	Peter Offensio	2,400	5,100	7,500
100-134	Mary E. Stagg	1,000	5,100	6,100
100-136	Nathalia Vervaeke	600	1,600	2,200
100-138	Fita Warner	1,200	3,200	4,400
100-140	Chas. Kegelman	700	2,500	3,200
100-142	Albert Braem	1,800	4,000	5,800
100-144	Chas. Simon	700	3,000	3,700
100-146	Herman A. Hagen	3,400	3,000	6,400
100-148	Gertrude Becker	3,850	7,500	11,350
100-150	Chris. Fitzsimmons	1,200	3,000	4,200

Sheet No. 40—Map 9, 3rd Ward.

Block bounded by Lyon, River, Butler and Sparrow Streets.

St. No.	Assessed to	Land	Building	Total
100-152	Vito Ruocco	\$1,100	\$6,000	\$7,100
100-154	Cons. Investment Co.	3,400		3,400
100-156	Katie Ganger	1,000	3,400	4,400
100-158	J. J. Bailey	2,000	6,000	8,000
100-160	Ch. of Lady Lourdes	Exempt		18,000
100-162	Madge V. H. Proskey	4,000	5,000	9,000
100-164	Nicola Mustascio	2,000	6,500	8,500
100-166	Mrs. E. M. Blauvelt	4,200	5,200	9,400
100-168	Mrs. E. M. Blauvelt	2,350	7,650	10,000
100-170	Nicola Mustascio	1,100	200	1,300
100-172	Madge V. H. Proskey	2,200	150	2,350
100-174	Ch. of Lady Lourdes	Exempt		27,000
100-176	Est. Wm. Kommer	600	1,600	2,200
100-178	Martin Mayne	600	1,500	2,100

Exhibit P-42.

Block bounded by Sparrow, River, Butler and Sassafras Streets.

River Street				
466-468	Peter O'Brien	\$2,200	\$4,500	\$6,700
470-476	Lorenzo Manzi	4,000	19,000	23,000
478	A. P. Fredericks	1,000	2,500	3,500
480	Richard Frost	1,000	2,500	3,500
482-484	Jno. R. Lee	2,000	3,500	5,500
486-488	Sarnida Hopper	2,000	2,000	4,000
490-492	Est. G. I. Hopper	2,000	3,200	5,200
494-500	Dwight Ashley	4,000	2,800	6,800
502-504	Gaizia Galizio	2,000	3,000	5,000
506-508	A. A. Ackerman	2,000		2,000
510-512	Dr. Wm. Flitcroft	2,300	3,000	5,300

Sheet No. 41—Map 9, 3rd Ward.

Block bounded by River and Erie Streets and Railroad.

Lot. No.	Assessed to	Land	Building	Total
River Street				
401-407	Eliza J. Bush	\$2,500	\$3,500	\$6,000
409-415	Bernard O. Bogert	2,400	4,300	6,700
417-419	Eliza O. Esler	2,000	4,000	6,000
421-425	Silk City S. D. & Tr. Co.	3,000	4,500	7,500
427	Mary Richardson	1,000	2,800	3,800
429-431	Frank Campana	2,000	1,000	3,000
433-435	Vincent Campana	2,000	50	2,050
437-439	Mary Richardson	2,200	5,500	7,700
441-443	Silk City S. D. & Tr. Co.	2,200	2,300	4,500
445-449	Pasquala Brescia	3,800	3,200	7,000
451-457	Mrs. E. M. Blauvelt	4,800	3,600	8,400
459-463	Savoy Realty Co.	3,600		3,600
465-479	Dwight Ashley	12,000	8,000	20,000
481-503	Est. James Bell	19,000	6,000	25,000
505-521	James Bell Land Co.	9,000		9,000
523	Gustave Holthoff	900	1,600	2,500
525	A. E. W. Caccia	900	2,000	2,900
527-529	Reformed Church	Exempt		16,000
531-½; 533	Est. T. Crowther	1,350	2,000	3,350
½; 533-535	Dr. W. L. Dunning	1,600	2,200	3,800
Erie Street				
4-22	L. Lapat, Inc., Lessee	3,700	1,900	5,600
28	Geo. F. Petry	500	1,900	2,400
30	Jeremiah Vanderbeck	450	1,800	2,250
32	Ada Winters	450	1,800	2,250
34	Mrs. A. M. Carlock	450	1,800	2,250
East 11th Street				
129	James Bell Land Co.	250		250
131-133	Sam'l J. Dougherty	500	1,400	1,900
135-151	James Bell Land Co.	2,250		2,250
130-132	L. Lapat	750		750
134-152	James Bell Land Co.	3,500		3,500

Sheet No. 42—Map 9, 3rd Ward.

Block bounded by River Street, Sixth Avenue, East 11th and Erie Streets.

Lot No.	Assessed to	Land	Building	Total
River Street				
541-547	James Bell Land Co.....	\$3,700	\$ 400	\$4,100
549	Abram J. Herring.....	900	1,500	2,400
551	Reohof J. DeRing.....	900	1,700	2,600
553-555	Felix L. Petit	1,500	4,200	6,000
557-563	Jno. Grundy	3,600	4,800	8,400
565-567	Jas. Bell Land Co.....	1,500		1,500
Erie Street				
27-33	Jas. Bell Land Co.....	1,850		1,850
East 11th St.				
91-101	Kearney & Foote Co.....	1,650	2,000	3,650
103	Felix L. Petit	350	1,000	1,350
105-107	Jas. Bell Land Co.....	700		700
Block bounded by E. 11th St., Sixth Ave., Erie St. and Railroad.				
Erie Street				
1-21 and	} E. L. Southerland & Edwards .	6,400	27,000	33,400
100-108 East 11th Street				

Sheet No. 43—Map 4, 3rd Ward.

Block bounded by East 11th Street, Fifth and Sixth Avenues and Railroad.

Lot No.	Assessed to	Land	Building	Total
Sixth Avenue				
155-179 and	} Kearney & Foote Co.....	\$7,700	\$51,500	\$59,200
38-41 E. Railway				
76-82 E. 11th St.				
East 11th Street				
82-86 and	} Weidmann Silk D. Co.....	6,650	100	6,750
26-33 E. Railway				
68-74 E. 11th and	} Kearney & Foote Co.....	2,900	21,000	23,900
34-41 E. Railway				
Fifth Avenue				
106-112	Weidmann Silk D. Co.....	1,800	2,000	3,800
114-116	Marco Permi	800	1,800	2,600
118-120	Waldman Caccia	900	2,900	3,800
Block bounded by E. 11th St., 5th and 6th Aves., and E. 12th Street.				
East 12th St.				
62-80	J. F. Baer Realty Co.....	2,500	12,000	14,500
East 11th St.				
51-53	Frederick Koman	600	2,200	2,800
55	Philip DePope	300	1,600	1,900
57-59	Jno. Grundy	600	2,000	2,600
61-65	J. F. Baer Realty Co.....	900		900
67-69	Louis Louis	600	1,200	1,800
Sixth Avenue				
185-199 and	} J. F. Baer Realty Co.....	7,500	55,000	62,500
71-81 East 11th & 82-92 E. 12th St.				
Fifth Avenue				
126-128	James Lembo	800	2,700	3,500
130-132	Nicola Cera	800	1,600	2,400
134-136	Wm. Walker	800	3,500	4,300
138	Mrs. Fred Secker	400	2,500	2,900
140	Otto Handwerk	500	2,500	3,000

Exhibit P-42.

Sheet No. 44—Map 4, 3rd Ward.

Block bounded by East 11th Street, 5th Avenue, East Railway Ave. and River.

Lot No.	Assessed to	Land	Building	Total
Fifth Avenue				
111- $\frac{1}{4}$; 117	} Weidmann Silk D. Co.	\$1,500		\$1,500
Rear 117-119				
$\frac{3}{4}$; 117-ft 119	Katz Bros.	900	\$2,400	3,300
East 11th St.				
2-30	Weidmann Silk D. Co.	4,500	45,000	49,500
Block bounded by	E. 11th St., E. 12th St., 4th and 5th Aves.			
East 11th Street				
1-23	Weidmann Silk D. Co.	3,450	7,500	10,950
25	Abram Cohen	300	1,200	1,500
27	Jno. Jahlonski	300	1,200	1,500
29	Emanuel Sereno	300	1,200	1,500
Fifth Avenue				
125-139	Wm. P. Bogert, Est.	3,400		3,400
East 12th Street				
8-34	Weidmann Silk D. Co.	3,250		3,250
36	Reinhardt Deutschen	300	1,100	1,400
38	Jacob Visser	300	1,100	1,400
40	Serafin Wherta	300	1,300	1,600

Sheet No. 45—Map 3, 3rd Ward.

Block bounded by Fifth Avenue, Railroad and Passaic River.

Lot No.	Assessed to	Land	Building	Total
Fifth Avenue				
27-93 and				
Rear lots to River	Weidmann Silk D. Co.	\$33,200	\$400,000	\$433,200
Block bounded by	5th Ave., 6th Ave., E. 8th St. and Railroad.			
Fifth Avenue				
36-96	James Bell Land Co.	7,250	20,000	27,250
East 8th St.				
39-71	Jas. Bell Land Co.	2,150		2,150
East 7th Street				
38- $\frac{1}{2}$; 78	James Bell Land Co.	2,050		2,050
37-pt 45	James Bell Land Co.	1,950		1,950
Sixth Avenue				
121-139	Natl. Silk Dyeing Co.	2,500		2,500
Wait Street				
All 4 fts 6-8	Patrick Welsh	800	1,200	2,000
Rear 6-8, all 10	Natl. Silk Dyeing Co.	700		700

Sheet No. 46—Map 3, 3rd Ward.

Block bounded by Sixth Avenue, Wait Street and Peel Street.

Lot No.	Assessed to	Land	Building	Total
Wait Street				
16-22	Grasselli Chemical Co.	\$1,600	\$5,500	\$7,100
24-28	Est. A. G. Bowering.	1,200	3,500	4,700
30	Firman Pynaert	450	1,500	1,950

Exhibit P-42.

Sixth Avenue				
112-114	Geo. Derks	\$550	\$ 50	\$ 550
116	Rosa Bracalello	250	1,600	1,850
118-120	Jos. M. Gardner	500	1,700	2,200
122	Jos. M. Gardner	250	1,500	1,750
124	Wm. Karpacz	250	1,500	1,750
126-136	Grasselli Chem. Co.	1,500		1,500
Peel Street				
125-127	Geo. Derks	500	1,500	2,000
129	Theo. Chamberlain	250	1,100	1,350
131-133	Richard Steyling	500	2,000	2,500
135	Peter Boersma	250	1,500	1,750
137	Est. Wm. Wait	250		250
139-141	Est. Edw. Van Houten	500		500
143	Mary L. Finkelmeier	250		250
145	Hannah V. Wright	250		250

Sheet No. 47—Map 8, 3rd Ward.**Block bounded by Peel, Wait, Bleeker and East 7th Street.**

Lot No.	Assessed to	Land	Building	Total
Peel St.				
120-122	Garret B. Winters	\$ 500		\$ 500
124-126	Est. Jacob Kivitt	500	\$1,500	2,000
128-130	Est. Jacob Kivitt	500	1,500	2,000
132-142	Est. Edw. Van Houten	1,500		1,500
Wait Street				
36	Chris. Fitzsimmons	450	1,450	1,900
38-50	Est. Edw. Van Houten	2,800		2,800
Bleeker St.				
123-141	Est. Edw. Van Houten	4,000		4,000
East 7th Street				
107-109	Peter Steenstra	600	1,600	2,200
111	D. D. Zabriskie	175		175
113-123	Est. Edw. Van Houten	1,800		1,800

Sheet No. 48—Map 8, 3rd Ward.**Block bounded by Wait, Bleeker, East 7th and Woods Streets.**

Lot No.	Assessed to	Land	Building	Total
Wait Street				
56-70	Natl. Silk Dyeing Co.	\$3,200		\$3,200
Bleeker Street				
124-138	Natl. Silk Dyeing Co.	3,200		3,200
East 7th Street				
129-143	Natl. Silk Dyeing Co.	3,200		3,200
Woods Street				
123-133	Natl. Silk Dyeing Co.	2,400		2,400

Sheet No. 49—Map 8, 3rd Ward.**Block bounded by Wait, Woods, East 7th and Lowe Streets.**

Lot No.	Assessed to	Land	Building	Total
Wait St.				
76-80	Est. Edw. Van Houten	\$1,200		\$1,200
82-90	Ashley & Bailey Co.	2,000	\$ 400	2,400

Exhibit P-42.

Woods Street			
124-130	Est. Edw. Van Houten	\$1,600	\$1.00
East 7th Street			
149-155	Est. Edw. Van Houten.....	1,600	1.00
157-163	Ashley & Bailey Co.....	1,600	1.00
Lowe Street			
109-111	Ashley & Bailey Co.....	800	.80
Block bounded	Woods, East 7th and Lowe Streets.		
East 7th Street			
150-164	Est. Edw. Van Houten.....	2,800	2.80

Sheet No. 50—Map 8, 3rd Ward.**Block bounded by Wait, Lowe, East 7th and Rye Streets.**

Lot No.	Assessed to	Land	Building	Total
Wait Street.				
96-102	Henry M. Post	\$1,650	\$1,600	\$3,250
104-106	Est. Edw. Van Houten.....	750		750
108-110	Chas. H. Knapp	750	1,200	1,950
East 7th Street.				
169-175	Henry M. Post	1,600	500	2,100
177-179	Est. Edw. Van Houten.....	800		800
181-183	Chas. H. Knapp.....	800		800
Block bounded	Lowe, East 7th and Rye Streets.			
East 7th Street				
170-184	Est. Edw. Van Houten.....	2,800		2.80
Rye Street				
59-61	Gust. DeGrato	800	3,000	3.80
63-65	Gust. DeGrato	800	1,700	2.50

Sheet No. 51—Map 8, 3rd Ward.**Block bounded by Wait, Rye, East 7th and Lyon Streets.**

Lot No.	Assessed to	Land	Building	Total
East 7th Street				
189-203	Swift & Company	\$3,000	\$1,000	\$4,000
Block bounded by	Rye, East 7th, Leon and East 5th Street.			
East 7th Street				
190-204	Pub. Service Corp. (lessee Pat. Pas. Gas & E. Co.).....	3,300	140,000	143,300
Rye Street				
48-66	Public Service Corp.....	12,000		12,000
Leon Street				
37-55	Public Service Corp.....	4,000	2,000	6,000
East 5th Street				
175-189	Public Service Corp.....	3,400	29,000	32,400

Sheet No. 52—Map 8, 3rd Ward.**Block bounded by (East 7th & Wait St.), Leon, Lyon and****East 5th Street.**

Lot No.	Assessed to	Land	Building	Total
East 7th Street				
210-220	Jacob Vanden Handle.....	\$3,100	\$ 150	\$3,250
Wait Street.				
150	Jacob Vanden Handle.....	500		500
153	A. Z. Winters	550		550

Exhibit P-42.

Leon Street	Pub. Service Corp., 8 lots at \$500	\$4,000	\$4,000
18-32	Jacob Van Den Handle.....	1,000	1,000
34-36			
East 5th Street	Public Service Corp. (special).		
195-209			
Lyon Street	Public Service Corp. (special.) (5 lots at \$500.)		
17-35	Geo. Bucis	1,000	\$1,200 2,200
17-39	Mrs. M. E. Blauvelt.....	1,000	2,100 3,100
41-43	A. Z. Winters	500	700 1,200
45			

Sheet No. 53—Map 18, 3rd Ward.

Block bounded by East 5th Street, Lyon, Wait and Putnam Street.

Lot No.	Assessed to	Land	Building	Total
East 5th Street	Pub. Service Corp. (Special). (8 lots at \$500.)			
215-229				
Lyon Street	Pub. Service Corp. (Special). (12 lots.)			
28-30				
Putnam Street	Pub. Service Corp. (Special). (10 lots.)			
21-39	Putnam, Wait, Warren and E. 5th Street.			
Block bounded by Putnam Street				
22-24; 24	Chas M. Brandt	\$ 700	\$ 200	\$ 900
14; 24-26	Mrs. E. A. Escher	800	1,000	1,800
Waite Street				
178	Chas. C. Hendrie	1,400	6,600	8,000
180-182	Mrs. E. A. Escher.....	2,200	9,000	11,200
24	Chas. M. Brandt.....	1,100	5,200	6,300
Warren Street				
19-29	Est. D. Fullerton.....	6,000		6,000
East 5th Street				
235-241	Est. Jas. Lawler	2,050	1,000	3,050
243-249	Est. D. Fullerton.....	2,050	2,800	4,850

Sheet No. 54—Map 18, 3rd Ward.

Block bounded by Warren and Keen Streets, Railroad and Passaic River.

Lot No.	Assessed to	Land	Building	Total
River Street				
311-315	A. Mahler	\$3,000	\$3,500	\$6,500
317-319	Friemark & Horwich	1,200	1,300	2,500
321-323	Samuel Cohen	1,800	3,500	5,300
325-331	Edward Ryan	3,800	5,500	9,300
334-330	Jno. A. Lydecker	8,700	9,300	18,000
Warren St.				
2-8	Jno. Hinchliffe	1,900		1,900
10-12	Matilda Sturr	900		900
14, 22; 18	Jno. Hinchliffe	1,200	1,400	2,600
Keen St.				
2-13	Max Bernstein	3,000	1,600	4,600
15-17	Andrew Baum	1,500	1,000	2,500
Block bounded by Keen, Railroad, Franklin and Passaic River.				
River St.				
294-302	Est. B. Richard	4,300	4,500	8,800
304-312	Fullerton & Co.....	7,000	20,100	27,100
285-291	Louis Paer	3,500	4,000	7,500
293	Fred. Lochman	1,000	1,500	2,500
295-297	Michael Yoeman	2,000	2,200	4,200
299-303	Louis Berman	3,200	4,500	7,700

Exhibit P-42.

Sheet No. 55—Map 18, 3rd Ward.

Block bounded by Railroad, Franklin, River St. and
Sassafras St.

Lot No.	Assessed to	Land	Building	Total
Franklin St.				
20	Mrs. H. A. Hagen.....	\$ 700	\$1,700	\$2,400
22	Geo. Baum	700	1,400	2,100
24	Louis Baum, Jr.....	700	200	900
26	Modestino Porgana	700	1,100	1,800
28-32	Frank Sands	1,600	1,500	3,100
River St.				
276-278	Michael Lagrissa	1,000	3,800	4,800
280-284	Jos. Distler	2,500	1,500	4,000
286-288	Geo. Distler	2,300	2,000	4,300
Lafayette St.				
15-1/2; 21	Michael Lagrissa	3,800	2,800	6,600
1/2; 21-23	Hern. Deutsch	1,450	3,000	4,450
25	Ida Leidner	900	600	1,500
27-1/2; 29	Chris. Pfister	1,350	1,000	2,350
1/2; 29-35	Est. Mary Harrison.....	4,200	1,200	5,400
Franklin, River Street, Lafayette Street and Passaic River.				
River St.				
271-275	Car. Hemig, Est.	4,500	7,500	12,000
277-283	Geo. Kinsey	3,000	1,800	4,800
265-267	Matilda M. Kuhn	3,200	3,500	6,700

Sheet No. 56—Map 23, 4th Ward.

Block bounded by Lafayette, Straight and Montgomery Street
and Railroad.

Lot No.	Assessed to	Land	Building	Total
Lafayette St.				
24-26	Jno. Armstrong	\$2,000	\$1,800	\$3,800
28-32	Est. R. R. Armstrong.....	3,000	3,200	6,200
Straight St.				
5-7	Julia Klander	2,000	500	2,500
9	Tony Reggo	800	2,200	3,000
11	Jacob Visser	800	900	1,700
13-19	Angelo Galizino	3,500	7,000	10,500
Montgomery St.				
45-49	Est. Robt. Armstrong	2,000	1,000	3,000
Block bounded by Straight, Montgomery Streets and River Street.				
River St.				
234-238	Eliz. J. Wyman.....	4,000	9,000	13,000
240-252	Est. Thos. Weinhardt.....	7,000	12,500	19,500
245-247	Louisa Rengle	2,700	2,800	5,500
249	Cavino Vitone	800	900	1,700
251	Harry Levy	1,500	1,000	2,500
253	Harry Levy	900	1,000	1,900
255-263	Est. Thos. Weinhardt	6,000	11,000	17,000

Exhibit P-42.

Sheet No. 57—Map 23, 4th Ward.

Block bounded by Montgomery, Straight, Lawrence and Railroad.

Lot No.	Assessed to	Land	Building	Total
Straight St.				
3-29	Frank Filasto	\$4,300	\$7,500	\$11,800
1	Antonio DePasquale	800	900	1,700
3	David Attanio	800	900	1,700
5	Angelo Malzone	700	900	1,600
7	Antonio DePasquale	700	900	1,600

Block bounded by Montgomery, Straight, Lawrence and River Streets.

Straight St.				
2-24	Est. Thos. Weinhardt	2,000	5,200	7,200
6-28	Cannario Soline	1,800	2,800	4,600
6-32	Tony Pegutti	1,800	200	2,000
4-36	Morris Moscow	2,200	10,000	12,200
Montgomery St.				
0	P. & V. DeMario	800	1,800	2,600
2	Sam. Jacobs	900	300	1,200
4-16	Est. Thos. Weinhardt	1,800	2,800	4,600
River St.				
212-222	Nathan Barnett	9,000	13,000	22,000
224-pt 226	Morris Fineman	3,000	1,400	4,400
pt 226-228	Peter Gawwalis	2,300	1,800	4,100
230	P. & V. DeMario	1,300	2,000	3,300
Lawrence St.				
21-27	Julius Rejinski	3,200	7,000	10,200
29-31	Max Abrash	1,600	10,000	11,600

Sheet No. 58—Map 23, 4th Ward.

Block bounded by Railroad, Lawrence, Straight and Fulton Streets.

Lot No.	Assessed to	Land	Building	Total
Straight St.				
39-41	Annie Charavey	\$ 500	\$ 600	\$1,100
Block bounded by Straight, Lawrence and Fulton Streets.				
Straight St.				
50-56	Mrs. Fannie Perry	3,500	6,500	10,000
Lawrence Street				
12-18	Est. Jacob Walder	3,200	5,000	8,200
20-30	Jacob Levi	4,800	8,200	13,000
32-40	Jacob Levi Es.	4,000	33,000	37,000
Fulton St.				
196-202 River St. }	Est. Jacob Walder	24,500	66,000	90,500
& 11-35 Fulton St. }	Est. Jacob Walder	2,400	18,000	20,400
37-41				

*Exhibit P-42.***Sheet No. 59—Map 23, 4th Ward.****Block bounded by Railroad—Fulton and Harrison Streets**

Lot No.	Assessed to	Land	Building	Total
Fulton St.				
14	John Vanderclock	\$ 800	\$ 200	\$1,000
16-20	Ruth Sowerbutt	2,400	2,000	4,400
22-32 and	} Est. Jacob Walder.....	10,500	35,000	45,500
9-13 { Ann St.				
10-14 {				
34	Wm. Miller	800	700	1,500
36	Emily A. Greer.....	800	700	1,500
38	Louis S. Brooks.....	800	700	1,500
40-42	Benj. Urdang	1,600	1,300	2,900
44-50	Jno. Agnew	3,000		3,000
Harrison St.				
29-35	Ruth Sowerbutt	3,200	4,800	8,000

Sheet No. 60—Map 23, 4th Ward.**Block bounded by Railroad—Harrison, Ann and Governor Streets.**

Lot No.	Assessed to	Land	Building	Total
Harrison St.				
49-63 Governor	} Pat. Brew'g & Malt'g Co....	\$22,000	\$126,500	\$148,500
42-60 Harrison				
15-17 Ann Sts.				

Block bounded by Ann, Harrison, Paterson and Governor Streets.

Harrison St.				
30	Chris Heshner	800	1,600	2,400
32	Doll & Halstead	800	1,000	1,800
34-36	Hinchliffe Bros.	1,700	1,200	2,900
Paterson St.				
27	Wm. T. Hinchliffe	1,500	3,000	4,500
29	David Dabratsky	1,200	1,500	2,700
31-35	James S. Sowerbutt.....	3,500	5,700	9,200
37-39	Adam Fritz, Est.....	2,400	2,600	5,000
41	Adam Fritz, Est.....	1,600	3,600	5,200
Governor St.				
37	Adam Fritz, Est.....	900	3,100	4,000
39	Fred Brooks	900	2,800	3,700
41-43	J. C. Hinchliffe.....	2,000	7,000	9,000

Sheet No. 61—Map 33, 4th Ward.**Block bounded by Governor St., Railroad—Ann, Tyler, Paterson and Godwin St.**

Lot No.	Assessed to	Land	Building	Total
76-80 Tyler St.	} Est. John Agnew.....	\$23,000	\$8,000	\$31,000
75-79 Tyler St.				
46-52 Governor St.				
101-108 Godwin St.				
105-111 Godwin St.				
103 Hamilton Ave.				

Exhibit P-42.

Block bounded by Governor, Tyler, Paterson and Ann Streets.

Paterson St.				
67-69	Est. Andrew Pawelski.....	\$2,800	\$1,600	\$4,400
71	Ellen Pawelski	1,200	2,300	3,500
73	Dr. I. Levine	1,200	2,600	3,800
75	Samuel Blementhal	1,200	2,000	3,200
77	Mary E. Brown.....	1,200	2,000	3,200
79-81	Jos. Spinella	3,000	8,500	11,500
Tyler St.				
67	Isaac Basch	800	3,000	3,800
69	Peter Van Deigle	800	1,800	2,600
71	Samuel Birkhahn	750	1,000	1,750
Ann Street				
44-48	Mrs. J. H. Robinson.....	2,300	1,800	4,100
50	Jas. H. Bowles.....	700	400	1,100
52-58	Thos. Pickford	1,200	1,000	2,200
Governor St.				
54	Andrew Pawelski	900	3,000	3,900

Sheet No. 62—Map 33, 4th Ward.

Block bounded by Tyler, Paterson and Godwin Streets.

Lot No.	Assessed to	Land	Building	Total
Paterson St.				
67-69	Frank Pawelski	\$3,000	\$5,500	\$8,500
71	Mrs. Louisa Green.....	1,300	2,400	3,700
73	Mrs. Louisa Green.....	1,300	1,700	3,000
75-76; 77	A. B. Van Houten.....	1,900	2,800	4,700
78; 79-79	Sixth Holland Ch.....	Exempt		5,000
81	Est. A. Pawelski.....	1,700	3,300	5,000
Tyler St.				
68-70	Beulah Lockwood	1,600	2,400	4,000
72-74	Wm. H. Van Houten.....	1,600	1,400	3,000
Godwin St.				
99-101	Chas. Faveriaux	1,800	3,000	4,800
103	Wm. T. Gutherson.....	900	300	1,200
Block bounded by Godwin, Paterson Sts. and Hamilton Ave.				
Godwin St.				
96-102	Mrs. John Robinson.....	3,500	4,950	8,450
Hamilton Ave.				
87-89	Mrs. J. H. Robinson.....	4,000	7,300	11,300
91	Mary Billsborrow	2,500	3,800	6,300
93-95	Walter Vanderbeck	2,500	4,000	6,500
97	Eliza A. Suttle.....	1,450	3,000	4,450
99-101	Jno. B. Ludwig.....	3,400	6,600	10,000
Paterson St.				
87	Lawrence Ryan	1,600	4,000	5,600
89-91	Est. John H. Robinson.....	2,400	1,000	3,400
93	Ellen Mead	1,200	800	2,000
95-97	A. B. Van Houten.....	8,300	10,600	18,900
99-102	James Van Houten	3,200	3,000	6,200

Sheet No. 63—Map 33, 4th Ward.

Block bounded by Godwin, Paterson Streets and Hamilton Avenue.

Lot No.	Assessed to	Land	Building	Total
Godwin St.				
76-80	Holland Church.....	Exempt		\$3
82-84	Andrew Dickson	\$2,400	\$ 900	

Exhibit P-42.

Hamilton Ave.				
1/2: 75-77	James W. Row	\$2,400	\$1,100	\$1.00
79-81	Dr. Jno. VanNess	3,000	3,500	5.00
83	A. B. Van Houten	1,800	3,300	5.00
85	Dr. Rush Neer	2,200	7,000	9.50
Paterson St.				
88	Andrew Dickinson	1,200	1,200	2.00
90	Hay Over	900	700	1.00
92	Andrew Dickinson	900	700	1.00
94	R. C. Legg	900	4,000	4.50
Block bounded by Paterson, Hamilton, Fair Streets and Railroad.				
Hamilton Ave.				
94-1/2: 96	Sophie Weinhardt	3,100	6,200	5.00
1/2: 96-98	Jacob Silverman	2,700	3,500	6.00
100	Gusie Smith	2,700	3,200	5.00
102	Samuel Weinberg	1,450	3,300	4.70
104	Irving A. Hopper	1,450	2,400	4.20
106	Mrs. Wm. B. Gray	2,000	2,400	4.00
108-110	Leonard White	1,700	3,000	4.50
Fair St.				
91-93	Dr. J. T. Bowden, Est.	3,300	4,500	7.00
95	Marie K. Frommelt	1,800	2,500	4.00
97	Wm. B. Kendall, Sr.	2,150	5,000	7.10
99-107	Dr. Wm. Blundell	7,000	2,200	9.50
Block bounded by Hamilton Ave., Paterson and Fair Sts.				
Fair St.				
81-83	M. & H. Joelson	4,500	4,500	9.00
85-87	Dr. M. S. Joelson	4,000	3,500	7.50
Hamilton Avenue				
84	Wm. H. Van Houten	1,800	5,200	7.00
86	Jno. Mullen	1,800	2,000	4.00
88	Harvey Dougherty	1,800	2,000	3.00
90-92	Est. Wm. Fortune	4,000	7,800	11.00

Sheet No. 64—Map 33, 4th Ward.

Block bounded by Fair, Paterson, Broadway and the Railroad.

Lot No.	Assessed to	Land	Building	Total
Fair St.				
98	Simon Opet	\$2,200	\$3,500	\$5.70
100-102	C. A. Quackenbush	3,000	4,000	7.00
104-1/2: 106	Jos. Silver	2,700	3,000	5.70
1/2: 106-108	Westervelt & VanBlarcom ..	2,700	2,000	4.70
110-114	Rachael Van Houten	5,100	2,400	7.50
Broadway				
159	James Levie	6,000	8,000	14.00
161-169	Broadway Reformed Ch.	Exempt		40.00
171-175	Catherine Van Houten	10,500	7,000	17.50
Block bounded by Fair, Paterson Streets and Broadway.				
Broadway				
147	Nathaniel Hough	5,000	3,000	8.00
149	Michael Dove	5,000	3,000	8.00
151	Est. A. M. Decker	5,000	6,000	11.00
153-155	William Hewitt	8,500		
Fair St.				
88-90	Dr. Henry Kipp	2,700	4,000	6.70
91-94	Rachael Steinberg	2,700	3,000	5.70
96	B. S. Rosestone	3,100	3,000	6.10

Sheet No. 65—Map 44, 5th Ward.

Block bounded by Broadway, Paterson, Van Houten Streets
and Railroad.

Lot No.	Assessed to	Land	Building	Total
Broadway				
162-164	Est. H. B. Crosby.....	\$11,100	\$3,500	\$14,600
166-168	Est. J. J. Brown.....	10,150	3,000	13,150
170-172	Dr. W. B. Johnson.....	10,100	6,000	16,100
174	Dr. A. B. Vanderbeek.....	8,000	2,000	9,000
176-178	Nathan Barnett (H. F. S.)....	Exempt		25,700
Van Houten St.				
187-189	Est. H. B. Crosby.....	5,000	250	5,250
191-193	Mrs. Mary Brown.....	4,565	130	4,695
195	Jacob Steele.....	2,340	2,000	4,340
197	Ernest S. Fields.....	2,340	2,000	5,340
199-205	Van Houten & Stevenson.....	7,800	17,000	24,800
Block bounded by Broadway, Van Houten and Paterson Streets.				
Van Houten				
172-173	A. A. Beckman.....	4,500	2,800	8,300
177	A. A. Beckman.....	3,270	2,500	4,700
179	Mrs. Henry Van Riper.....	2,250	1,700	3,950
181	Chas. H. May.....	2,710	3,000	5,710
Broadway				
131-132-134	Michael Dunn.....	7,340	1,500	8,840
136	Women's Chr. Temp. U.....	5,700	5,000	10,700
138	Mrs. S. C. M. Allen.....	4,700	4,000	8,700
140	McCoy & Johnson.....	6,000	3,500	9,500

Sheet No. 66—Map 44, 5th Ward.

Block bounded by Van Houten, Paterson and Ellison Streets
and Railroad.

Lot No.	Assessed to	Land	Building	Total
Van Houten St.				
188-190	Dr. W. H. Lowe.....	\$4,200	\$4,200	\$8,400
192-194	Dr. H. W. Lucas.....	4,350	3,600	7,950
196-198	Helen Hurd.....	6,250	4,500	10,750
200-202	Henry L. Berdan.....	5,820	5,000	10,820
204-206	D. G. Rodgers.....	4,000	22,000	26,000
Paterson St.				
171	Est. W. W. Phelps.....	2,470	2,000	4,470
173	P. Coughlin.....	2,500	2,000	4,500
175	Mrs. I. H. Voorhis.....	2,500	4,300	6,800
177	J. A. Stoutenborough.....	2,300	2,400	5,700
179	Mrs. J. C. Todd.....	4,050	2,600	6,650
181-183; 183	Sarah B. Haines.....	3,450	2,100	5,550
183-185	Thomas Beveridge.....	3,250	2,100	5,350
187				
Ellison St.				
219-229	E. M. Stiles.....	17,250	900	18,150
Block bounded by Paterson, Van Houten and Ellison Streets.				
Map 43.				
Ellison St.				
189-197	Emma A. Lewis.....	5,000	4,000	10,200
199	Mrs. C. V. R. Cadmus.....	2,500	4,000	6,500
201	Dr. J. H. Bradworth.....	2,500	1,700	4,200
203	Mrs. Ellen Straw.....	3,500	2,400	4,900
205	S. G. Walker.....	3,000	8,500	11,500

Exhibit P-42.

Paterson St.				
174	J. W. Miller	\$2,000	\$6,000	\$8,000
176	Est. J. W. McKee	3,000	2,000	5,000
178	Nettie Dingman	2,775	4,000	6,775
180	James Lavis	2,900	1,000	3,900
Van Houten				
179	Est. A. D. Winfield	2,700	3,000	5,700
173	Mrs. Emily Cahill	2,700	4,500	7,200
174-180	N. Y. Telephone Co.	8,000	45,000	53,000

Sheet No. 67—Map 44, 5th Ward.

Block bounded by Ellison, Paterson and Market Streets and Railroad.

Lot No.	Assessed to	Land	Building	Total
Ellison St.				
220-222	Erie Railroad	\$1,500		\$1,500
224-15; 228	Erie Railroad 2nd Class R. R. property.			
15; 228-230	Erie Railroad	3,500	\$2,500	6,000
Paterson St.				
193-201	Central Storage Co.	13,250	13,000	26,250
203-207	N. Y. & N. J. R. Y. Co.	7,500	6,000	13,500
209-213	I. & M. A. Sheehan	9,000	5,000	14,000
215	A. A. Beckman	3,000	10,000	13,000
217-219	Pat. Vehicle Co.	7,200	5,500	12,700
Rear 221-223				
221	L. Sandford	2,500	1,000	3,500
Market St.				
237-pt 252	Manhattan Hotel Co.	49,720	44,200	134,020
pt 252-259	Erie R. R. Company	32,000	10,000	42,000

Block bounded by Market, Paterson and Ellison Streets.

Map No. 43 5th Ward.

Market St.				
223-225	Jas. Inglis, Jr.	25,000	3,300	28,300
227-229	R. B. Stoutenborough	25,000	2,000	27,000
231	A. L. Simon	20,000	20,000	40,000
Paterson St.				
200	Tony Dinapole	700	400	1,100
202	H. G. Halsefield	2,500	2,500	5,000
204 and				
Rears 204-206	Public Service Corp.	5,000	20,000	25,000
208	Anson Carlson	3,500	300	3,800
208-210	Isaac Blauvelt	5,000	2,000	7,000
212-216				
Rears 208-216	H. J. Kochler	9,000	500	9,500
218-pt 220	A. & D. B. Hubbard	7,000	2,500	9,500
pt 220-222	R. B. Stoutenborough	950	600	1,550
Ellison St.				
200-202	Mrs. M. B. O'Connell	4,505	3,200	7,705
204	P. R. Schnyder	2,500	3,000	5,500
206	Thomas Holt	2,000	2,200	4,200

Sheet No. 68—Map 52, 9th Ward.

Block bounded by Market, Prince, Ward Street and Railroad Ave.

Lot No.	Assessed to	Land	Building	Total
Market St.				
222-224	Est. Lederer	\$40,000	\$0,000	\$40,000
226-228	Mrs. S. H. Wall	120,000	25,000	145,000

Exhibit P-52.

Prince Street				
13	Silk City R. E. Ass'n.....	\$2,500	\$3,000	\$5,500
15	Laffray Grocery Co.....	2,100	7,500	9,600
17-19	Chas. B. Dunn.....	5,000	2,000	7,000
Ward Street				
153	Wallace Graham, Sr.....	2,500	1,400	3,900
155	Frank Wilkinson.....	2,000	1,400	3,400
157	Frank Wilkinson.....	2,000	1,500	3,500
159-179	Silk City R. E. Ass'n.....	21,000	42,000	63,000
Block bounded by	Ward St., Railroad Ave., Grand St., and Dale Ave.			
Ward St.				
154-160	Frank Ulrich.....	5,000	14,000	19,000
162-168	J. O. Terhune.....	8,000	12,000	20,000
170-172	Nathan Barnert.....	5,000		5,000
Railroad Ave.				
12	W. J. Woolley.....	2,000	2,000	4,000
14-16	Ketcham Estate.....	20,000	62,000	82,000
Grand St.				
151-165	Nathan Barnert.....	21,000	44,500	65,500
Dale Avenue				
13-15	W. J. Woolley.....	1,500	3,500	5,000
	Nathan Barnert.....	12,000	26,500	48,500

Sheet No. 69—Map 57, 9th Ward.

Block bounded by Grand St., Railroad Ave., Slater St., and Dale Ave.

Lot No.	Assessed to	Land	Building	Total
Railroad Avenue				
14-16 and	Watson Machine Co.....	\$26,000	\$15,000	\$71,000
16-18 Dale Ave.				
100-102 R. R. Ave.	Martin Gable Co.....	5,000	500	5,500
77-79 Dale Ave.				
105-107 R. R. Ave.	Public Service Corp.....	6,000	7,000	13,000
11-13 Dale Ave.				
109-111 R. R. Ave.	James Wilson.....	7,500	20,000	27,500
6-8 Dale Ave.				
Block bounded by	Slater, Green Sts. and Railroad and Dale Aves.			
Railroad Avenue.				
119-125	Wm. M. Smith.....	16,000	1,000	17,000
125-129				
131-135	Est. Sam'l Smith & Sons.....	12,000	5,000	17,000
137-141	Chris Kelley.....	4,000	900	4,900
Dale Avenue				
141-145-147	Union Brewing Co.....	2,400	800	3,200
149-151	Est. S. Smith & Sons.....	10,000	12,000	22,000
153-155	Chris Kelly.....	3,200		3,200

Sheet No. 70—Map 63, 9th Ward.

Block bounded by Cedar and Clay Streets, Railroad Avenue and Railroad.

Lot No.	Assessed to	Land	Building	Total
Railroad Ave.				
151-153	Erie Railroad. Second class property.	\$5,300	\$12,000	\$17,300
155-157				
159-161	Standard Oil Co.....	7,000		7,000
163-165	Erie R. R.....			
167-169				

Exhibit P-42.

Block bounded by Green and Taylor Sts., Railroad and Dale Aves.

Railroad Ave.

162-190

192-194

Erie R. R. Co.....	\$18,400	\$2,800	\$21,200
M. K. Kametz.....	2,100	4,400	6,500

Dale Avenue
139-168

D. L. & W. R. R. Co. Second class railroad property.

Taylor Street

47-51

fts. 53-55

D. L. & W. R. R. Co. Second class railroad property.

M. K. Kametz.....	1,200	2,800	4,000
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Spring Street

121

123

125-127

D. L. & W. R. R. Co.....	700	1,300	2,000
John H. Bimson.....	500	1,500	2,000
C. D. Pollard.....	1,500	4,800	6,300

Block bounded by Railroad Ave., Clay St., D. L. & W. R. R. Co., Taylor St.

Taylor St.

54-60

Henrietta Blackburn	4,200	13,000	17,200
---------------------------	-------	--------	--------

Railroad Ave.

fts. 208-220

Rears 208-220

Clay Street

145-151

D. L. & W. R. R. Co..... 6,000 6,000

D. L. & W. R. R. Railroad property.

D. L. & W. R. R. Second class R. R.

Sheet No. 71—Map 71, 10th Ward.

Block bounded by Clay, Straight, Peach and Plum Streets.

Lot No.	Assessed to	Land	Building	Total
Clay St.				
166-174	E. M. Stiles.....	\$4,800		\$4,800
Straight St.				
492-496	E. M. Stiles.....	3,000		3,000
498-502	Marie E. Bogert.....	3,000	\$ 300	3,300
Peach St.				
23-25	E. M. Stiles.....	1,300	1,400	2,700
27-29	Mary Lach	1,200	3,000	4,200
Plum Street				
7-13	E. M. Stiles.....	2,800		2,800
Block bounded by Clay, Plum, Peach and Spring Streets.				
Clay St.				
152-160	D. L. & W. R. R.....	3,840	4,000	7,840
Plum Street				
6-14	D. L. & W. R. R. Second class railroad.			
Peach St.				
1	M. J. O'Rourke.....	800	1,500	2,300
3-7	M. J. O'Rourke.....	1,600	5,300	6,900
9	Jno. E. Quackenbush.....	600	1,100	1,700
11	D. L. & W. R. R.....	600		600
13-17	D. L. & W. R. R. Second class railroad.			
Spring St.				
159	Jacob Brookstein	800	2,400	3,200
161	Jane Whorwell	600	1,500	2,100
163	Mrs. E. Smith.....	600	1,600	2,200
165	Isaac Anderson	600	1,100	1,700
167	Isreal Peel	600	2,200	2,800
169	Thomas Conlon	600	100	700
171	Sarah Horwitz	600	1,800	2,400

Sheet No. 72—Map 71, 10th Ward.

Block bounded by Straight, Peach and Plum Streets and Washington Avenue.

Lot No.	Assessed to	Land	Building	Total
Straight St.	Joseph Lach	\$1,800	\$1,500	\$3,300
08-510	Bogart & Karlough	3,200	5,000	8,200
512-518	James C. Hinchliffe.....	700	1,400	2,100
520	D. C. Bolton, Est.....	700	700	1,400
522	Patrick Reardon	1,400	2,000	3,400
524-526	D. L. & W. R. R. Co.....	1,500		1,500
528-530				
Peach Street	Geo. Herman	1,400	1,500	2,900
24-26	Bogart & Carlough Co.....	700		700
28				
Plum Street	D. L. & W. R. R. Second class railroad property.			
33-39				
Washington Ave.	D. L. & W. R. R. Second class railroad property.			
53-59				
Block bounded by Straight and Hemlock Streets and Getty and W. Railway				
Aves., on parts of Maps 71 and 78.	Passaic Structural Steel Com-			
	pany (300 lots).....	150,000	150,000	300,000

Sheet No. 73—Map 78, 10th Ward.

Block bounded by Hemlock, West Railway, Elizabeth and Getty Avenue.

Lot No.	Assessed to	Land	Building	Total
Hemlock St.	Amn. Locomotive Co.....	\$4,500		\$4,500
72-78				
West Railway	Amn. Locomotive Co.....	4,500		4,500
101-108				
Elizabeth St.	Amn. Locomotive Co.....	4,500		4,500
71-87				
Getty Avenue	Amn. Locomotive Co.....	1,000		1,000
73-175				
Block bounded by Getty, Madison, West Railway and Elizabeth Street.				
Elizabeth St.	Amn. Locomotive Co.....	7,000		7,000
64-90				
West Railway	Amn. Locomotive Co.....	4,500		4,500
111-118				
Madison Ave.	Amn. Locomotive Co.....	7,000		7,000
1186-1212				
Getty Ave.	Amn. Locomotive Co.....	4,000		4,000
181-195				

Sheet No. 74—Map 85, 10th Ward.

Block bounded by Madison Ave., Getty Ave., Robert St., & Erie R. R.

Lot No.	Assessed to	Land	Building	Total
Getty Ave.	Amn. Loco. Co. (208 lots)	\$83,200	\$180,000	\$263,200
203-277				
Block bounded by Robert St., West Railway, Thomas and Getty Avenue.				
Getty Ave.	Amn. Loco. Co.....	3,700		3,700
283-297				
West Railway	Amn. Loco. Co.....	1,700		1,700
162-169				
Thomas St.	Amn. Loco. Co.....	6,300		6,300
63-97				
Robert St.	Amn. Loco. Co.....	3,300		6,300
64-98				

Exhibit P-42.

Sheet No. 75—Map 85, 10th Ward.
Block bounded by Thomas St., West Railway, George and
Getty Avenue.

Lot No.	Assessed to	Land	Building	Total
Thomas St.				
64-68	Geo. Lang, Est.	\$1,050	\$5,200	\$6,250
70	Jno. Laird	350	1,100	1,450
72-74	James M. McGlashen.....	700	2,100	2,800
76	Chas. P. Thrift.....	350	900	1,250
78	Jos. P. Smith.....	350	1,600	1,950
80-84	Hattie Breeze	1,050		1,050
86-88	Thos. C. Rooney.....	700	2,000	2,700
90-94	Jacob Friesch	1,050	3,800	4,850
96	Chas. E. Mueller.....	350		350
West Railway				
172-179	Chas. E. Mueller.....	1,700	6,000	7,700
George St.				
63	Jno. Hand & Sons.....	300		300
65-67	Andrew Holmes	600	1,500	2,100
69-73	Ellen Hogan	900		900
75-77	Hattie Breeze	600	4,500	5,100
79-87	W. Vandeburgh	1,500	12,000	13,500
89-93	Jacob Frisch	900		900
95	Chas. E. Mueller.....	300	500	800
Getty Avenue				
303-307	Henry Lang	1,400	9,600	11,000
ft. 309	James Crooks	400		400
Rear 309	Henry Lang	50		50
311	Eliza Farrell	450	2,000	2,450
313	Martha E. Prall.....	450	2,000	2,450
315-317	Hannah Earley	950	4,500	5,450

Sheet No. 76—Map 85, 10th Ward.
Block bounded by George, West Railway, Gould and
Getty Avenues.

Lot No.	Assessed to	Land	Building	Total
George St.				
64-78	Michael Lynch	\$2,800	\$57,000	\$59,800
80-90	Michael Lynch	2,100		2,100
92	Mrs. Jane Hogg.....	350	2,000	2,350
94	C. Z. Van Riper.....	350		350
96	Abram Krulowitz	350		350
West Railway				
182-183	C. Z. Van Riper.....	450		450
184-185	Jennie A. Cadmus.....	400		400
186-188	Jno. Terhune	600		600
189-191	Henry Bewkes	600		600
192-193	I. M. Terhune.....	450		450
Gould Ave.				
155-157	M. Lynch	700		700
159	Jennie A. Cadmus.....	350		350
161-167	Jno. Terhune	1,400		1,400
169-175	Max Pitowiskey	1,400		1,400
177-183	Jennie A. Cadmus.....	1,400		1,400
185	Abram Krulowitz	350		350
187	Wilhelmina Regeisch	350	2,000	2,350
Getty Avenue				
323-325	Albert Earley	1,040	4,500	5,540
327-343	E. & Z. Van Raalter.....	4,050		4,050
345	Julia Barry	590	8,000	8,590

Exhibit P-42.

Sheet No. 77—Map 85, 10th Ward.
Block bounded by Gould, West Railway, Goshen and
Getty Avenues.

Lot No.	Assessed to	Land	Building	Total
Getty Ave.				
351-353	Cons. Brewing Co.....	\$ 950	\$2,500	\$3,450
355-pt 357	James J. Cardiff.....	540		540
pt 357-pt 359	W. Collins	540		540
pt 359-367	Thos. Dynan, Est.....	1,970		1,970
Gould Avenue				
156-160	Wm. J. Dynan	900		900
162	Thos. Dynan	300		300
164	W. H. Gibbs.....	300	1,300	1,600
166-186	Jno. Hand & Sons.....	3,300		3,300
West Railway				
196-204	Jno. Hand & Sons.....	1,900	40,000	41,900
Goshen St.				
63-69	Thomas Dynan, Est.....	1,000		1,000
71-93	Jno. Hand & Sons.....	3,000		3,000

Sheet No. 78—Map 89, 10th Ward.
Block bounded by Goshen, West Railway, Grove Street and
Getty Avenue.

Lot No.	Assessed to	Land	Building	Total
Goshen St.				
64	Agnes Kidd	\$ 250		\$ 250
66	Catherine Hough	250		250
68	Sam'l G. McKiernan.....	250		250
70-72	Henry McCormick	500	\$1,100	1,600
74-86	S. G. McKiernan	1,750		1,750
88-96	Mary S. Brown.....	1,250		1,250
West Railway				
208	G. DeLucia	250		250
209-211	Mary Brown	600		600
212-215	S. G. McKiernan.....	850		850
Grove St.				
63-65	F. J. Noonan	500		500
67	Rachael Villa	250		250
69	James Riley	250		250
71-73	Watson Machine Co.....	500		500
75-95	S. G. McKiernan.....	2,750		2,750
Getty Ave.				
373	Hattie Wolf	500		500
375	Mrs. James Connolly.....	450		450
377	David Davakjy	450		450
379	Rose O'Connor	450		450
381-387	Henry F. Comiskey.....	1,850		1,850

Sheet No. 79—Map 89, 10th Ward.
Block bounded by Grove, West Railway, Michigan and
Getty Avenue.

Lot No.	Assessed to	Land	Building	Total
Getty Ave.				
393-401	Colt & Fowler	\$1,550	\$1,300	\$2,850
403-407	Jno. Kelly	950	1,200	2,150

Exhibit P-42.

Grove St.					
64-66	Anthony Jorlett	\$500	\$1,200	\$1,700	433
68	Tony Dannella	250		250	435
70-78	Chas. Turnbull	1,250		1,250	437
84-90	Standard Oil Co.....	2,000		2,000	439
West Railway					441
218-225	Standard Oil Co.....	1,700		1,700	443
Michigan Ave.					
61	Geo. R. Turnbull.....	250		250	
63	Chas. Cordon	250	850	1,100	
65-73	Geo. R. Turnbull.....	1,250		1,250	
75	S. G. McKiernan	250		250	
77-91	Standard Oil Co.....	2,000		2,000	

Sheet No. 80—Map 89, 10th Ward.

Block bounded by Michigan, West Railway, Delaware and
Getty Avenues.

Lot No.	Assessed to	Land	Building	Total
Getty Ave.				
413-415	Wood McKee	\$ 650		\$ 650
417-419	R. Pierce	600		600
421-427	Emma J. Greaves	1,250		1,250
Michigan Ave.				
62-64	Ellen Ryerson	500		500
66-70	S. G. McKiernan	750		750
72-76	Jennie E. Copeland.....	750		750
78-84	Jas. Crooks	1,000		1,000
86-92	Louis Mai	1,000		1,000
West Railway				
228-231	Louis Mai	850		850
232-235	Henry Tries	850		850
Delaware Ave.				
61	Emma J. Greaves	250		250
63-71	Henry Tries	1,250	\$ 600	1,850
73-79	Jno. Suppo	1,000	1,500	2,500
81-83	Jno. Petnoff	500		500
85-89	Henry Tries	750		750
91	Wm. I. Norris.....	250		250

Sheet No. 81—Map 89, 10th Ward.

Block bounded by Delaware, West Railway, Buffalo and
Getty Avenues.

Lot No.	Assessed to	Land	Building	Total
Delaware Ave.				
62	S. G. McKiernan	\$ 250		\$ 250
64-66	I. Cohen	500	\$ 600	1,100
68	Annie Beyersdorf	250		250
70-72	Geo. R. McLean.....	500	2,200	2,700
74-76	E. B. Crooks.....	500		500
78	Henry Arrighi	250	1,200	1,450
80-90	S. G. McKiernan	1,200		1,200
West Railway Ave.				
238-245	S. G. McKiernan	1,700		1,700
Buffalo Ave.				
159-187	S. G. McKiernan	3,000		3,000

Exhibit P-42.

Getty Ave.	Jane Johnson	\$300		\$300
433	C. F. Reiher	250		250
435	Geo. Van Riper	250	\$3,000	3,250
437	Jos. S. Knight	250	2,300	2,550
439	Rosa Rodgers	250	1,100	1,350
441	S. G. McKiernan	800		800
443-447				

Sheet No. 82—Map 89, 10th Ward.

Block bounded by Buffalo, West Railway, Vesper and Getty Avenue.

Lot No.	Assessed to	Land	Building	Total
Getty Ave.				
453-459	S. G. McKiernan	\$ 850		\$ 850
461-467	Ann McKiernan	850		850
Vesper St.				
9-37	Ann McKiernan	2,250		2,250
West Railway				
218-251	S. G. McKiernan	800		800
252-255	Ann McKiernan	800		800
Buffalo Ave.				
160-188	S. G. McKiernan	3,000		3,000

Sheet No. 83—Map 89, 10th Ward.

Block bounded by Vesper, West Railway, Genessee and Getty Avenue.

Lot No.	Assessed to	Land	Building	Total
West Railway				
258-269	Andrew Cardinal	\$2,650	\$25,000	\$27,650
Vesper St.				
10-16	Steel Button Mfg. Co.....	800		800
18-22	Ann McKiernan	600		600
24-30	S. G. McKiernan	800		800
32-38	Assessed on Railroad Avenue.			
Getty Ave.				
473-475	Steel Button Mfg. Co.....	700	7,500	8,200
476-483	Jno. Donnelly	500		500
485	Lizzie Spear	200		200
Genessee Ave.				
163-165	A. A. Breen	370		370
166-169	Mises Wilson	620		620
171-173	Aug. Liss	500		500
175-179	Frank Quinn	750	1,200	1,950
181-183	S. A. Cooke	500		500
185-187	E. E. Belynea	500		500
189-195	Chas. Buttell	800	1,400	2,200
197	Mich. End	250	1,600	1,850
199-203	Howard	800	1,600	2,400

Sheet No. 84—Map 89, 10th Ward.

Block bounded by Genessee, Getty, West Railway and Knickerbocker Ave.

Lot No.	Assessed to	Land	Building	Total
Getty Ave.				
489	Mrs. A. A. Brace.....	\$ 200		\$ 200
491	Jno. Phalon, Est.....	200		200
493	E. H. Baldwin.....	200		200
495	Edwin Gould	200		200
497-503	Presby Church.....	Exempt		

Exhibit P-42.

Genessee Ave.				
168-176	C. Seinkbell	\$1,250	\$1,200	\$2.40
178-182	Elenor Parsons	750		70
184-186	Jno. A. Croker	500		50
188-190	Jno. A. Croker, Est.	500	900	1.80
192-194	A. T. Lorme	500		50
196-198	Dr. P. S. Kinne	500	1,400	1.80
West Railway				
278-281	Dr. P. S. Kinne	850		80
282-285	C. W. Congdon	800		80
Knickerbocker Ave.				
167-173	C. Seinkbell	1,000	2,000	3.00
175	Jas. Crooks	250		20
177-181	Jno. A. Croker, Est.	750		70
183-187	Jno. A. Croker	750	2,000	2.70
189-191	Jno. B. Pustula	500	1,800	2.30
193	Dr. P. S. Kinne	250		20
195	Marie Hendricks	250	3,600	3.80
197-199	Dr. P. S. Kinne	500	700	1.20

Sheet No. 85—Map 89, 10th Ward.**Block bounded by Getty, Knickerbocker, West Railway and Crooks Ave.**

Lot No.	Assessed to	Land	Building	Total
Getty Ave.				
509-515	Jno. A. Croker	\$ 850		\$ 850
Knickerbocker Ave.				
174-180	Jno. A. Croker	1,000		1,000
182-184	Jno. Gimmell	500	\$3,000	3,500
186-188	S. Desmet	500	1,500	2,000
190-192	C. Beckert	500	900	1,400
194-200	Geo. Warner	1,000	900	1,900
202-204	S. Desmet	500	1,050	1,550
West Railway Ave.				
288-290	A. L. R. Spagenmacher	650		650
291	Jas. Crooks	250		250
292-293	C. Buckley	400	1,100	1,500
294-295	C. W. Congdon	450		450
Crooks Ave.				
169-pt 171	Otto L. Fullboam	450	1,200	1,650
pt 171-173	Theo. Funk	360	1,100	1,460
175-177	Jos. N. Fowler	600	1,000	1,600
179-181	Angelo Roncorano	600	2,500	3,100
183-187	C. Albonico	900	3,000	3,900
189	Cessario DeBlaise	300	1,000	1,300
191	Frank Migliasco	300		300
193-195	Henry Lang	600	1,150	1,750
197-199	Angelino Note	500	600	1,100
201	S. K. Kinne	250		250
203-205	Jno. Pustula	500	900	1,400
207	C. W. Congdon	200		200

EXHIBIT P-43.

Printed in testimony at page 172.

EXHIBIT P-44.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at

5Ny Ds 40 Dh 3 ex

Jo, Erie Depot, Jersey City, N. J. Dec. 12, '1

Board of Public Utility Commissioners.

At one p. m., Dec. 11th, at Fifth avenue crossing Paterson a man who was working on cars in siding inside of crossing gates was struck by passenger train No. 220 and seriously injured.

R. S. PARSONS,

Supt. N. Y. Div.

1055 a

Erie Division.

ERIE RAILROAD COMPANY.

New York, Susquehanna & Western Railroad.

New Jersey & New York Railroad.

To the

BOARD OF PUBLIC UTILITY COMMISSIONERS FOR THE

STATE OF NEW JERSEY

Trenton, N. J.

181

12/15/1911.

NOTICE OF ACCIDENT.

Name of Corporation owning road:

Erie Railroad. New York Division.

Name of Corporation leasing or operating road:

Erie Railroad.

Date and hour of accident:

December 11th, 12.58 P. M.

Exhibit P-44.

Precise location of accident:

Paterson, N. J.

Number and description of train:

No. 320. First Class.

Conductor:

M. J. Conway.

Engineman:

Geo. Conklin.

Nature of accident:

A carload of flag stone was placed about nine feet west of Fifth Avenue crossing, Paterson, which was being unloaded by men employed by the J. W. Ferguson Company, Contractor; as train 320 was approaching one of the men was standing between the eastbound track and the car of stone standing on the siding, prying on a flag stone, and evidently thought that he was clear of the train which was approaching. Engine struck him and knocked him down. Face bruised, hip bone on right side bruised and man is in serious condition.

Number of passengers or other persons killed or injured, including trespassers:

1 trespasser injured.

Names and occupations of employees killed or injured:

None.

Extent of damage to property and equipment:

None.

A. J. STONE,

General Superintendent.

RMS.

Exhibit P-45.

EXHIBIT P-45.

WESTERN UNION TELEGRAPH COMPANY.

Received at

Trenton N

6NyPe Ds 37 Dh 3 ex

Jersey City N. J. Apl 19, '09

Bd of Comrs.

April 18th at 159 a. m. extra 930 east, an unknown man attempted to board train at Paterson and was badly injured and died later from result of injuries.

A. C. ELSTON, *Supt.*

N. Y. Div.

125p

ERIE RAILROAD COMPANY.

To the

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF NEW JERSEY:

Trenton, N. J.

NOTICE OF ACCIDENT.

4/20th

Name of Corporation owning road:

Erie Railroad.

Name of Corporation leasing or operating road:

Erie Railroad New York.

Date and hour of accident:

1.59 A. M. April 18th.

Precise location of accident:

Paterson, N. J. station.

Number and description of train No. extra 930,
freight.

Conductor:

Welsh.

Engineman:

Donahue.

*Exhibit P-46.***Nature of accident:**

An unknown man in attempting to board train on Market street crossing, Paterson, was badly injured and died later from injuries received. He ran under gates on this crossing.

Number of passenger or other persons killed or injured, including trespassers:

1 trespasser killed.

Names and occupations of employees killed or injured:

None.

Extent of damage to property and equipment:

None.

A. J. STONE,

General Superintendent.

RMS.

EXHIBIT P-46.**THE WESTERN UNION TELEGRAPH COMPANY.**

Received at

2 G Gm Ds 48 Dh 3 ex

Jo, Erie Depot, Jersey City N. J. August 26, '10

Secretary Board Railroad Commission.

At 7.20 p. m., August 26th, eastbound Erie R. R. train No. 2, struck an automobile on Broadway street crossing, Paterson, N. J., Albert Froelich and Henrietta Froelich, his daughter killed. Edward Butler and Chester Foile seriously injured. All four parties occupants machine demolished.

R. H. PARSONS, *Supt.*

Erie. R. R.

Exhibit P-46.

ERIE RAILROAD COMPANY.

To the

**BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF NEW JERSEY:**

Trenton, N. J., Sept. 13, 1910.

NOTICE OF ACCIDENT.

Name of Corporation owning road:

Eric Railroad. New York Division.

Name of Corporation leasing or operating road:

Eric Railroad.

Date and hour of accident:

Aug. 26th, 7.15 P. M.

Precise location of accident:

Broadway Crossing, Paterson, N. J.

Number and description of train:

Passenger train 2.

Conductor:

Murphy.

Engineman:

Hector.

Nature of Accident:

An automobile was standing on the north side of tracks waiting for train No. 41 westbound to clear crossing, when the gateman started to raise the gates and when about high enough the auto approached over the crossing and was struck by eastbound train No. 2, hurling the occupants from the auto and killing two of them, injuring three others.

Number of passengers or other persons killed or injured, including trespassers:

2 other persons killed.

3 other persons injured, one of them badly.

Name and occupation of employes killed or injured:

None.

Extent of damage to property and equipment:

Not known.

A. J. STONE,
General Superintendent.
RMS.

Exhibit P-47.

EXHIBIT P-47.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at

1 2 NY 50 Dh

Jersey City N. J. July 16, '12

Board of Public Utilities Com.

July 15th at 6.43 a. m., at Clay street crossing Paterson a man attempted to cross ahead of passenger train No. 105 eng & 828 engineer C. Clark and conductor J. Voorhis gates being down on crossing was struck and killed.

R. R. PARSONS, *Supt.*

New York Div.

20p

ERIE DIVISION.

ERIE RAILROAD COMPANY.

To the

BOARD OF PUBLIC UTILITY COMMISSIONERS FOR THE
STATE OF NEW JERSEY:

Trenton, N. J.

132

NOTICE OF ACCIDENT.

Name of Corporation owning road: 7/25/1912

Erie Railroad. New York Division.

Name of Corporation leasing or operating road:

Erie Railroad.

Date and hour of accident:

July 15th, 1912. 6.42 A. M.

Precise location of accident:

Clay Street crossing, Paterson, N. J.

Number and description of train:

No. 105 first class.

Conductor:

J. Voorhis.

Engineerman:

C. F. Clark.

Exhibit P-48.

Nature of accident:

Crossing watchman lowered gates at Clay Street crossing for train No. 303 and as train passed he noticed No. 105 approaching, and kept the gates down for this train, in the meantime John Rony went under the gates and stepped onto the west track where he seemed to stop and look towards train No. 105 approaching, but paid no attention to the engine whistle which engineer sounded, and when he did attempt to go over crossing he was struck by breast beam of pilot and killed.

Number of passengers or other persons killed or injured, including trespassers:

1 trespasser killed.

Names and occupation of employes killed or injured:

None.

Extent of damage to property and equipment.

None.

A. J. STONE,
Board of Public
Utility Commissioners.
Received Aug. 2, 1912.

EXHIBIT P-48.

Eric Division.

ERIE RAILROAD COMPANY.

New York, Susquehanna & Western Railroad.

New Jersey & New York Railroad.

To the

**BOARD OF PUBLIC UTILITY COMMISSIONERS FOR THE
STATE OF NEW JERSEY:**

Trenton, N. J.

188

NOTICE OF ACCIDENT.

**Name of Corporation owning, leasing or operating
road:** **9/17/1912**

Erie Railroad. New York Divi

Date and hour of accident: **am-**

September 7th, 6.43 P. M.

Exhibit P-48.

Precise location of accident:

Keene Street Crossing, Paterson, N. J.

Number and description of train:

First class No. 3rd 44.

Conductor:

J. B. Honnell.

Engineman:

W. H. Menner.

Nature of accident:

Train 3rd 44, engine 548 struck the rear wheel of wagon on Keene Street Crossing, Paterson, owned and driven by S. Sinson and accompanied by his wife who were thrown from the wagon. Both sustained injuries, drivers injuries internal. Crossing is protected by flag-man between the hours of 6.30 A. M. and 6.30 P. M. Wagon approached the crossing from the north side and driver should have seen the train.

Number and names of passengers killed or injured:

None.

Number and names of other persons killed or injured:

2 other persons, Siboris Sinson and wife, injured.

Number and names (if known) of trespassers killed or injured:

None.

Board of Public
Utility Commissioners.

Rec'd Sep. 23, 1912.

Names and occupations of employes killed or injured:

None.

Extent of damage to property and equipment:

Wagon slightly damaged.

Remarks:

A. J. STONE,
General Superintendent.

Exhibit P-49.

EXHIBIT P-49.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at

1 Ny 55 Dh 1 ex

Erie Depot, Jersey City, N. J. Sept. 19, '12.

Public Utility Com.

September eighteenth two fifty eight p. m. Clay street Paterson N. J. train twenty seven engineer F. Heath conductor B. D. Carpenter struck wagon which was crossing from south side. Driver M. Sevanscheck residence 325 Holstman street Paterson badly injured. He was taken to St. Josephs Hospital, above point the crossing is protected by ga s.

R. S. PARSONS, Supt.

935 a

Erie Division.

ERIE RAILROAD COMPANY.

New York, Susquehanna & Western Railroad.

New Jersey & New York Railroad.

To the

BOARD OF PUBLIC UTILITY COMMISSIONERS FOR THE
STATE OF NEW JERSEY

219

NOTICE OF ACCIDENT.

Board of Public

Utility Commissioners.

Received, Oct. 18, 1912.

Name of Corporation owning, leasing or operating
road: 10/11/1912.

Erie Railroad. New York Division.

Date and hour of accident:

September 18th, 2.58 P. M.

Precise location of accident:

Clay street crossing, Paterson, N. J.

Number and description of train:

First class No. 27.

Exhibit P-50.

Conductor:

B. D. Carpenter.

Engineman:

F. Heath.

Nature of accident:

Train No. 27 struck a wagon on Clay Street crossing Paterson, smashing wagon and injuring the driver who died several hours after the accident occurred. Wagon drove in on crossing from south side and at an extremely slow pace. Crossing watchman called to the driver to move quickly, but he apparently paid no attention to the warning.

Number and names as passengers killed or injured:

None.

Number and names of other persons killed or injured:

1 other person killed. Mendel Senanseheck.

Number and names (if known) of trespassers killed or injured:

None.

Extent of damage to property and equipment:

Wagon damaged. Money damage not known.

Remarks:

A. J. STONE,
General Superintendent.

EXHIBIT P-50.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at

53 Dh 5 ex

Jersey City, N. J. Nov. 6

Board Public Utilities Com.

At 6.20 a today November 6th at Madison ave,
crossing Paterson, N. J. way freight extra 803 west

Exhibit P-50.

engineer C. Hanners and Condr J. W. Coryn struck a horse and wagon driven by John Hamilton injuring the driver and killing horse wagon badly damaged.

R. S. PARSONS, *Supt.*

Erie N. Y. Div.

Erie Division.

ERIE RAILROAD COMPANY.

New York Susquehanna & Western Railroad.

New Jersey & New York Railroad.

To the

BOARD OF PUBLIC UTILITY COMMISSIONERS FOR THE
STATE OF NEW JERSEY :

Trenton, N. J.

243

NOTICE OF ACCIDENT.

Name of Corporation owning, leasing or operating
road: 11/8/1912.

Erie Railroad. New York Division.

Date and hour of accident :

November 6th 6.20 A. M.

Precise location of accident :

Madison Avenue, Paterson, N. J.

Number and description of train :

Extra freight.

Conductor :

J. W. Corwin.

Engineman :

C. Hanners.

Nature of Accident :

Way freight engine 808 struck a horse and wagon on Madison Avenue crossing, Paterson, injuring the driver and killing the horse. Wagon was thrown on eastbound track and was struck by train 52 eastbound, wagon striking the driver. Engine whistle blown and bell ringing at the time train approached the crossing. Crossing gates are operated between the hours

Exhibit P-51.

of 6.30 A. M. and 7.30 P. M. Crossingman alarm bell was in O. K. condition. Crossingman advises bell was ringing when he arrived after the accident occurred.

Number and names of passengers killed or injured:

None.

Number and names of other persons killed or injured:

1 other person injured.

John Hamilton.

Number and names (if known) of trespassers killed or injured:

None.

Names and occupations of employes killed or injured:

None.

Extent of damage to property and equipment:

None.

Remarks:

Board of Public
Utility Commissioners.
Received No. 14, 1912.
A. J. STONE,
General Superintendent.

EXHIBIT P-51.

THE WESTERN UNION TELEGRAPH COMPANY.

Received at

8-27.

6 NYNA DH Frank 1EX.

HU Erie Depot, Jersey City, N. J. Mar 24 1913.

Public Utility Commission,
Trenton, N. J.

March 24th 6.21 P. M. Keene street Paterson, N. J. train 135 engine 847, engineer Thornhill, conductor Doty struck and killed James Eakin residence 621 Mercer street Paterson, N. J., crossing protected by crossing bell and flagman.

451a

J. B. DICKSON, *Supt.*

Exhibit P-51.

Erie Division.

ERIE RAILROAD COMPANY.

New York Susquehanna & Western Railroad.

New Jersey & New York Railroad.

To the

BOARD OF PUBLIC UTILITY COMMISSIONERS FOR THE
STATE OF NEW JERSEY :

Trenton, N. J.

60

NOTICE OF ACCIDENT.

Name of Corporation owning, leasing or operating
road: 3/27/1913.

Erie Railroad. New York Division.

Date and hour of accident :

March 24th, 1913, 6.21 P. M.

Precise location of accident :

Keene Street crossing, Paterson, N. J.

Number and description of train :

No. 135 first class.

Conductor :

J. H. Doty.

Engineman :

R. Thornhill.

Nature of Accident :

Train No. 135 engine 847 struck and killed a man by the name of James Eakins who approached Keene Street crossing from the south side and crossed over diagonally to westbound main track where he was struck. Crossing is protected by crossing bell which was in good condition and ringing for the train in question. Cross is protected by flagman between the hours of 6.30 a. m. and 6.30 p. m. Engine whistle was also sounded for this crossing. Crossingman endeavored to prevent the man from crossing but without result. Speed of train was 12 miles per hour.

Exhibits P-52 to P-54.

Number and names of passengers killed or injured:
None.

Number and names of other persons killed or injured:
1 James Eakins, killed.

Number and names (if known) of trespassers killed
or injured:
None.

Names and occupations of employes killed or injured:
None.

Extent of damage to property and equipment:
None.

Remarks:

Board of Public
Utility Commissioners.

Received April 1-1913.

A. J. STONE,
General Manager.

EXHIBIT P-52.

(Also marked P-45.)

Blue print entitled "Plan of the Erie Railroad,
through Paterson, N. J., 1914, H. J. Harder, C. E."

EXHIBIT P-53.

(Also marked P-46.)

Blue print entitled "Proposed elevation of the Erie
Railroad through Paterson, N. J. 1914, H. J. Harder,
C. E."

EXHIBIT P-54.

(Also marked P-47.)

Blue print entitled "Profile of the Erie Railroad
through Paterson, N. J., 1914."

Exhibit P-55.

EXHIBIT P-55.

(Also marked 48 in testimony at page 503.)

SUMMARY

COST OF ELEVATION

ERIE RAILROAD, PATERSON, N. J.

SECTION.	R. R.	STREET.	TOTAL.
(Includes Bridge at N. end of section.)			
Cut to Madison	\$158,785.00	\$36,294.50	\$195,079.50
Madison to Grade	118,173.00	.....	118,173.00
Total	\$276,958.00	\$36,294.50	\$313,252.50
Grade to Straight	\$98,217.35	\$29,831.45	\$128,048.80
Straight to Clay	22,517.65	12,384.63	44,902.28
Clay to Taylor	55,550.55	16,657.85	72,208.40
Taylor to Market	372,736.15	23,339.90	396,076.00
Market to Ellison	79,064.79	3,273.60	82,338.39
Ellison to Van Houten	47,127.39	17,118.30	64,245.69
Van Houten to B'way	17,653.55	22,035.20	39,688.75
B'way to Fair	26,734.00	2,120.80	28,854.80
Fair to Hamilton	37,618.35	3,052.50	40,670.85
Hamilton to Governor	130,332.95	.....	130,332.95
Governor to Fulton	127,291.45	.....	127,291.45
Fulton to Montgomery	144,261.35	4,625.50	148,886.85
Montgomery to Lafayette	60,367.90	5,974.10	66,342.00
Lafayette to Keen	85,991.03	3,121.00	89,112.03
Keen to Warren	34,578.14	2,113.10	36,691.24
Warren to River	44,148.50	33,375.10	77,523.60
Total	\$1,409,859.17	\$189,025.93	\$1,598,885.10

PLAN NO. 1.

River to 6th Avenue...	\$177,639.00	\$18,933.20	\$196,572.20
6th Ave. to 5th Ave....	69,476.55	34,920.00	104,396.55
5th Avenue to River....	67,100.00	.....	67,100.00
River to grade	26,818.00	.....	26,818.00

Total \$341,033.55 \$53,853.20 \$394,886.75

PLAN NO. 2.

River Street to grade...	\$159,139.75	.....	\$159,139.75
Engineering	\$45,000.00	\$5,000.00	\$50,000.00
Depots .....	.....	.....	140,000.00
Signals and wires .....	.....	.....	50,000.00
Temporary frt. tracks...	.....	.....	\$40,000.00

Total \$280,000.00

1. Complete Plan	\$2,302,850.72	\$284,174.23	\$2,587,024.95
2. Plan leaving 5th Ave. at present grade..	2,120,956.92	230,320.43	2,351,277.35
3. Plan leaving both 5th and Madison at grade	1,843,998.92	194,025.93	2,038,024.85
4. Plan leaving Madison Ave. at grade but raising at 5th Ave.	2,025,892.72	247,879.73	2,273,772.45

N. B.—Figures do not include Property Damage nor operating costs due to interference with regular schedules.

Exhibit P-55.

TABLE III.
ERIE RAILROAD GRADE CROSSINGS
COST OF ELIMINATION
DETAIL ESTIMATE

GOULD TO MADISON.

Cut 26,000 yards.....	\$2.00	\$52,000.00	
Concrete walls, 6,500 yards....	7.50	48,750.00	
Backing, 1,650 yards.....	2.00	3,300.00	
Drains, 3,000 feet.....	.30	900.00	
Track (main double), 2,000 feet	5.50	11,000.00	
Ballast, 3,400 yards.....	1.50	5,100.00	
Temporary track (double) 2,000 feet	10.00	20,000.00	
Switches		200.00	
Siding, 1,550 feet.....	2.00	3,100.00	
		<hr/>	
Add 10 Per Cent.....		\$144,350.00	\$158,785.00

STREET WORK—

Fill, 27,000 yards.....	.15	4,050.00	
Curb and gutter, 2,580 feet....	1.00	2,580.00	
Sidewalk, 2,640 feet.....	1.20	3,168.00	
Paving, 6,990 yards .....	.60	4,194.00	
Electric railroad tracks, 700 feet	5.00	3,500.00	

NEW SEWERS—

California Av. (18 inch), 300 feet	1.50	450.00	
Madison Avenue (E.) (18 inch), 350 feet	1.50	525.00	
Madison Avenue (W.) (18 inch), 300 feet	1.50	450.00	
Water pipe (16-inch), 300 ft....	2.60	780.00	
Gas pipe, 6 inch, 300 feet.....	.80	240.00	
Gas pipe, 16 inch, 300 feet....	2.60	780.00	
Concrete wall, Loco. Wks., 350 yards	7.00	2,450.00	
Bridge: Span 42 feet, Width 52 feet. 2,184 sq. ft. at per square foot	4.50	9,828.00	
		<hr/>	
Add 10 Per Cent.....		\$32,995.00	36,294.50

\$195,079.50**MADISON TO FILL.**

Cut, 21,000 yards	\$2.00	\$42,000.00	
Concrete, 3,300 yards	7.50	24,750.00	
Backing, 900 yards.....	2.00	1,800.00	
Drain (24 inch), 1,700 feet....	3.50	5,950.00	
Cross drains		50.00	
Ballast, 3,300 yards.....	1.50	4,950.00	
Main track (double) 1,750 feet	5.50	9,625.00	
Siding, 1,550 feet.....	2.00	3,100.00	
Switch		100.00	
Rubble, 35 yards	3.00	105.00	
Temporary track, 1,500 feet....	10.00	15,000.00	
		<hr/>	
Add 10 Per Cent.....		\$107,430.00	118,173.00

Exhibit P-55.

CUT TO STRAIGHT STREET.

Fill (from borrow), 5,000 yards	\$.60	\$3,000.00
Fill (from cut), 8,400 yards....	.15	1,260.00
Cut, 1,200 yards.....	.60	720.00
Concrete, 1,500 yards.....	7.50	11,250.00
Rubble, 60 yards	2.60	156.00
Backing, 415 yards.....	2.60	1,079.00
Drains, 1,300 feet .....	.30	390.00
Ballast, 3,460 yards	1.50	5,190.00
Main track (double), 1,333 feet.	5.50	7,331.50
Newark Branch (double), 340 feet	5.50	1,870.00
Sidings, 5,835 feet	2.00	7,670.00
Switches and crossing		1,180.00
Trestle, 1,200 feet.....	20.00	24,000.00
Bridge (Span 96 feet, 3 tracks), 4,032 feet	6.00	24,192.00

Add 10 Per Cent.

\$29,288.50

\$98,217.35

STREET WORK—

Cut, 7,260 yards	\$.50	\$3,600.00
Wall, 100 yards	7.00	700.00
Sidewalk, 2,425 feet.....	1.20	2,910.00
Curb, 2,445 feet .....	.70	1,739.50
Pavement (granite block), 4,200 feet	3.20	13,440.00
6 inch gas pipe, 800 feet.....	.80	640.00
6 inch gas pipe, 800 feet.....	.80	640.00
18 inch sewer pipe, 300 feet....	1.50	450.00
Electric R. R. tracks, 600 feet..	5.00	3,000.00

Add 10 Per Cent.

\$27,119.50

\$29,531.45

\$128,048.80

STRAIGHT STREET TO CLAY STREET.

Fill, 1,200 yards	\$.15	\$180.00
Cut, 1,200 yards .....	.60	720.00
Concrete, 1,120 yards	7.50	8,400.00
Backing, 230 yards	2.60	598.00
Main track (double), 134 feet....	5.50	737.00
Siding, 180 feet	2.00	360.00
Ballast, 287 yards	1.50	430.50
Trestle, 50 feet	20.00	1,000.00
Bridge, 68 feet, 3 tracks, 2,856 square feet	6.00	17,136.00

Add 10 Per Cent.

\$29,561.50

\$32,517.65

STREET WORK—

Cut, 1,600 yards .....	.50	800.00
Concrete, 50 yards	12.00	600.00
Pavement (block), 1,000 yards.	3.20	3,200.00
Curb, 475 feet .....	.70	332.50
Sidewalk, 475 feet	1.20	570.00
40-inch brick sewer, 400 feet....	12.00	4,800.00
15-inch sewer, 425 feet.....	1.25	531.25
12-inch water pipe, 425 feet....	1.00	425.00

Add 10 Per Cent

\$11,238.75

\$12,384.63

\$44,902.28

*Exhibit P-55.***CLAY STREET TO TAYLOR STREET.**

Fill, 7,000 yards	\$.15	\$1,050.00	
Cut, 1,800 yards .....	.60	1,080.00	
Concrete, 1,800 yards	7.50	13,500.00	
Backing, 430 yards	2.60	1,118.00	
Drain, 700 feet .....	.30	210.00	
Rubble, 25 yards	3.00	75.00	
Tracks (double), 433 feet.....	5.50	2,382.50	
Switches		200.00	
Sidings, 1,155 feet	2.00	2,310.00	
Ballast, 830 yard	1.50	1,245.00	
Trestle, 400 feet	20.00	8,000.00	
Bridge (span 50 feet; 4 tracks), 2,800 square feet.....	3.50	13,000.00	
Bridge (span 56 feet; 1 track), 784 square feet	3.00	2,352.00	
Add 10 Per Cent		\$30,500.50	\$51,550.55

STREET WORK—

Cut, 4,500 yards	\$.50	\$2,250.00	
Concrete, 60 yards	12.00	720.00	
Pavement (granite block), 2,800 yards	3.20	9,248.00	
Curb, 1,565 feet .....	.70	1,095.50	
Sidewalk, 1,525 feet	1.20	1,830.00	
Add 10 Per Cent		\$15,143.50	\$16,657.45

\$72,208.40

TAYLOR STREET TO MARKET STREET.

Fill, 18,000 yards	\$.15	\$2,700.00	
Fill, 24,000 yards .....	.50	12,000.00	
Cut, 13,000 yards .....	.60	7,800.00	
Concrete, 18,267 yards	7.50	137,002.50	
Backing, 3,500 yards	2.60	9,100.00	
Drains, 3,400 feet .....	.40	960.00	
Drains, 3,300 feet .....	.30	990.00	
Trestle, 2,250 feet	20.00	45,000.00	
Main tracks (double), 2,399 feet	5.50	13,194.50	
Sidings, 4,400 feet.....	2.00	8,800.00	
Sidings, 1,600 feet.....	2.00	3,200.00	
Yard tracks, 8,200 feet.....	2.00	16,400.00	
Switches		1,400.00	
Switches (yard)		1,120.00	
Ballast, 6,200 yards.....	1.20	7,440.00	
Yard paving (block), 3,100 yards	3.20	9,920.00	
Curb, 3,500 feet .....	.60	2,100.00	
Drains, 200 feet.....	.40	80.00	

BRIDGES—

Span 57 feet, 2 tracks, 3,928 square feet	5.00	\$9,640.00	
Drives, 2 57x20, 1,140 square feet	4.00	4,560.00	
Span 96 (2 tracks), 2,744 square feet	6.00	16,464.00	

Add 10 Per Cent.....	\$338,851.00	\$372,736.50
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Exhibit P-55.

STREET WORK—

Excavation, 2,000 yards.....	\$.50	\$1,000.00	
Curb, 410 feet70	287.00	
Sidewalk, 410 feet	1.20	492.00	
Pavement (granite block) 600 yards	3.20	2,176.00	
Cut, 2,300 yards .....	.50	1,150.00	
Walls, 165 yards	7.00	1,155.00	
Railing, 400 feet	1.00	400.00	
Steps		200.00	
Entrances, 5 at	75.00	375.00	
Curb, 1,660 feet .....	.70	1,162.00	
Sidewalk (10 feet), 850 feet....	1.20	1,020.00	
Sidewalk (5 feet), 430 feet....	.60	258.00	
Sidewalk (15 feet), 170 feet....	1.70	289.00	
Sidewalk (17 feet), 180 feet....	2.60	360.00	
Pavement (asphalt), 3,200 yards	2.00	6,400.00	
Trolley tracks, 1200 feet.....	5.00	6,300.00	
12-inch gas pipe, 350 feet.....	1.00	350.00	
18-inch sewer pipe, 350 feet....	1.50	525.00	
2 2-inch tubes, 350 feet.....	.80	280.00	
1 2-inch tube, 350 feet .....	.60	140.00	
4-inch gas pipe, 350 feet .....	.80	280.00	
9 Telephone conduits, 350 ft....	2.60	1,260.00	
12 Electric conduits, 350 feet....	4.80	1,680.00	
10-inch brick sewer, 350 feet....	6.00	2,100.00	
12-inch water pipe, 350 feet....	1.40	490.00	
6-inch gas pipe, 350 feet.....	.80	280.00	
Add 10 Per Cent.....		\$30,309.00	\$33,339.90
			<u>\$496,576.00</u>

MARKET STREET TO ELLISON.

Fill, 1780 yards .....	.15	\$267.00	
Fill, 9,130 yards .....	.60	5,472.00	
Cut, 1,600 yards .....	.60	796.00	
Concrete, 4,553 yards	7.50	34,147.50	
Backing, 1,000 yards	2.60	2,600.00	
Drain, 1,200 .....	.20	360.00	
Main track (double), 604 feet..	5.50	3,322.00	
Ballast, 805 yards	1.50	1,207.50	
Trestle, 550 feet	20.00	11,000.00	
Bridge, 55-foot span, 2 tracks, 2,310 square feet.....	5.50	12,705.00	
Add 10 Per Cent.....		\$71,877.00	\$79,064.70

STREET WORK—

Curb, 400 feet	\$.70	\$280.00	
Sidewalk, 400 feet	1.20	480.00	
Pavement, 770 yards	2.80	2,156.00	
Cut, 120 yards .....	.50	60.00	
Add 10 Per Cent.....		\$2,976.00	3,273.60
			<u>\$82,338.30</u>

Exhibit P-55.

ELLISON TO VAN HOUTEN.

Fill, 2,100 yards	\$.60	\$1,530.00
Fill, 1,800 yards .....	.15	270.00
Cut, 600 yards .....	.60	360.00
Concrete, 2,946 yards	7.50	22,095.00
Racking, 625 yards	2.00	1,250.00
Drains, 720 feet .....	.50	360.00
Trestle, 305 feet	30.00	9,150.00
Track (main, double), 355 feet..	5.50	1,952.50
Switches		300.00
Ballast, 473 yards	1.50	709.50
Bridges (span 50 feet, 3 tracks), 1,400 square feet	5.50	7,700.00

Add 10 Per Cent..... \$42,843.00 \$7,127.50

STREET WORK—

Cut, 1,200 yards	\$.50	\$600.00
Wall, 300 yards	12.00	3,600.00
Curb, 900 feet .....	.50	450.00
Walk, 900 feet	1.20	1,080.00
Pavement, 1,530 yards	2.00	3,060.00
Driveways, 2 at	75.00	150.00
Doorways, 2 at	50.00	100.00
Steps to dwellings, 8 at.....	40.00	320.00
Water pipe (24-inch), 400 ft....	6.50	2,600.00
Telephone conduits (6), 600 feet	2.40	1,440.00
Water (6-inch), 400 feet.....	.80	320.00
2 3-inch gas pipes, 400 feet, each	.50	400.00
Electric conduits (20) 400 feet	8.00	1,600.00
2 electric tubes, 400 feet (both).	.80	320.00

Add 10 Per Cent..... \$15,562.00 \$1,714.20

\$64,245.50

VAN HOUTEN TO BROADWAY.

Fill, 2,700 yards	\$.15	\$405.00
Cut, 773 yards .....	.60	463.80
Concrete, 1,905 yards	7.50	14,287.50
Racking, 440 yards	2.60	1,144.00
Drains, 650 feet .....	.50	325.00
Track (double), 307 feet.....	5.50	1,688.50
Ballast, 315 yards	1.50	472.50
Trestle, 200 feet	30.00	6,000.00
Bridge, 68-foot span, 3 tracks, 1,848 square feet.....	6.00	11,088.00

Add 10 Per Cent..... \$34,200.50 \$3,762.05

STREET WORK—

Cut, 1,000 yards	\$.50	\$500.00
Wall, 30 yards	7.00	210.00
Curb, 1,100 feet .....	.50	550.00
Pavement (brick) 2,600 yds....	2.40	6,240.00
Sidewalk, 1,000 feet	1.20	1,200.00
Trolley tracks, 1,100 feet.....	5.00	5,500.00
Entrances, 3 at	50.00	150.00
Tube, 400 feet .....	.50	200.00
Conduits, 6, (Electric) 600 feet	2.40	1,440.00
Water (16-inch), 400 feet.....	2.60	1,040.00

Exhibit P-55.

STREET WORK—(Continued).

Gas (3-inch), 100 feet.....	\$.60	\$160.00	
Sewer (12-inch), 400 feet.....	1.00	400.00	
Conduits 4 (telephone), 400 feet.....	1.00	400.00	
Gas pipe (4-inch), 400 feet....	.50	200.00	
2 2-inch tubes (electric), 400 feet .....	.80	320.00	
		<hr/>	
Add 10 Per Cent.....		\$20,012.00	\$22,815.20
			<hr/>
			\$50,655.75

BROADWAY TO FAIR STREET.

Fill, 500 yards	\$.35	\$165.00	
Fill, 4,510 yards .....	.60	2,706.00	
Cut, 420 yards .....	.60	254.00	
Concrete, 902 yards	7.50	6,765.00	
Backing, 200 yards	2.60	520.00	
Main track (double), 201 ft....	5.50	1,105.50	
Ballast, 348 yards	1.50	522.00	
Drains, 360 feet .....	.30	108.00	
Trestle, 210 feet	20.00	4,200.00	
Bridge (span 50 feet; 2 tracks), 1,000 square feet	5.50	7,700.00	
		<hr/>	
Add 10 Per Cent.....		\$24,302.00	\$26,733.20

STREET WORK—

Cut, 100 yards	\$.50	\$50.00	
Curb, 400 feet .....	.70	280.00	
Pavement (bit. mac.), 400 yards.....	1.00	1,000.00	
Sidewalk, 400 feet.....	1.00	400.00	
		<hr/>	
Add 10 Per Cent.....		\$1,920.00	\$3,120.00
			<hr/>
			\$28,853.20

FAIR TO HAMILTON.

Fill, 900 yards	\$.35	\$315.00	
Fill, 4,810 yards .....	.60	2,886.00	
Cut, 500 yards .....	.60	304.00	
Concrete, 1,215 yards	7.50	9,112.50	
Backing, 200 yards	2.60	520.00	
Drains, 520 feet .....	.30	156.00	
Trestle, 207 feet	20.00	4,140.00	
Track (main, double), 207 ft....	5.50	1,138.50	
Siding, 200 feet	2.00	400.00	
Switch		100.00	
Ballast, 600 yards	1.50	900.00	
Bridges: span 61 feet, 1 track 834 square feet	5.50	4,587.00	
Bridges: span 60 feet, 2 tracks, 1,600 square feet.....	5.50	8,800.00	
		<hr/>	
Add 10 Per Cent		\$24,108.50	\$27,618.25

Exhibit P-55.

STREET ALTERATIONS—

Cut, 450 yards	\$.50	\$225.00	
Curb, 500 feet .....	.70	350.00	
Sidewalks, 500 feet.....	1.20	600.00	
Pavements (bit. mac.) \$1,000 yds	1.60	1,600.00	
		<hr/>	
Add 10 Per Cent.....		\$2,775.00	\$3,052.50
			<hr/>
			\$40,670.85

HAMILTON TO GOVERNOR.

Fill, 11,280 yards	\$.60	\$6,768.00	
Fill, 4,720 yards .....	.60	2,832.00	
Cut, 4,720 yards .....	.60	2,832.00	
Concrete, 8,260 yards	7.50	61,950.00	
Backing, 1,600 yards	2.60	4,160.00	
Trestle, 730 feet	25.00	18,250.00	
Drains, 2,100 feet .....	.30	630.00	
Track (main, double) 787 ft...	5.50	4,328.50	
Sidings, 880 feet	2.00	1,760.00	
Switch		100.00	
Ballast, 1,600 yards	1.50	2,400.00	
Bridge (span 54 feet, 2 tracks), 1,512 square feet.....	5.50	8,316.00	
Bridge (span 54 feet, 1 track), 756 square feet.....	5.50	4,158.00	
		<hr/>	
Add 10 Per Cent.....		\$118,484.50	\$130,332.95

GOVERNOR TO FULTON.

Fill, 9,400 yards	\$.60	\$5,640.00	
Cut, 7,120 yards .....	.60	4,272.00	
Concrete, 9,410 yards	7.50	70,575.00	
Backing, 1,600 yards.....	2.60	4,160.00	
Drains, 1,300 feet .....	.30	390.00	
Track (double), 495 feet.....	5.50	2,722.50	
Track 1,455 feet.....	2.00	2,910.00	
Switches		300.00	
Ballast, 1,300 yards	1.50	1,950.00	
Bridge (span 50 feet; 1 track), 700 square feet.....	5.50	3,850.00	
Bridge (span 50 feet; 2 tracks), 1,400 square feet.....	5.50	7,700.00	
Trestle, 450 feet	25.00	11,250.00	
		<hr/>	
Add 10 Per Cent.....		\$115,719.50	\$127,291.45

FULTON STREET TO MONTGOMERY.

Fill, 11,500 yards	\$.60	\$6,900.00	
Cut, 5,160 yards .....	.60	3,096.00	
Concrete, 9,980 yards	7.50	74,850.00	
Backing, 1,600 yards	2.60	4,160.00	
Drains, 1,600 feet.....	.30	480.00	
Trestle, 520 feet	25.00	13,000.00	
Track (main, double), 577 ft..	5.50	3,173.50	
Sidings, 977 feet.....	2.00	1,954.00	
Switches		300.00	
Ballast, 1,154 yards	1.50	1,731.00	
Bridge (64-ft.; 3 tracks), 2,688 square feet	6.00	16,128.00	
Bridge (64-ft.; 1 track), 896 square feet	6.00	5,376.00	
		<hr/>	
Add 10 Per Cent.....		\$131,148.50	\$144,263.35

Exhibit P-55.

STREET WORK—

Cut, 1,770 yards	\$.50	\$885.00	
Curb, 400 feet .....	.70	280.00	
Pavement (block), 800 yards...	3.20	2,560.00	
Sidewalk, 400 feet.....	1.20	480.00	
Add 10 Per Cent.		\$4,205.00	\$4,625.50
			<u>\$148,888.85</u>

MONTGOMERY-LAFAYETTE.

Fill, 4,700 yards	\$.60	\$2,820.00	
Cut, 560 yards .....	.60	336.00	
Concrete, 3,490 yards	7.50	26,175.00	
Backing, 650 yards	2.60	1,690.00	
Drains, 803 feet .....	.30	240.00	
Tracks (main), 286 feet.....	5.50	1,573.00	
Sidings, 286 feet.....	2.00	572.00	
Ballast, 570 yards	1.50	855.00	
Trestle, 220 feet	20.00	4,400.00	
Bridge, span 64 feet; tracks 2; 1792 square feet	6.00	10,752.00	
Bridge, span 64 feet; track, 1; 896 square feet.....	6.00	5,376.00	
Add 10 Per Cent.....		\$54,789.00	\$60,267.90

STREET ALTERATION—

Cut, 1,500 yards.....	\$.50	\$750.00	
Curb, 510 feet .....	.70	357.00	
Sidewalk, 510 feet.....	1.20	612.00	
Pavement (block), 1,010 yds...	3.20	3,328.00	
Gas (6-inch), 240 feet.....	.80	192.00	
Water (6-inch), 240 feet.....	.80	192.00	
Add 10 Per Cent.....		\$5,431.00	\$5,974.10
			<u>\$66,242.00</u>

LAFAYETTE TO KEEN.

Fill, 12,674 yards.....	\$.60	\$7,604.40	
Fill, 1,826 yards .....	.15	273.90	
Cut, 1,600 yards .....	.60	960.00	
Concrete, 4,020 yards	7.50	30,150.00	
Backing, 900 yards	2.70	2,430.00	
Drains, 1,160 feet.....	.30	330.00	
Trestle, 496 feet	20.00	9,920.00	
Track (double), 560 feet.....	5.50	3,080.00	
Sidings, 840 feet	2.00	1,680.00	
Switches		400.00	
Ballast, 1,054 yards	1.50	1,581.00	
Bridge (64-ft. span, 3 tracks) 2,688 square feet	6.00	16,128.00	
Add 10 Per Cent.....		\$74,537.30	\$81,991.03

Exhibit P-55.

STREET WORK—

Cut, 226 yards	\$.50	\$113.00	
Curb, 290 feet .....	.70	203.00	
Sidewalk, 290 feet.....	1.20	348.00	
Pavement (block), 680 yards...	3.20	2,176.00	
		<hr/>	
Add 10 Per Cent.....		\$2,840.00	\$3,124.00
			<hr/>
			\$85,115.03

KEEN STREET TO WARREN STREET.

Fill, 4,987 yards	\$.60	\$2,992.20	
Fill, 911 yards .....	.15	136.65	
Cut, 770 yards .....	.60	462.00	
Concrete, 1,580 yards.....	7.50	11,850.00	
Backing, 320 yards.....	2.60	832.00	
Drains, 630 feet .....	.30	189.00	
Trestle, 206 feet.....	20.00	4,120.00	
Track (main, double), 260 feet.	5.50	1,430.00	
Track, siding, 200 feet.....	2.00	400.00	
Ballast, 350 feet.....	1.50	525.00	
Bridge (54-foot span; 2 tracks), 1,512 square feet.....	5.50	8,316.00	
		<hr/>	
Add 10 Per Cent.....		\$31,252.85	\$34,378.14

STREET ALTERATIONS—

Cut, 140 yards	\$.50	\$70.00	
Pavement (block), 430 yards...	3.20	1,376.00	
Sidewalk, 250 feet.....	1.20	300.00	
Curb, 250 feet.....	.70	175.00	
		<hr/>	
Add 10 Per Cent.....		\$1,921.00	\$2,113.10
			<hr/>
			\$36,491.24

WARREN STREET TO RIVER STREET.

Fill, 1,310 yards	\$.60	\$786.00	
Fill, 4,190 yards .....	.15	628.50	
Cut, 490 yards .....	.60	294.00	
Concrete, 1,466 yards.....	7.50	10,995.00	
Backing, 290 yards	2.60	754.00	
Drains, 650 feet .....	.30	195.00	
Trestle, 215 feet.....	20.00	4,300.00	
Track (main, double), 305 ft..	5.50	1,677.50	
Ballast, 410 yards	1.50	615.00	
Bridge (90-ft. span; 2 tracks and platform), 3,060 square feet	6.50	19,890.00	
		<hr/>	
Add 10 Per Cent.....		\$40,135.00	\$44,148.50

STREET ALTERATIONS—

Cut, 3,700 yards.....	\$.50	\$1,850.00	
Walk, 60 yards	7.00	420.00	
Pavement, 4,300 yards	3.20	13,760.00	
Curb, 1,950 feet.....	.70	1,365.00	
Sidewalks, 1,880 feet.....	1.20	2,256.00	
Trolley tracks, 880 feet.....	5.00	4,400.00	
Entrances, 12 at.....	75.00	900.00	
12-inch gas (2) 350 feet ea....	1.80	1,260.00	

Exhibit P-55.

STREET ALTERATIONS—(Continued)

8-inch gas (2) 350 feet ea.....	\$1.00	\$700.00	
Sewer, 18-inch, 120 feet.....	1.50	180.00	
Gas, 6-inch, 600 feet.....	.80	480.00	
Sewer, 24-inch, 550 feet.....	3.80	2,090.00	
Gas, 4-inch, 600 feet.....	.60	360.00	
Water, 6-inch, 400 feet.....	.80	320.00	
Add 10 Per Cent.....		\$30,341.00	\$33,375.10
			\$77,523.60

RIVER STREET TO SIXTH AVENUE.

Fill, 21,570 yards.....	\$.60	\$12,942.00	
Fill, 9,630 yards.....	.15	1,444.50	
Cut, 3,300 yards.....	.60	1,980.00	
Concrete, 6,500 yards.....	7.50	48,750.00	
Backing, 1,660 yards.....	2.60	4,316.00	
Drains, 3,300 feet.....	.30	990.00	
Track (main, double), 2,261 feet	5.50	12,435.50	
Track, siding, 4,070 feet.....	2.00	8,140.00	
Ballast, 4,200 yards.....	1.50	6,300.00	
Trestle, 2,100 feet.....	20.00	42,000.00	
Bridge (62-foot span; 4 tracks),			
3,472 square feet.....	6.00	20,832.00	
Switches		1,360.00	
Add 10 Per Cent.....		\$161,490.00	\$177,639.00

STREET WORK—

Cut, 6,300 yards.....	\$.50	\$3,150.00	
Wall, 350 yards	7.00	2,450.00	
Pavement, 2,900 yards.....	3.20	9,280.00	
Curb, 1,240 feet .....	.70	868.00	
Walls, 1,220 feet.....	1.20	1,464.00	
Add 10 Per Cent.....		\$17,212.00	\$18,933.20
			\$196,572.20

SIXTH AVENUE TO FIFTH AVENUE.

Fill, 800 yards	\$.60	\$480.00	
Fill, 10,200 yards .....	.15	1,530.00	
Cut, 1,800 yards .....	.60	1,080.00	
Concrete, 2,000 yards.....	7.50	15,000.00	
Backing, 570 yards	2.60	1,482.00	
Drains, 1,200 feet.....	.30	360.00	
Trestle, 610 feet	20.00	12,200.00	
Track (main, double), 671 feet	5.50	3,690.50	
Sidings, 2,471 feet.....	2.00	4,942.00	
Switches		600.00	
Ballast, 1,800 yards.....	1.50	2,700.00	
Bridge (62-foot span, 4 tracks),			
3,472 square feet.....	5.50	19,096.00	
Add 10 Per Cent.....		\$63,160.50	\$69,476.55

*Exhibit P-55.***STREET WORK—**

Drain (24-inch), 1,200 feet....	\$3.80	\$4,560.00	
Cut, 8,400 yards.....	.50	4,200.00	
Walls, 600 yards.....	7.00	4,200.00	
Entrances, 4 at.....	50.00	200.00	
Curb, 1,880 feet.....	.70	1,326.00	
Sidewalk, 1,850 feet.....	1.20	2,220.00	
Pavement, 4,700 yards.....	3.20	15,040.00	
		<hr/>	
Add 10 Per Cent.....		\$31,746.00	\$34,920.60
			<hr/>
			\$104,397.15

FIFTH AVENUE TO RIVER—No. 1.

Fill, 2,700 yards.....	\$.60	\$1,620.00	
Fill, 3,300 yards.....	.15	495.00	
Cut, 3,300 yards.....	.60	1,980.00	
Concrete, 3,530 yards.....	7.50	26,475.00	
Backing, 690 yards.....	2.60	1,794.00	
Drains, 920 feet.....	.30	276.00	
Trestle, 460 feet.....	20.00	9,200.00	
Main track, 460 feet.....	5.50	2,530.00	
Siding, 1,200 feet.....	2.00	2,400.00	
Switches.....		400.00	
Ballast, 1,220 yards.....	1.50	1,830.00	
Passaic River Bridge, 7-foot rise (3 spans—115, 132, 115).....		12,000.00	
		<hr/>	
Add 10 Per Cent.....		\$61,000.00	\$67,100.00

PASSAIC RIVER TO GRADE.

Fill, 9,600 yards.....	\$.60	\$5,760.00	
Track (double), 1,150 feet.....	5.50	6,325.00	
Ballast, 1,530 yards.....	1.50	2,295.00	
Trestle, 500 feet.....	20.00	10,000.00	
		<hr/>	
Add 10 Per Cent.....		\$24,380.00	\$26,818.00

RIVER STREET TO FIFTH AVENUE—No. 2.

Fill, 20,000 yards.....	\$.60	\$12,000.00	
Fill, 3,000 yards.....	.15	450.00	
Cut, 3,000 yards.....	.60	1,800.00	
Concrete, 5,550 yards.....	7.50	41,625.00	
Backing, 1,500 yards.....	2.60	3,900.00	
Rubble, 90 yards.....	3.00	270.00	
Drains, 2,400 feet.....	.30	720.00	
Trestle, 2,000 feet.....	20.00	40,000.00	
Track (main double), 2,925 feet.....	5.50	16,087.50	
Sidings, 8,600 feet.....	2.00	17,200.00	
Switches.....		1,920.00	
Ballast, 5,800 yards.....	1.50	8,700.00	
		<hr/>	
Add 10 Per Cent.....		\$144,672.50	\$159,139.75

Note:—No allowance has been made for the extra operating cost to the Erie R. R. Co. caused by interference with regular schedules.

No allowance has been made for property damage caused by the lowering or raising of streets, by the elimination or alteration

Exhibit P-55.

of sidings, nor for the cost of altering buildings to meet new conditions.

The estimate includes the cost of changing sidings located on the Erie right-of-way, but not of those located on other property.

The 10 per cent. added to each section is to cover fencing and incidentals, and also extra foundations, drains, etc., made necessary by conditions found during construction and not possible of determination until then.

Respectfully,

H. J. HARDER,
City Engineer.

Exhibit R-1.

EXHIBIT R-1.

ERIE RAILROAD

Statement Showing Per Cent. of Return on

	1903	1904	1905	1906
Total Operating Revenue (including Outside Operations),	\$48,193,063	\$47,508,846	\$48,152,544	\$52,384,152
Total Operating Expenses (including Outside Operations),	30,018,037	32,769,672	33,498,911	36,628,220
Net Operating Revenue (including Outside Operations),	18,175,026	14,739,174	14,653,633	15,755,932
Tax Accruals,	1,035,383	1,046,846	1,052,390	1,064,070
Operating Income,	17,139,643	13,692,328	13,601,243	14,691,862
Net-Hire of Equipment, Joint Facilities, Miscellaneous Rents,	Dr. 365,401	Dr. 191,200	Dr. 335,128	Cr. 46,000
Net Operating Income,	16,774,242	13,501,128	13,266,115	14,717,862
Less:				
Lease of Roads,	49,001	49,001	49,001	49,001
Interest Charges,*	8,644,665	8,677,813	8,981,548	9,394,818
Total Deductions,	8,693,666	8,726,814	9,030,549	9,443,819
Net Income from Railroad Operating Investment,	8,080,576	4,774,314	4,235,566	5,274,043
Property Investment,	364,694,604	373,232,159	379,856,675	390,514,640
Per Cent. on Property Investment,	2.22	1.28	1.12	1.35
Taxes Paid to State of New Jersey,				

* Does not include Interest on Obligations issued for other than Transportation.

Exhibit R-1.

SYSTEM.

Property Devoted to Railroad Purposes.

1907	1908	1909	1910	1911	1912	1913
\$56,401,198	\$53,696,681	\$54,370,381	\$59,078,833	\$61,326,508	\$61,016,286	\$67,326,282
38,875,997	42,806,606	38,050,389	40,462,337	41,730,262	43,685,061	47,449,852
17,525,201	10,890,075	16,319,992	18,616,496	19,596,246	17,331,225	19,876,430
1,612,646	1,183,195	1,539,494	1,540,064	1,556,804	2,059,649	2,148,006
15,912,555	9,706,880	14,780,498	17,076,432	18,039,442	15,271,576	17,728,424
Cr. 362,922	Dr. 558,497	Dr. 924,818	Dr. 1,302,625	Dr. 1,705,121	Dr. 1,912,047	Dr. 1,753,387
16,275,477	9,148,383	13,853,680	15,773,807	16,334,321	13,359,529	15,975,037
46,247	44,478	44,722	41,943	36,092	42,841	42,389
9,753,537	10,496,508	10,511,540	10,594,870	10,394,090	10,499,716	10,819,941
9,799,784	10,542,986	10,536,412	10,636,813	10,430,182	10,542,557	10,862,330
6,475,693	Dr. 1,392,603	3,300,368	5,136,994	5,904,139	2,816,972	5,112,707
407,429,163	418,798,525	425,296,125	428,537,328	431,618,000	440,359,308	453,045,352
1.59	Dr. .33	.78	1.20	1.37	.64	1.13
			\$339,713	\$556,083	\$734,229	\$804,368

Properties.

Exhibit R-2.

EXHIBIT R-2.

ERIE RAILROAD SYSTEM.

Capital Expenditures made July 1, 1910, to June 30, 1913, for Betterment of Conditions and Safety as Follows:

	Year Ended June 30, 1911	Year Ended June 30, 1912	Year Ended June 30, 1913	Total
Total for Equipment	\$1,342,181.45	\$7,176,417.98	\$5,563,401.29	\$14,082,000.72
Total Construction	2,820,542.90	3,163,013.24	4,619,801.66	10,603,359.80
Total Construction and Equipment	4,162,724.35	10,339,433.22	10,183,202.95	24,685,360.52
Included in the above are expenditures for:				
Eliminating Grade Crossings	234,412.73	109,208.77	104,584.87	448,206.37
Improved Station Facilities	79,722.78	159,488.47	167,294.24	406,505.49
Automatic Signals	197,122.33	51,973.88	116,934.83	366,031.04
Interlocking Appliances	8,197.50	64,238.67	108,934.83	181,371.00
Increased weight of Rail	102,558.16	105,650.04	94,916.98	303,125.18
Bridge, Trestle and Culverts	256,631.75	272,667.71	1,212,256.54	1,741,556.00
Replacing Steel Passenger Equipment with Steel				
Applying Steel Underframes to Postal Cars	5,398.95	3,432.57	3,213.11	12,044.63
Safety Appliances to Equipment			80,854.23	80,854.23
Applications under Ash Pan Law			13,813.96	13,813.96
" " Head Light Law				
" " Boiler Inspection Law	6,800.00	6,800.00	6,800.00	20,400.00

EXHIBIT R-3.

ERIE RAILROAD COMPANY.

(Including Chicago & Erie Railroad)
Station Improvements as ordered by Commissions to October 31, 1913.

	Amount Authorized		Amount Expended		Amount to be Expended	
	Improvements	Individuals & Companies	Improvements	Individuals & Companies	Improvements	Individuals & Companies
I 3057	\$3,006.47	\$144.48	\$3,097.97	\$276.91	\$*91.50	\$*132.43
I 3676	1,788.08	41.25	2,033.80	41.25	*265.12	
I 2878	502.12	177.44	502.14	177.27	• .02	.17
C 653	7,240.98	1,432.00	6,017.23	1,376.60	1,223.75	75.40
C 663	5,289.22	528.68	5,271.59	528.68	17.03	
C 712	5,673.16	8,334.39	5,087.21	7,815.78	585.95	518.61
I 3693	12,376.66	2,826.02	11,726.95	2,311.64	649.71	*59.06
I 2881	1,315.92	751.64	1,315.92	974.08	• 222.44	314.38
C 647	5,621.13	593.86	5,777.44	589.06	*156.31	4.80
I 1900	317.16		319.90		• 2.74	
I 3834	3,059.75	3,580.00	3,073.12	3,422.40	• 13.37	113.84
Total.	\$46,191.25	\$18,429.76	\$44,243.27	\$17,513.67	\$1,947.98	\$916.09
		\$2,137.08		\$2,112.30		\$24.78

* Over Expended.

Exhibit R-4.

EXHIBIT R-4.

ERIE RAILROAD COMPANY.

Statement showing extra expense on account of the "Full Crew" Law in the States of New York and New Jersey for the month of September, 1913.

Division.	Freight.	Passenger.	Total.
New York	\$2,806.96	\$1,297.33	\$4,104.29
Delaware	2,733.31	253.41	2,986.72
Susquehanna	2,343.90	346.27	2,690.17
Rochester	293.93	348.14	642.07
Buffalo	2,051.27	651.62	2,702.89
Allegheny	1,435.67	\$26.74	1,462.41
Meadville	833.59	174.25	1,007.84
	<hr/> \$12,781.60	<hr/> \$4,123.90	<hr/> \$17,905.50

Statement Showing Approximate Annual Expense Account of "Full Crew" Laws in the States of New Jersey and New York, based on Expenses for the Month of September, 1913.

Division.	Freight.	Passenger.	Total.
New York	\$33,643.52	\$15,347.84	\$49,291.36
Delaware	32,798.52	4,340.90	37,139.42
Susquehanna	40,607.76	6,819.34	47,427.10
Rochester	3,531.36	4,177.69	7,709.05
Buffalo	34,615.24	10,221.84	44,837.08
Allegheny	19,600.84	6,321.36	25,922.20
Meadville	10,264.56	2,139.00	12,403.56
	<hr/> \$163,241.80	<hr/> \$49,487.69	<hr/> \$212,729.49

New York, November 22, 1913.

*Exhibit R-5.***EXHIBIT R-5.****Erie Railroad (Including C. & E. R. R.)****Cost for compliance with Full Train Crew Laws.****Indiana Law, effective April 10, 1907.**

1907 (8 months—20 days) ..	\$4,650.91	
1908	8,298.54	
1909	9,679.22	
1910	8,137.68	
1911	8,903.93	
1912	8,578.16	
1913 (10 months)	9,024.05	\$57,272.49

Ohio Law, effective July 13, 1911.

1911 (5 months—15 days) ..	\$4,979.79	
1912	9,857.46	
1913 (10 months)	8,004.39	\$22,841.64

Pennsylvania Law, effective July 18, 1911.

1911 (5 months—13 days) ..	\$29,673.06	
1912	68,063.24	
1913 (10 months)	59,394.97	\$157,731.27

NOTE:—Pennsylvania Law would have cost about \$1,000.00 more if no coal strike April and May 1912.

New Jersey Law, effective May 1, 1913.

1913 (6 months)	\$14,355.60	\$14,355.60
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New York Law, effective September 1, 1913.

1913 (2 months)	\$28,848.68	\$28,848.68
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Recapitulation.

Indiana Total Cost.....	\$57,272.49
Ohio " "	22,841.64
Pennsylvania Total Cost.....	157,731.27
New Jersey " "	14,355.60
New York " "	28,848.68

Grand Total **\$281,049.68**

Office of General Manager,
December 1, 1913.

EXHIBIT R-6.

ERIE RAILROAD SYSTEM.

Principal Capital Expenditures Made in State of New Jersey for Years Ending June 30th.

	1911	1912	1913	Total
Improvements in Yard, Monmouth St., J. City.	\$52,152.48	\$38,440.36		\$90,631.74
Purchase of twenty electric trucks, J. City.	20,528.03	2,884.07		24,412.10
Proportion of Cost of grade crossing at West End, J. City.	12,230.16			12,230.16
Proportion of Cost of grade crossing at West End, J. City.				
New Bridge, 1st at Patterson, N. J.	24,400.35			24,400.35
New Bridge, Little Ferry, N. J.	41,000.00	16,754.30		58,754.30
Bridge, Tracks, etc., Greenwood Lake Division, Hackensack River.	27,120.70			27,120.70
Revision of Berrys Creek, Hackensack Meadows.		26,220.71		26,220.71
Automatic Signals on Northern RR of New Jersey.		33,818.55	\$25,823.63	129,042.14
Extension of Dock A, Jersey City.		47,200.26		47,200.26
Engine Handling facilities at Butler, N. J.		25,545.19	82,412.69	107,957.88
Steaming facilities at Edgewater, N. J.		12,043.77		12,043.77
Lining three sections at Bergen Tunnel.		20,167.50		20,167.50
Track to Peters Mine, Ringwood, N. J.			35,180.09	35,180.09
Improvements to Coach Yard, Jersey City.			59,153.66	59,153.66
Improving yard F, Croxton, N. J.			20,840.61	20,840.61
Facilities for to accommodate NYS&W at Jersey City.			33,779.85	33,779.85
		144,010.45	1,280.07	145,290.52
Total.	\$179,312.60	\$378,403.70	\$238,479.49	\$803,205.50

Open Cut, Total Expenditures to June 30, 1913.
 Hackensack Bridge, during 1911-1912 & 1913.
 Erie Terminals, Edgewater Section to June 30, 1913.

EXHIBIT R-7.

ERIE RAILROAD COMPANY.

Accounting Department

Statement of Additions and Betterments Authorized to October 31, 1913, and Unexpended Balances to September 30, 1913.

SUMMARY.

Divisions	Amount Authorized	CHARGEABLE TO		UNEXPENDED BALANCES		
		Additions & Betterments	Expenditures	Individuals & Companies	Expenditures	Individuals & Companies
New York	\$551,197.19	\$284,571.21	\$177,623.26	\$39,602.72	\$65,715.70	\$35,401.55
Greenwood Lake	165,196.94	125,483.28	28,957.63	10,755.95	8,546.87	2,406.72
Northern Railroad of New Jersey	64,548.72	11,463.72	7,469.76	45,375.24	4,523.63	1,760.62
Packisware	202,205.37	154,500.41	32,117.62	15,552.94	2,766.32	5,990.51
Jefferson	60,814.00	37,704.00	18,110.00	5,000.00	14,673.13	26.32
Wyoming	129,852.46	44,313.17	32,461.91	53,677.38	22,238.67	53,677.38
Sanquehanna	439,547.45	339,538.61	25,615.39	75,693.42	12,650.33	55,114.50
Tugay	377.00	377.00	.....	.....	.....	.....
Rochester	60,931.00	20,545.48	9,337.40	1,618.21	2,902.18	791.96
Albany	45,620.32	37,406.51	7,135.13	13,311.79	7,064.69	144.64
Bufford	18,240.24	16,844.47	1,265.77	.....	1,260.37	786.80
Buffalo	1,491,265.91	1,287,121.42	64,888.62	139,353.87	20,348.71	75,870.59
Meadville	4,764,191.63	3,775,672.99	618,559.77	270,518.37	463,466.85	366,023.69
Marion	278,394.96	167,101.42	163,169.15	9,122.01	52,755.55	6,377.65
Cincinnati	968,836.58	834,696.97	163,062.31	4,677.26	84,440.96	4,677.26
Chicago and Erie Railroad Co.	7,830,352.35	4,841,602.59	988,729.27	621.49	765,206.33	484.26
General	18,827,542.06	17,484,105.54	1,234,394.16	8,842.16	1,270,113.90	3,468.40
	\$28,898,102.59	\$21,550,452.60	\$3,556,061.55	\$798,548.54	\$2,583,664.64	\$653,443.39
						\$246,146.29

*Exhibit R-8.***EXHIBIT R-8.**

This consists of ten large pages giving detailed summary by divisions showing the items of the expenditures, total of which is given in Exhibit R-7. The earliest date of authorization on each division is as follows:

DIVISION.	DATE.
New York	August 23, 1911.
Greenwood Lake	October 11, 1911.
Northern Railroad of New Jersey	June 26, 1912
Delaware	September 25, 1912.
Jefferson	June 14, 1911.
Wyoming	October 11, 1911.
Susquehanna	June 26, 1912.
Rochester	October 11, 1911.
Tioga	April 23, 1913.
Allegheny	August 3, 1910.
Bradford	October 23, 1912.
Buffalo	February 20, 1896.
Meadville	July 11, 1911.
Mahoning	September 26, 1911.
Cincinnati	July 11, 1911.
Chicago & Erie	December 13, 1911.

Following is a statement of general additions and betterments applying to Erie Railroad Company as a whole and to equipment generally authorized from March 1, 1911, to October 31, 1913, and the unexpended balances to September 30, 1913, copied from pages 7, 8 and 9 of Exhibit R-8.

Exhibit R-8.

ERIE RAILROAD COMPANY.

ACCOUNTING DEPARTMENT.

Statement of Additions and Betterments Authorized to October 31, 1913, and Unexpended Balances to September 30, 1913.

Nature of Work.	Date Authorized.	Amount Authorized.	Unexpended Balance—Overexpenditures marked thus *.	Approximate Date of Completion.
GENERAL ROAD				
Distant Signals on Ohio and C&E Divisions.....	Dec. 13, 1911	\$24,733.95	\$19,444.82	Oct. 1913
Tie Plates on certain curves Erie Division.....	Jun. 14, 1911	270,784.80	2,744.51	Oct. 1913
Track scales at various points Ohio & C&E Divs.....	Oct. 25, 1911	26,490.70	13,362.37	Oct. 1913
Track scales at various points Erie Division.....	Oct. 25, 1911	27,952.49	5,971.53*	See Note
Automatic Scales at various freight stations.....	Dec. 4, 1912	5,262.77	4,336.58	Indefinite
Ballast, O. & C&E Divs. Fiscal Year 1914.....	May 28, 1913	128,370.00	109,702.94	June 1914
Applying Tie Plates on certain curves Erie Divs. Fiscal Year 1914	Jul. 30, 1913	162,686.81	133,274.17	June 1914
Installing and repairing scales at various stations, Ohio Division	Jul. 30, 1913	7,600.17	7,412.67	Indefinite
Purchase and installation of machinery & appliances..	Aug. 27, 1913	130,073.00	126,230.63	Indefinite
To cover cost of other than cinder, ballast to be applied raising track above previously existing levels, during year ending June 30, 1914.....	Sep. 17, 1913	368,350.06	211,341.69	Indefinite
System of wiring for electric welding at various points. Tie Plates on Curves of Erie & Hersey R. R.....	Oct. 22, 1913	7,472.48	7,472.48	Indefinite
	Jun. 14, 1911	30,969.84	3,359.45*	Indefinite

Note: Work Completed. Charges not yet audited.

Exhibit R-8.

Exhibit R-8 (Continued).

Nature of Work.	Date Authorized.	Amount Authorized.	Unexpended Balance Overexpenditures marked thus *.	Approximate Date of Completion.
Track for Midland Linseed Co. Edgewater, N. J.	Mar. 13, 1912	\$2,332.48	\$258.31	Oct. 1913
Right of Way Ridgewood Jct. to Suffern, N. Y.	May 15, 1912	25,000.00	2,336.14	Indefinite
Edgewater, N. J. Siding for Central Chemical Co.	Jan. 8, 1913	1,080.72	98.13*	Indefinite
Undercliff, N. J. Siding for Undercliff Terminals & Warehouse Company	Jan. 22, 1913	717.86	220.91	Indefinite
Undercliff, N. J. Improving track facilities for Barrett Manufacturing Company	Feb. 26, 1913	4,125.90	1,187.25	Indefinite
Right of Way Ridgewood Jct. to Suffern, N. Y.	Mar. 12, 1913	25,000.00	11,991.65	Indefinite
Purchase of land Village of Suffern, N. Y.	May 12, 1913	2,350.00	150.00	Oct. 1913
Concrete Retaining Walls in Bergen Archways.	Oct. 23, 1912	21,192.22	11,834.04*	Oct. 1913
Shango, N. Y. Extension of Culvert 372.24 (Genesee River Railroad)	Jul. 30, 1913	1,826.00	1,826.00	Indefinite
Edgewater, N. J. Turnout Track for Corn Products Refining Company	Jun. 26, 1912	338.80	295.57	Indefinite
EQUIPMENT.				
Five Pacific Type Class K-2 locomotives	Mar. 13, 1912	121,000.00	54,916.23	Indefinite
One Locomotive Crane at Marion, Ohio.	Jun. 26, 1912	10,000.00	10,000.00	Indefinite
80 Steel Underframes Refrigerator Cars.	Jun. 26, 1912	107,910.73	10,006.73	Indefinite
One Locomotive Crane at Huntington, Ind.	Jun. 26, 1912	10,000.00	4,260.00	Indefinite
Five Steel Frame 30 Foot Caboose.	Jul. 10, 1912	7,973.35	1,104.24*	Indefinite
One Eight Wheel Locomotive Crane.	Sep. 25, 1912	8,150.00	7,991.39	Indefinite
One Jordan Spreader Car.	Sep. 25, 1912	5,544.00	404.00	Indefinite
Two Wooden Car Floats	Sep. 11, 1912	72,000.00	34,651.23	Indefinite
Twenty-five Suburban Coaches. (60 Foot)	Jul. 10, 1912	254,008.50	494.21*	Completed
Eleven Combined suburban coaches (61 Foot)	Jul. 10, 1912	109,091.29	191.47	Completed

Exhibit R-8.

Exhibit R-8 (Continued).

Five hundred Coke Cars (40 Tons).....	Jul. 10, 1912	\$1,092,050.00	\$1,860.10*	Completed
Fifty Mikado Engines.....	Jul. 10, 1912	1,352,410.20	139,816.83	Indefinite
Three Hundred Automobile Cars (40 Tons).....	Jul. 10, 1912	324,342.00	15,131.36*	Indefinite
Five Mikado Engines.....	Sep. 11, 1912	134,143.95	845.30	Indefinite
Two Harbor Freight Barges.....	Oct. 23, 1912	12,800.00	106.03	Indefinite
Purchases of Locomotive No. 2509.....	Sep. 25, 1912	21,500.00	36.60*	Indefinite
Purchase of 25 Mikado Locomotives.....	Sep. 25, 1912	672,650.00	7,710.75	Completed
Five Hundred 40 Ton Box Cars.....	Sep. 25, 1912	536,225.00	396,087.20	Completed
One Thousand 40 Ton Box Cars.....	Sep. 25, 1912	1,084,046.00	1,393.81	Completed
Two Steel Car Floats and One Steel Tug.....	Jan. 22, 1913	97,000.00	1,303.79	Indefinite
Purchase of 25-70 foot express cars.....	Mar. 12, 1913	237,138.25	236,488.24	Indefinite
Purchase of 10 freight locomotives 2700-2709.....	Jan. 22, 1913	272,192.20	1,984.54	Indefinite
Purchase of one Steel Tug.....	May 28, 1913	76,000.00	49,717.00	Indefinite
Purchase of 10 covered Barges & 5 Open Lighters.....	May 28, 1913	88,500.00	88,403.77	Indefinite
Purchase of Steam Lighter.....	Jun. 25, 1913	26,875.00	15,454.30	Indefinite
Purchase of 7-65 foot Steel Postal Cars.....	Jul. 30, 1913	103,180.00	103,180.00	Indefinite
Building of 4-40 Ton Box Cars.....	Jul. 30, 1913	5,341.64	2,002.29	Indefinite
Purchase of 25 Barges from Jordan Ship Co.....	Aug. 20, 1913	75,000.00	500.00*	Indefinite
Purchase of 25-ton locomotive crane.....	Aug. 27, 1913	11,000.00	11,000.00	Indefinite
Purchase of 10 fast freight Pacific type engines.....	Aug. 20, 1913	249,845.20	248,976.85	Indefinite
Purchase of 40 Mikado Engines.....	Aug. 20, 1913	1,092,543.32	1,091,770.14	Indefinite
Purchase of locomotive cranes, coal and ashes at No. Judson, Ind. and Spencerville, O.....	Sep. 17, 1913	11,480.00	11,480.00	Indefinite
Purchase of 17 Car capacity steel car float.....	Sep. 17, 1913	46,000.00	16,000.00	Indefinite
Purchase of 500 Drop End Gondola Cars.....	Apr. 23, 1913	645,368.30	645,330.65	Indefinite
Purchase of 3000 steel frames 40 ton box cars.....	Apr. 23, 1913	3,211,345.00	3,161,705.01	Indefinite
Purchase of 1500-50 ton self clearing steel hopper cars.....	Apr. 23, 1913	1,784,020.00	1,753,954.32	Indefinite
Purchase of New Harbor Tugboat.....	Sep. 24, 1913	25,000.00	25,000.00	Indefinite
Equipping 58 engines with cast steel frames.....	Jul. 13, 1910	73,237.79	13,188.90	Indefinite

Exhibit R-8.

Exhibit R-8 (Continued).

Nature of Work.	Date Authorized.	Amount Authorized.	Unexpended Balance Overexpenditures marked thus *	Approximate Date of Completion.
Reinforcing ends of 60 full Postal & Mail Compartment Cars	Mar. 1, 1911	\$4,248.00	\$1,413.16*	Indefinite
One new Dynamometer Car	Aug. 23, 1911	9,493.00	2,467.40	Oct. 1913
Fire Pumps, in Harbor tugs, Nanuet, Waverly, Nyack, Oradell, Rochester and Shohola	Sep. 26, 1911	12,600.00	4,460.98	Oct. 1913
Equipping 250-35 ton steel underframe twin hopper gondola cars series 12750 to 12999 Inc.	Oct. 11, 1911	176,590.00	2,037.23	Indefinite
Equipping 20 coaches with steel underframes	Oct. 25, 1911	25,170.00	92.18	Indefinite
Steel Underframes for five 70 ft. combined cars	May 8, 1912	6,906.50	5,241.74	Indefinite
Steel Underframes and 6 wheel cast steel truck Car No. 991	Jun. 12, 1912	3,167.50	7.30	See Note
Steel Underframe to 8 Postal Cars	Jul. 16, 1912	11,062.56	6,790.06	Indefinite
Steel Underframes to 26 Comb. Baggage & Mail Cars ..	Jul. 10, 1912	31,920.10	26,041.08	Indefinite
Steel Trucks, Electric Lights, etc., car 996	Sep. 11, 1912	6,656.53	10.54	Indefinite
Brick Arches Valve Gears, Superheaters 50 K-1 engines.	Nov. 13, 1912	188,639.23	103,249.64	Indefinite
Locomotive Crane & Magnet East Buffalo, N. Y.	Dec. 11, 1912	9,295.00	2,969.40	Indefinite
Converting postal cars 660 to 662 to baggage cars also steel underframes	Dec. 11, 1912	4,217.22	1,496.83	Indefinite
Purchase of two Harbor freight Barges	Dec. 11, 1912	12,000.00	63.96*	Indefinite
Steel Underframes & Electric lights various cars	Dec. 11, 1912	48,425.76	36,542.76	Indefinite
Improvements to business car No. 995	Mar. 12, 1913	11,207.04	5,373.91*	Indefinite
Installing "Parsons System" blower in Ferryboat Arden.	Apr. 23, 1913	710.49	106.49	Indefinite
Purchase of One 40 Ton Box Car	Apr. 23, 1913	1,181.00	583.58	Indefinite
Converting 45 Roger Ballast & 26 Flat Bottom Gondola to Cinder Cars	May 12, 1913	35,939.99	422.07	Indefinite
Purchase of Railroad ditcher, Ohio & C & E Divs.	Jun. 11, 1913	6,000.00	6,000.00	Indefinite

Note: Work Completed. Charges not yet audited.

Exhibit R-8 (Continued).

Equipping 320 Switch engines with push poles.....	Jun. 25, 1913	\$11,480.70	Indefinite
Rebuilding 46 Class B-1 locomotives.....	Jul. 9, 1913	184,995.90	Indefinite
Equipping all locomotives & Cars with safety devices..	Jul. 9, 1913	1,777,175.51	Indefinite
Purchase of One No. 16 Special Motor Car NY Div....	Jul. 30, 1913	965.00	Indefinite
Purchase of concrete mixer New York Div.....	Aug. 20, 1913	1,000.00	Indefinite
Purchase of Application of 70 flange Lubricators to freight engines.....	Jul. 30, 1913	6,314.00	Indefinite
Equipping 100 Coaches & combined cars with Electric lights & 90 of the same with steel underframes.....	Jul. 30, 1913	324,367.30	Indefinite
Converting 50 Box cars into cabooses.....	Jul. 30, 1913	41,663.00	Indefinite
Equipping business car 992 with Wilson Storage batteries and electric lights.....	Aug. 27, 1913	2,931.08	Indefinite
Purchase of four Fairbanks Morse Motor Cars No. 16 Special complete with turntable.....	Aug. 27, 1913	3,860.00	Indefinite
Converting seventeen car float to twelve car float.....	Aug. 27, 1913	1,333.36	Indefinite
Converting 148 Roger Ballast and 111-30 Ton Flat Bottom Gondolas into cinder cars.....	Aug. 20, 1913	130,725.07	Indefinite
Equipping engines 968, 970, 1586, & 1654 with Baker Valve Cars.....	Sep. 17, 1913	4,668.10	Indefinite
Installation of electric lighting on three car floats.....	Oct. 22, 1913	337.05	Indefinite
Conversion of car floats Nos. 2 & 26 from 17 car to 12 car capacity.....	Oct. 22, 1913	2,666.72	Indefinite
Equipping 6657-30 ton box cars with Economy Draft Arms and Friction Draft Gears.....	Oct. 22, 1913	948,223.08	Indefinite
Equipping 13 wrecking cranes with Gas Cutting Outfits.....	Oct. 22, 1913	4,361.50	Indefinite
Total.....		<u>\$11,107,555.13</u>	
		47,240.69*	

*Exhibits R-9—R-10.***EXHIBIT R-9.****ERIE RAILROAD COMPANY.****ALL LINES.****Month of October.**

	1913	1912		
Gross Revenue,	\$5,732,617.08	\$5,780,077.64	Decrease	\$47,460.56
Operating Expenses and Taxes,	4,596,212.55	4,208,548.93	Increase	387,663.62
Operating Income	\$1,136,404.53	\$1,571,528.71	Decrease	\$435,124.18
Included in the expenses is one-twelfth of the entire taxes of the year; also one-twelfth of the annual depreciation of equipment.				

FOUR MONTHS TO OCTOBER 31st.

	1913	1912		
Gross Revenue,	\$22,383,906.94	\$22,347,031.50	Increase	\$36,875.44
Operating Expenses and Taxes,	17,329,317.33	15,868,296.11	Increase	1,461,021.22
Operating Income	\$5,054,589.61	\$6,478,735.39	Decrease	\$1,424,145.78

EXHIBIT R-10.**ERIE RAILROAD SYSTEM.**

Statement showing increase in operating costs due to increased price of fuel and ties.

	Increase 1913 over 1910
Fuel	\$473,597
Ties	71,994
	<hr/> \$545,591

Office of the Comptroller
December 3rd, 1913.

Exhibit R-11.

EXHIBIT R-11.

(Condensed)

(Public—No. 336)

(H. R. 21279)

An Act Making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, one thousand nine hundred and thirteen, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, that the following sums be and they are hereby appropriated for the service of the Post Office Department in conformity with the Act of July second, one thousand eight hundred and thirty-six, as follows:

* * * * *

For railway post office car service four million seven hundred and seven thousand dollars: Provided, that no part of this amount shall be paid for the use of any car which is not sound in material and construction and which is not equipped with sanitary drinking water containers and toilet facilities, nor unless such car is regularly and thoroughly cleaned: Provided further that after the first of July, one thousand nine hundred and seventeen, the Postmaster General shall not approve or allow to be used or pay for any full railway post office car not constructed of steel or steel underframe or equally indestructible material, and not less than twenty-five per centum of the railway post office cars of a railroad company not conforming to the provisions of this Act shall be replaced with cars constructed of steel annually after June, one thousand nine hundred and thirteen; and all cars accepted for this service and contracted for by the railroad companies after the passage of this act shall be constructed of steel: Provided further that the Postmaster-General is authorized to pay for

Exhibit R-12.

full railway cars necessarily used in service by the Post Office Department from July 1, 1911, to March 1, 1912, when in his judgment a reasonable and proper effort was being made by railroad companies to comply with the provisions of the Act of March 4, 1911, but on account of insufficient time the requisite work could not be completed on July 1, 1911.

• • • • •

Approved, August 24, 1912.

EXHIBIT R-12.

Same as Schedule "A" attached to Report of Board, and printed at page 1765.

Exhibit R-13.

EXHIBIT R-13.

Along the Erie Railroad Main Line at Certain Street Crossings
in Paterson, N. J.

Location	RAILROAD				WESTERN UNION			Crossings Included
	Telgh.	Short Line Phone	Bell	Automatic	Telgh.	Clock & District		
Main Ave. to Park Jet side line	7		2	11 to 14			Madison Ave.	
Park Jet to Main station					19 working		Straight St. Clay St. Cedar St. Essex St.	
side line	9	2	4	6 to 11	2 dead	1		
Main stn to r of block led by Market Ellison Sts.					5 working 3 dead 2 19-condr cables		Market St. Signal wires cross in 1 span of cable	
side line ce to west side roadway 10 poles them on south consolidated	7		3	10				
side of Broadway Warren St.	7	1	5	10	4 dead 10 working	9	Ellison St. Van Houten St. Broadway	
side line	7	2	4	9 to 13			Same as in two following sections	
side of Broadway news Coal Yard					10 working 4 dead	9	Hamilton Ave.	
side line to Coal Yard							Goodwin St. Straight St. Montgomery (not cut thru)	
Warren St.							Lafayette Franklin Kecne	
side line					7	1		
in St. to River with side line labeled	7	2	4	16	7	1	Warren St. River St.	

*Exhibits R-14—R-15.***EXHIBIT R-14.**

Statement of estimated annual increase in payrolls as follows, and increases in wages awarded by arbitration commissions and effective since May 1st, 1912.

Effective	Character of Employment	Amount
May 1, 1912	Engineers	\$134,274.00
May 1, 1913	Telegraphers	47,500.00
May 2, 1913	Firemen	100,350.00
October 1, 1913	Conductors and Trainmen	200,270.00
	Total	\$482,394.00

EXHIBIT R-15.**PATERSON CROSSING CASES.****ABSTRACT OF TITLE.**

1. The main line of railroad maintained and operated by the Erie Railroad Company in the City of Paterson was constructed under the Charters of The President and Directors of the Paterson and Hudson River Railroad Company and The Paterson and Ramapo Railroad Company granted by certain Acts of the Legislature of the State of New Jersey and amended by Supplements thereto.

2. The President and Directors of the Paterson and Hudson River Railroad Company is a corporation organized under an Act of the Legislature of New Jersey passed January 21st, 1831 (P. L. 1826, page 24), in which it was authorized, among other things, to survey, lay out and construct etc., a railroad from Paterson to the Hudson River. A copy of said Act and Supplements thereto are hereto attached and marked "Exhibit 1."

3. The property and franchises of said The President and Directors of the Paterson and Hudson River Railroad Company are now held and operated by the Erie Railroad Company under a certain lease dated September 9, 1852, originally made to the Union

Exhibit R-15.

Railroad Company, a copy of which lease and schedules therein referred to are hereto attached and marked "Exhibit 2."

4. The Paterson and Ramapo Railroad Company is a corporation organized under an Act of the Legislature of New Jersey passed March 10, 1841 (P. L. 1840-1, page 97), in which it was authorized, among other things, to survey, lay out, and construct, etc., a railroad from Paterson to the division line between the Township of Franklin, in the County of Bergen, and the State of New York—a copy of said Act and of the Supplements thereto are hereto attached and marked "Exhibit 3."

5. The property and franchises of the said The Paterson and Ramapo Railroad Company are now held and operated by the Erie Railroad Company under a certain lease dated September 9th, 1852, originally made to the Union Railroad Company, a copy of which lease is hereto attached and marked "Exhibit 4."

6. Said leases were assigned to the New York and Erie Railroad Company by the Union Railroad Company September 10, 1852, such assignments being affirmed by an Act of the Legislature of the State of New Jersey approved March 14, 1853 (P. L. 1853, page 480), and Laws of 1862, page 206—copies of such assignments are attached hereto and marked "Exhibit 5."

7. The New York and Erie Railroad Company was a corporation of the State of New York, duly incorporated in the year 1832 under an Act of the Legislature of the State of New York passed April 24, 1832, known as Chapter 224 of the Laws of 1832, "with power to construct a single, double or treble railroad or way from the City of New York to Lake Erie," and with other powers therein stated. Under the Act aforesaid, previous to the year 1852, the New

Exhibit R-15.

York and Erie Railroad Company did construct the railroad which it was authorized to construct.

8. Upon the first day of June, 1858, by a mortgage acknowledged the 11th day of June, 1858, and known as the Fifth Mortgage, the New York and Erie Railroad Company mortgaged its property, rights and franchises to James Brown and John C. Bancroft Davis, as Trustees for the bondholders, recorded in Passaic County Clerk's office June 18th, 1858, in Book II of Mortgages, pages 368 to 377 inclusive. This mortgage was foreclosed in accordance with its terms and conditions because of default, and upon foreclosure the property, rights and franchises described therein were duly sold. The foreclosure and sale were made pursuant to the laws then existing and particularly pursuant to Chapter 160 of the Laws of 1860, and Chapter 119 of the Laws of 1861, of the State of New York.

9. By virtue of such foreclosure and sale all the property, rights and franchises of said railroad corporation were conveyed by Philo T. Ruggles, Referee, and others, to Dudley S. Gregory and John C. Bancroft Davis, as Trustees, by deed dated December 28, 1861, recorded in Passaic County Clerk's office October 8, 1862, in Deed Book M-2, page 402.

10. The Erie Railway Company was incorporated April 30, 1861, under an Act of the Legislature of the State of New York passed April 2, 1861, known as Chapter 119 of the Laws of 1861, hereinbefore referred to, and all of the aforesaid property, rights and franchises were vested in said Erie Railway Company by deed given by Dudley S. Gregory and John C. Bancroft Davis, as Trustees, to Erie Railway Company, dated December 28, 1861, recorded in Passaic County Clerk's office October 8, 1862, in Deed Book M-2, page 432, etc., and said Erie Railway Company was confirmed in its rights to the property so acquired by it

Exhibit B-13.

by Chapter 66 of the Laws of 1862 of the State of New York, said foreclosure and sale having been authorized by Chapter 229 of the Laws of 1860 of the State of New Jersey.

11. Said Erie Railway Company mortgaged all its property, rights and franchises to The Farmers' Loan and Trust Company by mortgage dated February 4, 1874, recorded in Passaic County Clerk's office April 2, 1874, in Mortgage Book D-2, page 7. At the time this mortgage was made, said Erie Railway Company had come to be the owner and operator of railroad lines in the State of New Jersey and in the State of Pennsylvania, and said mortgage was also recorded in the proper County Clerk's offices in each of said States.

12. In 1875 actions to foreclose this mortgage were commenced in the Supreme Court of the State of New York, in the Court of Chancery in the State of New Jersey, and in the Courts of Common Pleas for Wayne County in the State of Pennsylvania, and elsewhere, and such proceedings were thereafter duly had in said foreclosure that judgments of foreclosure and sale were duly entered, and the property was duly sold on the 24th day of April, 1878, in the City of New York, to Edwin D. Morgan, John Lowber Welsh and David A. Wells, Trustees, and George Tichnor Curtis, the Referee making said sale, by a deed dated April 26th, 1878, duly conveyed said property to said Trustees, said deed being recorded in the office of the Clerk of Passaic County August 2, 1878, in Liber D-6 of Deeds, page 40, and in the proper County Clerk's offices of the various States. To confirm said sale the Erie Railway Company itself conveyed its property to the same Trustees by deed dated April 26, 1878, recorded in Passaic County Clerk's office August 2, 1878, in Liber D-6 of Deeds, page 25.

Exhibit R-15.

13. Said Erie Railway Company was reorganized pursuant to the Act of 1874, and the Acts amendatory thereof, by a Certificate of Incorporation duly filed with the Secretary of State at Albany, N. Y., on the 27th day of April, 1878, and thereupon, and on the same day, said Morgan, Welsh and Wells, Trustees, duly conveyed the property, rights and franchises so conveyed to them, to the said reorganized corporation known as The New York, Lake Erie and Western Railroad Company; the deed of conveyance being recorded in Passaic County Clerk's office August 2, 1878, in Liber D-6 of Deeds, page 50, and also recorded in the proper States and County Clerk's offices.

14. Said corporation, The New York, Lake Erie and Western Railroad Company, on the 5th day of October, 1878, mortgaged all of its property, rights and franchises to The Farmers' Loan and Trust Company, as Trustee for bondholders, to secure the payment of certain bonds and indebtedness of said corporation, according to the terms and conditions thereof, said mortgage being recorded in Passaic County Clerk's office November 6, 1878, in Book K-2 of Mortgages, page 188; said mortgage also being recorded in the various County Clerk's office of the various States wherein the property was located.

15. Thereafter The Farmers' Loan and Trust Company brought suits to foreclose such mortgage for default in the payment of principal or interest as there in provided, and such proceedings were duly had in such foreclosure suits in the Circuit Court of the United States for the Southern District of New York, also for the Northern District of New York, also for the District of New Jersey, also for the Eastern District of Pennsylvania, also for the Western District of Pennsylvania, also for the Northern District of Ohio, also for the Southern District of Ohio, also for the District of Indiana, also for the Northern District

Exhibit R-15.

of Illinois, also for the Southern District of Illinois, that Arthur H. Masten, Esq., as Special Master under the foreclosure decree, sold the entire property, rights and franchises on the 6th day of November, 1895, at Ramapo, N. Y., to Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, as the representatives of a majority of those interested in the property sold as bondholders or stockholders.

16. On November 11, 1895, said Arthur H. Masten, as Special Master, conveyed the lands so sold by him to said Coster, Fitzgerald and Thomas, by deed recorded in Passaic County Clerk's office November 18, 1895, in Liber C-12 of Deeds, page 456, and also recorded in the Clerk's offices of the various Counties in the various States mentioned.

17. Pursuant to the laws of the State of New York, a Certificate of Incorporation was duly filed with the Secretary of State of the State of New York on the 14th day of November, 1895, whereby said Respondent, the Erie Railroad Company, was duly organized as a corporation and thereafter exemplified copies of such Certificate of Incorporation were duly filed, and other steps were duly taken in the several States in which the property so sold was located, whereby said corporation became a corporation and empowered to take the title of the property so sold and to operate such property as a railroad in the several States wherein it was located.

Chapter 688 of the Laws of 1892 was in force in the State of New York when said Certificate of Incorporation was filed and by filing such Certificate of Incorporation the Erie Railroad Company subjected itself to the provisions thereof and in particular to the provisions of Section 3, Subdivision 4, which provides as follows:

"Any plan or agreement which may have been entered into at or previous to the time of sale, in anticipation of the formation of the new corpora-

Exhibit R-15.

tion, and pursuant to which such purchase was made, such corporation shall be vested with and be entitled to exercise and enjoy all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on such corporations."

18. To more effectually vest all the property, rights, privileges, franchises, powers and immunities of the old corporation or corporations in the said reorganized corporation, said Erie Railroad Company, on the 14th day of November, 1895, said Coster, Fitzgerald and Thomas duly conveyed the same to said Erie Railroad Company, by a deed dated and acknowledged that day, and said deed was duly recorded in Passaic County Clerk's office November 18, 1895, in Liber C-12 of Deeds, page 456, and said deed was also recorded in the County Clerk's offices of the various States wherein said property was located.

Further to confirm the rights of said Erie Railroad Company in and to the property as sold on foreclosure, John G. McCullough and Eben B. Thomas, as receivers of the New York, Lake Erie & Western Railroad Company, pursuant to the decree of foreclosure and sale, duly conveyed all the property and franchises aforesaid to said Erie Railroad Company by a deed dated February 26, 1896, acknowledged April 6, 1896, and recorded in the office of the Register of Deeds, in the City and County of New York, on the 13th day of April, 1896, in Liber 44, Section 3 of Cons., page 254.

To still further confirm the right of the Erie Railroad Company to all the property, rights and franchises heretofore mentioned, The Farmers' Loan and Trust Company conveyed the same to said Erie Railroad Company by a deed dated February 26, 1896.

and recorded in the Clerk's office of Rockland County, N. Y., March 4, 1896, in Liber 182 of Deeds, at page 522.

Upon the 14th day of November, 1895, said Erie Railroad Company took possession of all the property, rights and franchises so sold on foreclosure, described in its Certificate of Incorporation and covered by the statutes under which said reorganization was effected, and said Erie Railroad Company has since that time continued to possess and to operate the same as a common carrier of passengers and freight for hire; that the property so obtained, and additional property soon thereafter obtained, constitutes the line of railroad extending from the City of New York, through the States of New Jersey, Pennsylvania, New York, Ohio, Indiana and Illinois, to the City of Chicago, and reaching such cities as Buffalo and Cleveland, and thereon said Erie Railroad Company is engaged in interstate commerce.

In and by the Acts of the Legislature, the mortgages, the foreclosures, the sales, the deeds, the reorganizations, the certificates of incorporation, and the other acts and deeds hereinbefore recited, the Erie Railroad Company, on the 14th day of November, 1895, became vested with title to all the property, rights, privileges, franchises, powers and immunities of each and every of its predecessors from 1832 to November 14, 1895, so described or referred to in its certificate of incorporation of November 14, 1895, or conveyed to it by virtue of any of the mortgages, foreclosures, sales or deeds hereinbefore mentioned, or made to it but not herein set forth and mentioned.

The Erie Railroad Company has complied with the conditions and requirements of Chapter 11 of the Laws of New Jersey of 1898.

Copies of descriptions of lands conveyed to or taken by The President and Directors of the Paterson and Hudson River Railroad Company and The Paterson

and Ramapo Railroad Company and used for the construction, operation and maintenance of their respective railroads, are hereto attached and marked "Exhibit 6."

PATERSON GRADE CROSSING CASES.
AN ACT
TO INCORPORATE THE PATERSON AND
HUDSON RIVER RAILROAD COMPANY.

Passed January 21, 1831.

Sect. I. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That John Colt, Robert Carriek, Abraham Godwin, Jr., Richard R. Morris, William S. Buckner, Elias B. D. Ogden and Andrew P. Hopper, and such other person or persons as may hereafter be associated with them, shall be, and are hereby ordained, constituted and declared to be a body corporate and politic, in fact and in name, by the name of "THE PRESIDENT AND DIRECTORS OF THE PATERSON AND HUDSON RIVER RAILROAD COMPANY," and by that name they and their successors and assigns shall and may have continued succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever; and shall have power to make and use a common seal, and the same at pleasure to alter; and they and their successors, by the same name and style, shall be capable of purchasing, holding and conveying any lands, tenements, goods and chattels, necessary or expedient to the objects of this corporation, and shall be clothed with all the rights, powers and privileges pertaining to corporate bodies, and requisite for the purposes aforesaid.

II. And be it enacted, That the capital stock of said company shall be two hundred and fifty thousand

dollars, with liberty for the Company to increase the same to five hundred thousand dollars, and shall be divided into shares of fifty dollars each, which shall be deemed personal property, and transferable in such manner as the said Corporation shall by their by-laws direct.

III. And be it enacted, That the above named persons, or a majority of them, shall open books to receive subscriptions to the capital stock of the said Corporation, at such time or times, and place or places as they, or a majority of them may think proper, giving notice thereof at least twenty days prior to the opening of said books, by publishing the same in the newspapers printed in Paterson, and in a paper printed in the city of New York; and that the said books shall be kept open as long as the said persons, or a majority of them, shall think proper; and if more subscriptions be taken than the amount of the capital stock, it shall be in the power of the said persons, or a majority of them, to apportion the stock to the subscribers as they may deem expedient and conducive to the object of the incorporation.

IV. And be it enacted, That at the time of subscribing for said stock, ten dollars shall be paid to the above named persons, or some one of them, upon each share subscribed for which money shall be paid over to the treasurer of the Company as soon as one shall be appointed; and when the said capital stock shall be subscribed for, and the books closed, and the apportionment made, if the same become necessary, it shall be the duty of the persons named in the first section of this Act, or a majority of them, to call a meeting of the stockholders, upon like notice as above, to choose seven directors; and such election shall be made by ballot, at the said time and place, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the

capital stock entitling the holder thereof to one vote; and the said named persons, or a majority of them, shall be inspectors of the first election of directors of said Corporation, and shall certify under their hands the names of those persons duly elected, and deliver over the subscription books to the said directors; and that annually thereafter, upon like notice being given by the directors for the time being, the stockholders shall in the same manner elect the same number of directors; and the time and place of holding the first meeting of directors shall be fixed by the said persons named in the first section of this Act, or a majority of them; and the directors chosen at any of the elections of said Corporation, shall, as soon as may be after every election, choose, out of their own number, a president; and in case of the death, resignation or removal of the president or any director, such vacancy or vacancies may be filled, for the remainder of the year wherein they may happen, by the said board of directors, or a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president pro tempore, who shall have such power and functions as the by-laws of the said Corporation shall provide.

V. And be it enacted, That in case it should happen that an election of directors should not be made during the day, when, pursuant to this Act, it ought to have been made, the said Corporation shall not for that cause be deemed to be dissolved, but such election may be held at any other time, on notice as aforesaid; and the directors for the time being shall continue to hold their office until new ones shall have been chosen in their places.

VI. And be it enacted, That five directors of said Corporation shall be competent to transact all business of the said Corporation, and they shall have power to call in the remainder of the capital stock of

Exhibit R-15.

said company, by such installments, not exceeding five dollars on each share at any one time, and at such times as they may direct, and in case of the non-payments of said installments, or any one of them, to forfeit the share or shares upon which such default shall arise; and to make and prescribe such by-laws, rules and regulations as to them shall appear needful and proper, touching the management and regulation of the stock, property, estate and effects of the said Corporation, and shall also have power to appoint a secretary, treasurer, engineer, agents, superintendents and such servants as may be required to transact the business of the Corporation, with such compensation to them and the president, as to the board shall seem proper, and that they shall exact from the treasurer sufficient security for the due performance of his trust; Provided, said by-laws be in no respect repugnant to the laws of this State or of the United States.

VII. And be it enacted, That the President and directors be, and they are hereby authorized and invested with all the rights and powers necessary and expedient, to survey, lay out and construct a railroad, or lateral roads, from one or more suitable place or places in the town of Paterson, one at least of which shall either commence at, or pass in its course, within fifty feet of the corner of the present lower race-way, in the town of Paterson, at the intersection of Congress and Mill Streets, near the Catholic Chapel, to Weehawken, and from thence to any other suitable place or places on the Hudson river, opposite to the City of New York, within fifty feet of the high water mark, not exceeding sixty-six feet wide, with as many set of tracks and rails as they may deem necessary, crossing the Hackensack river upon or adjoining the present bridge, belonging to the New Barbadoes Toll Bridge Company, with their consent, but if such consent cannot be obtained, then as near the said bridge as practicable, with a draw, in a line, and correspond-

Exhibit R-15.

ing with the present one, and of equal or greater width; and it shall be lawful for the said president and directors, their agents, engineers, superintendents, and others in their employ, to enter, at all times, upon all lands and waters for the purpose of exploring, surveying, levelling and laying out the route or routes of such railroad, or lateral roads, and of locating the same; and to do and erect all necessary works, buildings and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes and the location of such road or lateral roads shall have been determined upon, and a survey of such route or routes, or location, deposited in the office of the secretary of state, then it shall be lawful for said company, by its officers, agents, engineers, superintendents, contractors, workmen, and other persons in their employ, to enter upon, take possession of, hold, have, use, occupy and excavate any such lands, and to erect embankments, bridges and all other works necessary to lay rails, and to do all other things which shall be suitable and necessary for the completion or repair of the said road or roads, and to carry into full effect the object of this incorporation; and may also take and use any stone, gravel, sand, clay or other earth, on or near the said route, which may be required for the construction of, repairing, altering or extending the said road or roads, or of any of the works or appendages, subject to such compensation to be made therefor as is hereinafter provided, and repairing any breaches they may make in enclosures: Provided, always, that the payment, or the tender of the payment, of all damages for the occupancy of lands through which the said railroad or railroads may be laid out, be made, before the said company, or any person under their direction or employ, shall enter upon, or break ground in the premises, except for the purpose of surveying and laying out said road or roads, unless the

consent of the owner or owners of such lands be first had and obtained in writing: And provided also, that it shall be lawful for any person or persons owning any ferry on the Hudson river, opposite to the city of New York, or any landing on the Passaic river, or manufactory within the corporate limits of the town of Paterson, to which said railroad shall not be laid by this Company, to erect and build a branch railroad, to intersect said railroad, at such point or points, within the said limits, as may be deemed expedient, and to charge the tolls thereon, in the same manner and at the same rates as this Corporation is authorized to charge, and for the purpose of constructing said branch railroad, he or they shall be invested with the same privileges, and be subject to the same liabilities and reservations as this Corporation are entitled and subject to.

VIII. And be it enacted, That when said Company or its agents, cannot agree with the owner or owners of any such required lands or materials for the use or purchase thereof, or in case any such owner or owners thereof shall be feme covert, or under age, non compos mentis, or reside out of the State, then it shall and may be lawful to and for the said directors to apply to any justice of the supreme court of this State, who upon such application, is hereby authorized and empowered, enjoined and requested to frame and issue one or more writ or writs, as occasion shall require, in the nature of a writ ad quod damnum, to be directed to the sheriff of the county in which such lands are tenements shall be, commanding him that, by the oaths or affirmations of twelve good and lawful men of his bailiwick, who shall be indifferent to the parties, he shall inquire whether the person or persons owning any lands, tenements or hereditaments, necessary to be used by the said directors, or which may be injured in establishing such railroad or roads, which person or persons shall be

Exhibit B-15.

named, if known, and which lands and tenements shall be described in such writ or writs, will suffer and sustain any and what damages, by reason or means of taking such lands, tenements or other real hereditaments, gravel or materials, necessary or expedient for the use of such railroad or roads, or the repair thereof, or the works thereto belonging; and to return the said writ, together with the finding of such jury, to the next supreme court of this State, after the finding thereof, on or before the first day of said term; and upon such writ being delivered to the sheriff, he shall give at least twenty days' notice, in writing, to all and every owner or owners of the lands and tenements in the said writ described, or to so many of them as can be found, or to the agent or agents of such owners, if known; and if not known, such notice to be published in some newspaper printed in the county in which such lands lie, for the same length of time, before executing said writ, of the time of executing the same; and he shall cause to come upon the premises, at the time appointed, twelve good and lawful men of his bailiwick, who shall be selected in such manner, and upon like notice to the parties, as struck juries usually are, to whom he shall administer an oath or affirmation that they will diligently inquire concerning the matter and things in the said writ specified, and a true inquisition make according to the best of their skill and judgment, without favor or partiality; and thereupon the said sheriff and inquest shall proceed to view all and every the lands and tenements in such writ specified, and having considered the quantity of lands, materials and other matters and things, necessary or requisite to be vested in said Company, for the purposes aforesaid, they shall cause the same to be minutely and accurately described by metes and bounds, or other particular descriptions, and shall value or appraise the value of the land, and the injury or damages, if

any, which the owner or owners of said lands, tenements, or improvements or materials, will, according to their best judgment and skill, sustain and suffer, by means of so much of the said lands and tenements being vested in the said Company, or by means of such improvements being destroyed or rendered useless, or of less value, defining and ascertaining as well all such lands and tenements and privileges so to be vested in said Company, as the several sums at which the said injuries and damages shall be so assessed; and in making such valuation and appraisement, it shall be the duty of the jury or juries to allow compensation for the lands, tenements and hereditaments, to be taken for the use aforesaid, at the fair value they would have come to before the location of the said road or roads, and a full value for all gravel and other materials, that may be used by the said Company, for the purposes aforesaid; and that said sheriff and jury shall make an inquisition, under their hands and seals, distinctly and plainly setting forth all the matters and things aforesaid, and the sheriff shall return the same, together with the said writ, to the office of the clerk of the Supreme Court, according to the command of the court; and the justices of the said court shall examine the same, at the term to which it is returned, and if the said writ shall appear to have been duly executed, and the return thereof sufficiently certain, to ascertain the lands and tenements, rights and privileges intended to be vested in the said Company, and the several compensations awarded to the owners thereof, then the said court shall enter judgment, and the said Company, paying the said inquisition assessed, or bringing the same into the said court, over and besides the costs of such writ, and executing and returning the same, to be taxed by the justice who issued it, shall be entitled to have and to hold, to them and their successors and assigns, forever, all and every the lands, tenements, rights and privileges in

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the said inquisition described, as fully and effectually as if the same had been granted to them by the owners thereof; and if any return so to be made shall not be sufficiently certain for the purposes aforesaid, the said court shall award an inquisition *de novo*; and upon payment or bringing into court all such moneys as by such judgment shall be required to be paid or brought into court, all such lands, tenements, rights and privileges, shall be fully and absolutely vested in the said corporation, who shall become seized and possessed thereof, in like manner as the then late owners was or were seized or possessed thereof.

IX. And be it enacted, That it shall be the duty of the said Company to construct and keep in repair, good and sufficient bridges or passages over and under the said railroad or roads, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be prevented thereby, and also where the said road shall intersect any farms or lands of any individual, to provide and keep in repair suitable wagon ways, over and under said railroad, so that they may conveniently pass the same.

X. And be it enacted, That the President and Directors of the said Company shall have power to have constructed or to purchase with the funds of the Company, and to place on any railroad constructed by them, all machines, engines, wagons, carriages and vehicles for the transportation of persons or any species of property thereon that they may think reasonable, expedient and right: Provided, they shall not charge more than at the rate of six cents per mile per ton for the transportation of property on the said road or roads, or six cents per mile for carrying each passenger on said railways in the carriages of the Company, or three cents per mile for each ton of property transported, or three cents per mile for each passenger carried on said railways in carriages of

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others, and three cents per mile for each empty carriage; and that said Company are hereby authorized to demand and receive money for toll, and the transportation of persons, and every species of property at the aforesaid or such less rates as they from time to time shall think reasonable and proper; and the railroad or roads and appendages, and the land over which the same shall pass, and all the works and improvements, steam engines, carriages and all other property whatsoever, belonging to the said Company, at any time or times, are hereby vested in the said Company incorporated by this Act, and their successors and assigns during the continuance of this Act.

XI. And be it enacted, That the President and Directors of the said Company, as soon as the affairs of the Company will allow, shall declare and make such dividend as they may deem prudent and proper of the net proceeds thereof, and shall in like manner, semi-annually, thereafter, declare such dividends, and pay the same to the stockholders or the said Company in proportion to the amount of shares held by them respectively, as they may deem prudent and proper; and in case they fail so to do, they shall assign their reasons in writing to the stockholders for such failure.

XII. And be it enacted, That if any person shall wilfully impair, injure, destroy or obstruct the use of any railroad constructed under the provisions of this Act by the said Company, or any of their necessary works, wharves, bridges, carriages or machines, such person or persons so offending shall forfeit and pay to the said Company any sum not exceeding two hundred dollars, at the discretion of the court or jury, to be by them recovered in an action of debt in any court having competent jurisdiction, and also shall be liable to pay to said Company double the amount of damages sustained thereby, to be sued for in an action of trespass.

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XIII. And be it enacted, That the said Company may have and hold real estate at the commencement and termination of said road or roads not exceeding two acres at each place, and not approaching nearer than fifty feet of high water mark at either of the present ferries of Hoboken, Weehawken or Jersey City, without the consent of the owner or owners of the ferry or ferries opposite which said land may be taken, and may erect and build thereon houses, warehouses, stables, machine shops, and other buildings and improvements as they may deem expedient for the safety of property, and construction of carriages and other necessary uses, and take and receive the rents, profits and emoluments thereof; and shall have the privilege and authority to erect, build and maintain on the rivers Passaic and Hackensack, respectively, such wharves, piers, bridges and other facilities as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this Act, subject to the aforesaid restrictions; and for the safety of the navigators one or more lamps shall be placed at one side of the draw of said bridge which lamp or lamps shall be lighted every evening thereafter as long as said bridge shall stand, before it grows dark, and continue lighted until daylight, at the expense of the said Company; and shall keep, or cause to be kept at the said bridge, a careful person to open the draws for the free passage of vessels with standing masts; and for each and every neglect in opening the draws, and each and every night's neglect to light the lamp or lamps, the directors of said Company shall pay the sum of ten dollars, to be recovered in an action of debt by any person suing for the same; Provided, that nothing herein contained shall be so construed as to give the Company hereby incorporated the right to establish or carry on a ferry for the carrying of passengers or freight.

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XIV. And be it enacted, That the road or roads authorized by this Act, be, and the same are hereby declared a public highway, and free for the passage of any railroad carriage thereon, with passengers or property, upon payment of the tolls prescribed by this Act: Provided, always that the said carriages so used thereon shall be of the same description as those used by the Company, and shall be so regulated as to time of starting, rates of travelling and rates of tonnage, as not to interfere with the carriages of the Company, or injure the said road.

XV. And be it enacted, That if the said railroad shall not be commenced in one year from the fourth of July next and completed at the expiration of five years from the same time, that then, and in that case this Act shall be void.

XVI. And be it enacted, That no part of the capital stock or moneys of the Company incorporated by this Act shall be used or employed by said Company for banking purposes under the penalty of forfeiting this charter.

XVII. And be it enacted, That at any time after the expiration of fifty years from the completion of the said road, the Legislature of this State may cause an appraisement of the said road and the appendages thereof to be made by six persons, three of whom shall be appointed by the Chief Justice of this State for the time being, the remaining three by the Company, who, or a majority of them, shall report the value thereof to the legislature within one year from the time of their appointment; or, if they cannot agree, they shall choose a seventh, who, with the aforesaid six, shall report as aforesaid, or in case the said Company shall neglect or refuse to appoint the said three persons on their part for two months after the said appointment by the said chief justice, then the three persons so appointed by him shall proceed to

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make such appraisement, which shall be binding on the said Company; or in case the said six commissioners shall be appointed as aforesaid, and they cannot agree upon the seventh man, then, upon two weeks' notice to the said Company, the said chief justice shall appoint such seventh man as aforesaid, to make such appraisement as aforesaid, and thereupon the State shall have the privilege for three years of taking said road, upon the payment to the Company of the amount of the said report within one year after electing to take said road, which report shall be filed in the office of the secretary of this State, and the whole property and interest of said road, and the appendages thereof, shall be vested in the State of New Jersey upon payment of the amount so reported to the said Company; and that it shall be the duty of the president of the Company to lay before the Legislature, under oath or affirmation, when they shall so request, a full and fair statement of the costs of the said road, and of all the receipts and disbursements of the Company; Provided always, that the aforesaid valuation shall be made without reference to the receipts or disbursements of the Company, or advance of the stock, and the said valuation shall in no case exceed the first costs of the said railroad, with the lands and appendages thereof.

XVIII. And be it enacted, that from and after the completion of the said railroad, it shall be the duty of the treasurer of the said Company, under oath or affirmation, to make annual returns of the number of passengers and the number of tons of merchandise and other articles transported thereon, to the treasurer of this State; and that the said Company shall, after the expiration of five years from the passing of this Act, pay to the treasurer of this State, yearly and every year, a tax of one quarter of one per cent upon their capital stock paid in; and yearly and every year after the expiration of ten years, a tax of

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one half of one per cent upon the capital stock so paid in as aforesaid, and that no further or other tax or impost shall be levied or assessed upon said company.

XIX. And be it enacted, That this Act shall be deemed and taken as a public Act, and shall at all times be recognized as such in all courts and places whatsoever.

A SUPPLEMENT to an Act entitled "An Act to Incorporate the Paterson and Hudson River Railroad Company" passed January twenty-first, eighteen hundred and thirty one. Passed the 18th November, 1831.

Sect. I. Be it enacted, By the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall be lawful for the president and directors of the Paterson and Hudson River Railroad Company, their successors and assigns, to locate and form their road from the east side of Berry's Hill, in the county of Bergen, to the Hudson River, upon such route as may by them be thought advisable: Provided, however, that in making the same they shall not interfere with the vested rights of any other Company; and shall, in all things, comply with the requisitions of the thirteenth section of the Act to which this is a supplement, as to the bridges over the Hackensack and Passaic rivers; And provided also, that the bridge over the Hackensack river shall not be more than thirty feet wide in the line of the draw, the opening of which draw shall be at least thirty feet wide in the narrowest part, and be placed by said Company in a line with the course of the river, and in such position as to do the least injury to the navigation, they having a due regard to the wishes and views of the navigators thereof: And provided further, that the draw shall not be constructed to be opened by lifting.

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II. AND WHEREAS it may be found expedient for the president and directors of the Paterson and Hudson River Railroad Company, their successors or assigns, to form a tunnel under the Weehawken or Bergen Hill, which would add greatly to the expenses of making their road, and be a great public accommodation: Therefore, be it further enacted, That if the said tunnel shall be made, it shall be lawful for the said president and directors of the Paterson and Hudson River Railroad Company, their successors and assigns, in addition to the tolls already allowed, to charge for passing through said tunnel, for each passenger, the sum of twelve and a half cents, and for every ton of goods, wares and merchandise, the sum of ten cents.

III. And be it enacted, That the said president and directors of the Paterson and Hudson River Railroad Company, their successors and assigns, in their bridge over Berry's Creek, shall make a draw, with an opening at least twenty-four feet wide, which shall be so constructed that it may be easily opened by the boatmen who have occasion to navigate the creek.

IV. And be it enacted, That this Supplement shall be taken and considered as a public Act.

A FURTHER SUPPLEMENT to an Act entitled "An Act to Incorporate the Paterson and Hudson River Railroad Company." Passed January twenty first, one thousand eight hundred and thirty one.

SECT. I. Be it enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That so much of the fifteenth section of the Act to which this is a supplement as requires that the said railroad shall be completed at the expiration of five years from the fourth day of July, one thousand eight hundred and thirty one, be, and the same is hereby repealed; and when the permanent railroad of the New Jersey Railroad and Trans-

portation Company shall be constructed through Bergen Hill and thence to the Hudson River, and put in use, it shall be lawful for the president and directors of the Paterson and Hudson River Railroad Company, their successors and assigns, to charge for the transportation of goods, wares and merchandise thereon, from the junction to the river, or on any branch thereof, twelve and a half cents per ton per mile; and that it shall not be lawful for said Company, directly or indirectly, to charge for the transportation of property on their road, and on the said permanent road, from the junction and on its branches, more than the tolls prescribed by the tenth section of their Act of Incorporation and by this Supplement; and if the owners and occupants of property on Main and Congress streets in Paterson, or of a majority thereof in value, shall require the same, and the Paterson and Hamburg Turnpike Company, without compensation, shall consent thereto in writing (if their consent be necessary), that then the president and directors of the Paterson and Hudson River Railroad Company, their successors and assigns, shall be authorized and required, within six months after such requisition and consent shall be obtained, with reference to said street, to extend a track down Main Street, to or within one hundred feet of its intersection with Broadway; and that within one year from the fourth day of July next, they shall lay a track down Congress street, to the point designated in their Act of incorporation.

II. And be it enacted, That so much of the seventeenth section of the said original Act, as authorizes the legislature of the State, to cause an appraisement of said road to be made, at any time after the expiration of fifty years from the completion of said road; and that so much of the eighteenth section as requires the treasurer of said company to make annual returns to the treasurer of this State, from and after the com-

pletion of the said railroad, be, and the same are hereby repealed; and that the legislature may cause such appraisement to be made at any time after the expiration of fifty years from the fourth day of July one thousand eight hundred and thirty six; and that it shall be the duty of the treasurer of the said company, from and after the said fourth day of July one thousand eight hundred and thirty six, to make the annual returns required by the said eighteenth section.

III. And be it enacted, that this supplement shall be taken and considered as a public Act.

Passed February 27, 1835.

A FURTHER SUPPLEMENT to the Act entitled "An Act to Incorporate the Paterson and Hudson River Railroad Company."

Sec. I. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall be lawful for the president and directors of the Paterson and Hudson River Railroad Company, their successors and assigns, to increase their capital stock the further sum of two hundred thousand dollars, by loan or otherwise, which shall be divided into shares of fifty dollars each, and to be raised in such manner as they may deem expedient and most conducive to the objects of the incorporation.

II. And be it enacted, that so much of the eighteenth section of the Act to which this is a supplement, as requires the said Company to pay to the treasurer of this State an annual tax of one quarter of one per centum upon their capital stock paid in, be, and the same is hereby repealed.

Passed March 3, 1837.

**AN ACT for the better protection of the Navigation
of the Passaic River.**

Sect. I. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That each and every bridge or viaduct hereafter to be erected over the Passaic River, between the head of navigation and the Newark Bay, shall be so constructed as to contain a draw for the free passage of vessels navigating the said river, the opening of which draw shall be at least thirty five feet wide in the narrowest part, and shall be placed in such position as to do the least possible injury to the navigation thereof.

II. And be it enacted, That as soon as the Passaic River, by the construction of locks and other sufficient devices, shall be made navigable to the bridge of "The Paterson and Hackensack Turnpike Company" for vessels requiring a draw thirty five feet wide, it shall be the duty of "The Paterson and Hudson River Railroad Company" to have completed in their bridge or viaduct which crosses the said river below the present head of navigation, a draw of thirty five feet in width in the narrowest part, so as to permit the free passage, as well in entering as in leaving the said draw, of all vessels navigating in said river to and from the said Turnpike Bridge.

III. And be it enacted, That this Act shall go into operation immediately on the passage thereof.

Passed March 10, 1842.

RESOLUTION respecting the Tax on the Capital Stock passed in March, 1842, by the Legislature.

Resolved, That the treasurer of this State be authorized and directed, in computing and collecting the annual taxes from "The Paterson and Hudson River Railroad Company" to compute and estimate them upon the original capital stock of \$250,000 until the Company shall divide six per cent per annum; and

that payments of taxes made by the Company upon such computation, shall be esteemed and taken as a full compliance by them with that requirement of their charter.

AN ACT to facilitate the improvement of the Paterson and Hudson River Railroad.

WHEREAS it is represented by the petition of "The President and Directors of the Paterson and Hudson River Railroad Company," that they have negotiated an arrangement for the purchase of iron for improving their railroad, by agreeing to issue the bonds of the Company, to bear six per cent interest per annum and to be secured by mortgages upon the property and franchises of the Company, but that doubts have arisen whether they have sufficient powers to make such bonds and mortgages, and they thereupon having requested legislative aid in the premises, therefore,

Sect. I. Be it enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the board of directors of "The President and Directors of the Paterson and Hudson River Railroad Company," to issue the bonds of the said Company to the amount of one hundred thousand dollars, of no less denomination than five hundred dollars, for the purpose of buying iron and of borrowing money, payable to the owners, or bona fide holders thereof, at such times as to them shall appear expedient and can be agreed upon, bearing an interest of six per cent per annum; and for securing the due payments of the bonds, with the interest to accrue thereon, it shall and may be lawful for them to pledge or hypothecate by way of mortgage, trust or otherwise, the Paterson and Hudson River Railroad, with all its appendages and appurtenances, and all the lands,

tenements, premises, chartered rights, franchises and privileges belonging to the said Company, and such pledges, hypothecations, mortgages or trusts shall be valid for the security of the due payments of all bonds, with the interest thereof, which may be intended to be secured thereby, and of all new bonds which may be issued upon the cancellation of any original bonds; and in case a default shall be made in the payment of any bond so issued, or of the interest thereof, the person or persons, body politic or corporate, or their legal representative or assigns, claiming under any such pledge, hypothecation, mortgage or trust, may, by the process of law, acquire and have, hold, use, enjoy or sell the said railroad, with its appendages and appurtenances, and the property of the said Company; and they, or any purchaser or purchasers thereof, may enjoy and dispose of the property, and may take and receive the tolls, issues and profits of the said railroad, and enjoy the rights of the said Company during the whole residue of the term for which the said Company is chartered, in as full and ample a manner as the stockholders of said Company could or might have disposed of, used and enjoyed the same; subject, nevertheless, to all the restrictions, limitations, impositions and conditions which are upon said Company.

II. And be it enacted, That this Act shall go into operation immediately upon the passage thereof.

Passed January 18, 1844.

AN ACT to enable parties having claims against The New York and Erie Railroad Company, and others, using the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad, to prosecute for such claims or damages in the Courts of this State, and to legalize the leases or contracts made by the Paterson and Ramapo Railroad Company and

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the Paterson and Hudson River Railroad Company to the Union Railroad Company.

WHEREAS, the New York and Erie Railroad Company are now in possession of the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad under certain leases and contracts made by said companies, and are now carrying on the business of said roads under said leases and contracts; and whereas, the New York and Erie Railroad Company being a foreign corporation, and any other corporation or individuals using said roads, or either of them, and transacting the business of the same, ought to be liable to actions for damages done in operating said roads as fully as the said companies are by their charters now liable, and to effect that purpose all doubts as to the authority of said companies to make such leases and contracts ought to be removed; and whereas, all persons having claims for debt or damages of any and every kind ought to be enabled to prosecute said foreign corporation in the Courts of this State; therefore:

I. Be it enacted, By the Senate and General Assembly of the State of New Jersey, that the New York and Erie Railroad Company, and any other Corporation or individuals using the aforesaid roads or either of them, shall be, and they are hereby declared liable for all claims for debts, damages, omissions and delinquencies arising from the running or operating said Railroads, and carrying freight and passengers on the same, as fully as the said the Paterson and Hudson River Railroad Company, and the Paterson and Ramapo Railroad Company, are now liable by the laws of this State.

II. And be it enacted, That whenever any action shall be commenced against the said The New York and Erie Railroad or any other foreign Corporation, using said roads, in any of the courts of this State,

the first process to be made use of may be a summons or subpoena, a copy whereof shall be served on the president, or one or more of the directors, or the superintendent, or on any station agent of said Corporation, six entire days before its return.

III. And be it enacted, That when the sheriff or other officer shall return such summons or subpoena "served" or "summoned" the defendants shall be considered as appearing in court, and may be proceeded against accordingly.

IV. And be it enacted, That the power and authority of the said Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company, to make such leases and contracts is hereby declared and affirmed, and said leases and contracts are hereby declared legal and valid; provided, that said leases and contracts shall not be held to grant any power, privilege or right, not granted to said Companies respectively by their charters, and the supplements thereto.

V. And be it enacted, That the Legislature may at any time alter, amend or repeal this Act.

Approved March 14, 1853.

AN ACT to authorize the New York and Erie Railroad Company to purchase and hold lands, and to complete and finish the Railroad of the Paterson and Hudson River Railroad Company.

WHEREAS, The New York and Erie Railroad Company, by virtue of certain leases and agreements, made by the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company to the Union Railroad Company, bearing date the ninth day of September, eighteen hundred and fifty two, and assigned to the New York and Erie Railroad Company, have the right to use the railroads of said two first mentioned Companies, during

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their respective charters, and have the right to extend said Paterson and Hudson River Railroad, and to make a railroad from any point in the same to the Hudson River, at some point opposite the City of New York, which leases and agreements were approved and confirmed by an Act of the Legislature of this State, approved March fourteenth, eighteen hundred and fifty three. And whereas, it is desirable that the New York and Erie Railroad Company should have the power to purchase and hold in their own name such lands, necessary and convenient for the transaction of their business, as said Paterson and Hudson River Railroad Company, and other Companies incorporated by this State, may by law purchase and hold at their stations and depots, and to proceed in their own name to construct and extend said railroad from the Paterson and Hudson River Railroad to the Hudson River, and to hold the lands necessary for such construction, in their own name.

I. Be it enacted, by the Senate and General Assembly of the State of New Jersey, That the New York and Erie Railroad Company are hereby authorized to purchase and hold in their own name, such and so much land and real estate in the County of Hudson, at or near any station or depot that they may establish in said County, as may be necessary for the convenient transaction of their business, for storing and working upon their engines, cars, fuel and materials to be used upon their roads, for receiving, delivering and keeping property, transported or to be transported on their road, to the best advantage for side tracks, platforms and station houses, and for all other purposes strictly connected with and appertaining to their business of transporting passengers and **freight**: **Provided**, that two acres of land at any such depot or station, and no more, shall be exempt from city, townships and county tax.

II. And be it enacted, That the New York and Erie Railroad Company may proceed in their own name to make and construct a railroad from any point in the railroad of the Paterson and Hudson River Railroad Company, to any point on the Hudson River, opposite the City of New York, according to the provisions of the Act incorporating said Paterson and Hudson River Railroad Company, and the several supplements thereto, and that for that purpose they are hereby authorized to survey, lay out, and locate such extensions or continuation of said railroad of any width, not exceeding one hundred feet, and when such location has been filed in the office of the Secretary of State, to purchase and hold all lands necessary or convenient for the continuation of said road, and in all cases provided for in the eighth section of the Act, entitled "An Act to Incorporate the Paterson and Hudson River Railroad Company," are authorized to proceed to acquire the title to the same, by proceeding in their own name in the manner provided in such eighth section, and upon paying the inquisition assessed with the costs, or bringing the same into court, as in said section provided, shall be seized of the lands in such inquisition described, in the same manner as the Paterson and Hudson River Railroad Company would have been; Provided, that in this proceeding to acquire lands, this section shall confer the same power upon the New York and Erie Railroad Company as was vested by the said Act in the Paterson and Hudson River Railroad Company, and no greater power; and provided further, that said road, from the east side of Palisade Avenue, for the distance of thirty five hundred feet westwardly through the City of Hudson, shall not be constructed with an open cut, but shall be tunnelled or arched over, except proper and suitable openings and shafts for light and ventilation.

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III. And be it enacted, That for the purpose of enabling the State of New Jersey to take the said railroad upon an appraisment of its value, at any time after the fourth of July, eighteen hundred and eighty six, in the manner provided for by the seventeenth section of said Act to incorporate the Paterson and Hudson River Railroad Company, the continuation of said railroad and its depots and appendages, constructed, purchased and acquired by virtue of the provisions of this Act, shall be considered part of the road of the Paterson and Hudson River Railroad Company, and may and shall be taken by the State at the same time and in the same manner as the State may take the road of said Company, except, nevertheless, that the lands, railroad and appendages thereto, acquired or purchased by the New York and Erie Railroad Company and owned by them, shall be appraised separately from the residue of said railroad and appendages, and the value thereof paid to the New York and Erie Railroad Company.

IV. And be it enacted, That the said New York and Erie Railroad Company shall, as soon as they shall have completed the said railroad to the Hudson River, make and file in the office of the Secretary of this State, a map and plan of said railroad, from the point where it shall be constructed from the present road to the Hudson River, and of all side tracks and switches connected therewith, and the ground covered thereby, and of the land occupied by them as depots or stations, not including therein more than two acres of land not occupied by their track at each station or depot, verified by the oath of the President and Engineer of said Company, and shall attach thereto a just and true account of the costs of said lands and tract and the improvements thereon, verified by the oath of the President and Engineer; and said Company shall thereafter pay to the Treasurer of this State yearly, and every year, a tax of one-half of one per

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centum upon the amount of said cost in lieu of all other taxes on the same, and the lands included in said plan or map and said account, shall be subject to no other tax, impost or assessment, except city assessments for improvements upon or near the same, to which they shall be liable as all other lands.

V. And be it enacted, That this Act shall not affect or impair any contract or agreement heretofore made and entered into between the New Jersey Railroad and Transportation Company of the one part, and the President and Directors of the Paterson and Hudson River Railroad Company of the other part, or between any other parties or corporations.

VI. And be it enacted, That the Governor, the Chancellor, the Attorney General, the Treasurer and Secretary of this State, the Justices of the Supreme Court and the Judges of the Court of Errors of this State, whilst traveling for the purpose of discharging the duties of their offices, and the members and officers of both Houses of the Legislature of this State, during their annual or other sessions, shall pass and repass on the railroads of the President and Directors of the Paterson and Hudson River Railroad Company, including the extension hereby authorized, and of the Paterson and Ramapo Railroad Company, in the cars of any company running on said railroads, free of charge, subject to the rules and regulations of such Company.

VII. And be it enacted, That this Act shall take effect immediately.

Approved, February 21, 1856.

A FURTHER SUPPLEMENT to the act, entitled, "An Act to Incorporate the Paterson and Hudson River Railroad Company."

I. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the President

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and Directors of the Paterson and Hudson River Railroad Company be, and they are hereby authorized, to sell and convey or exchange their depot lands and premises in the City of Paterson, and the lands owned by them between said depot and the intersection of said road with the Paterson and Ramapo Railroad, and to exchange the same for or purchase other lands in the said city for another depot, and for a track or road for said Paterson and Hudson River Railroad, from such new depot, south of Market street, and to change the present terminus of their road, in the City of Paterson, for a terminus at such new depot; Provided, that this Act shall not authorize them to purchase or hold any greater quantity of land than are now authorized by law to purchase and hold for railroad purposes; and provided also, that the lands so to be acquired shall not be used for any but railroad purposes.

II. And be it enacted, That the President and Directors of the Paterson and Hudson River Railroad Company are hereby empowered to make contracts and agreements with the Union Railroad Company, or the New York and Erie Railroad Company, for the purpose of substituting such new depot and track or road in the place of the old depot and track or road.

Approved March 13, 1856.

AN ACT to promote the safety of travellers upon the Paterson and Hudson River Railroad.

I. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Paterson and Hudson River Railroad Company be, and they are hereby authorized to straighten parts of their road between Paterson and the Boiling Spring, in such manner as they may deem necessary, for the more safe transit of passengers on the same; and after locating and filing in the office of the Secretary of

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State, the route of said alterations, they shall be authorized to enter upon, use and acquire title to the lands occupied by the same, under the provisions of the Act incorporating said Company, which shall thereafter for all purposes be considered and taken as parts of their railroad.

Approved March 14, 1856.

CHAPTER XXVIII.

A supplement to an act entitled "An Act to authorize the New York and Erie Railroad Company to purchase and hold lands and to complete and finish the railroad of the Paterson and Hudson River Railroad Company," approved February twenty-first, one thousand eight hundred and fifty-six.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That the New York and Erie Railroad Company are hereby authorized to purchase and hold in their own name, such and so much land and real estate, at or near any station or depot that they may have or use in the city of Paterson, in the county of Passaic, as may be necessary for the convenient transaction of their business, for storing and working upon their engines, cars, fuel and materials to be used upon their roads, for receiving, delivering and keeping property transported or to be transported on their road, to the best advantage, for side tracks, platforms, and station houses, and for all other purposes strictly connected with and appertaining to their business of transporting passengers and freight.

2. AND BE IT ENACTED, That it shall be lawful for the said company to acquire or purchase, and hold in their own name, so much land as may be required to widen the railroad of the Paterson and Ramapo Railroad Company sufficiently for double or additional tracks to be laid thereon, and for the use

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of any stone, gravel, sand, clay, or other materials along or near the said railroad, which may be required for the making, maintaining, or repairing of said railroads; and in all cases provided for in the eighth section of the act entitled "An act to incorporate the Paterson and Ramapo Railroad Company," are authorized to proceed to acquire the title to the said land or the right to the use of said materials, by proceeding in their own name, in the manner provided in said act, and upon paying the inquisition assessed, with the costs, or bringing the same into court, as in said act provided, shall be seized of or entitled to the said lands or materials in such inquisition described, in the same manner as the Paterson and Ramapo Railroad Company would have been; provided, that in this proceeding to acquire lands or materials, this section shall confer the same power upon the New York and Erie Railroad Company as was vested by the said act in the Paterson and Ramapo Railroad Company and no greater power.

3. AND BE IT ENACTED, That this act shall take effect immediately.

Approved February 27, 1857.

LEASE OF ROAD.
THE PATERSON AND HUDSON RIVER
RAILROAD COMPANY
TO THE
UNION RAILROAD COMPANY.

THIS INDENTURE made this ninth day of September, in the year one thousand eight hundred and fifty-two, between the President and Directors of the Paterson and Hudson River Railroad Company, of the State of New Jersey, parties of the first part, and the Union Railroad Company, parties of the second part:

WITNESSETH, that the parties of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained on the part and behalf of the said parties of the second part, their successors and assigns, to be paid, kept and performed, have granted, bargained and sold, demised and to farm letten, and by these presents do grant, bargain and sell, demise and to farm let unto the said parties of the second part, their successors and assigns all and singular the railroad of the parties of the first part, as it is now constructed and exists, and all the land and real property forming, or connected with, or appurtenant thereto, from and including its terminus and station at and in the city of Paterson, in the county of Passaic and State of New Jersey, to and including its terminus and station at and on Bergen Hill, in the county of Hudson, in the State of New Jersey, at the junction of said railroad with the railroad of the New Jersey Railroad and Transportation Company, and the rails, bridges, culverts, viaducts, turnouts, switches, fixtures and superstructures of every kind thereon or connected therewith; and also all their buildings, erections, depots, stations, station houses, offices, shops and superstructures on or adjacent to, or connected with, or appurtenant to the said road as above described; and all the estate, right, title and interest, property, profession and demand of the parties of the first part, of, in and to the premises and every and any of them, and every part and parcel thereof; and also all the rights, privileges, franchises, titles, power, property, claims and pretensions of the parties of the first part, to transport persons, mails and property of every description on said railroad, and to charge, demand, collect, sue for and receive in the name of the parties of the first part or otherwise, but for the exclusive benefit of the parties of the second part, money for tolls and for the transportation of persons, mails

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and merchandise, in as full and ample a manner as the parties of the first part were authorized to do by the laws of the State of New Jersey.

And also all and singular the cars and engines mentioned and described in the schedule hereto annexed, marked C. (and which articles are estimated to be of the value in said schedule mentioned) and also the machinery and tools of every kind and description of the said parties of the first part used in the shops or works of the company, or in making or repairing said road, and also the hand carts and tools connected therewith used in the repairing of the track, and other articles of personal property appurtenant to said railroad.

To have and to hold the said above-mentioned and described premises, with the appurtenances, unto the said parties of the second part, their successors and assigns, from and including the fifteenth day of September one thousand eight hundred and fifty-two, for and during the existence and continuance of the charter of the parties of the first part, and the legal existence of the said the President and Directors of the Paterson and Hudson River Railroad Company, by virtue and in pursuance of the Act of Incorporation of the Legislature of the State of New Jersey, passed January 21, 1831, and all other Acts of said Legislature relating thereto, they, the said parties of the second part, yielding and paying therefor unto the parties of the first part, their successors and assigns, yearly and every year during the said term hereby granted, the yearly rent or sum of forty-five thousand six hundred dollars in equal half-yearly payments, to wit, on the first days of January and July in each and every year.

And the parties of the first part, for the considerations above expressed, further grant to the parties of the second part the right and power to use and enjoy all the privileges, benefits, grants, agreements and

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covenants and interests, which the parties of the first part at or before the execution and delivery of these presents, have, or are entitled to or may enjoy, or claim, or any way interested in and may enforce contained in, or secured by a certain agreement, bearing the date of the tenth of October, one thousand eight hundred and thirty-four, made by and between the parties of the first part, and the New Jersey Railroad and Transportation Company, and a certain other agreement, bearing the date of the ninth of September one thousand eight hundred and fifty-two, made between the said the parties hereto of the first part, and the New Jersey Railroad and Transportation Company, the copies whereof are hereto annexed and respectively marked A and B. Provided, however, that the parties of the second part shall, during such time and so long as they shall claim to enforce and shall receive the benefit of such privileges, benefits, grants, agreements, covenants and interests, perform and fairly execute to and with the New Jersey Railroad and Transportation Company all the agreements and covenants which in and by the two agreements above referred to the parties of the first part are bound to perform and execute to and with the said the New Jersey Railroad and Transportation Company all the agreements and covenants which in and by the two agreements above referred to the parties of the first part are bound to perform and execute to and with the said the New Jersey Railroad and Transportation Company.

And these presents further witness, that for the consideration above expressed, the parties of the first part further covenant and agree to and with the parties of the second part, their successors and assigns, that in case of a renewal or extension of the charter of the parties of the first part by an Act of the Legislature of the State of New Jersey, or in pursuance of the laws of said State, they, the parties of the first part, will make and execute to the parties of the sec-

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and part, a new lease and demise of all the property and premises hereinbefore mentioned and referred to for a term co-extensive in duration with the renewal or extended charter of the parties of the first part, at the same rents and under the same covenants (including a covenant for further renewal), as are contained in these presents. It being understood and agreed, however, that such new or renewed leases or demises shall contain provisions for an adjustment between the parties on a just and equitable principle of a valuation of any depreciation of said road or tracts by the use or neglect thereof; and it is further understood and agreed by and between the parties hereto, that the parties of the second part are to pay to the State of New Jersey all legislative charges for such renewals of the charters of the parties of the first part, and that at the termination of the leases or either of them, any erections or improvements on the said above mentioned and demised property that may have been made by the parties of the second part, or their assigns, at their own expense, shall be paid for by the parties of the first part, at their appraised and just value.

And the parties of the first part, for the considerations above expressed, further covenant and agree to and with the parties of the second part, that they, the parties of the second part, may, during the continuance of this demise, and during the continuance of a renewed or further demise or demises which may be hereafter made, use, employ and put in force all the rights, powers and chartered privileges of the parties of the first part for the purpose of making a tunnel, or otherwise passing Bergen Hill, and extending and making a railroad from any point on the railroad hereby demised to the Hudson River, to some point opposite to the city of New York, and for receiving tolls and making and collecting by all lawful ways, money, at the rates permitted in and by the charter of the parties of the first part for transporting per-

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sons, mails and property of every description over such new or extended railroad; and the parties of the first part further covenant and agree to render such further aid and assistance in obtaining legislative enactments to carry out or advance the agreement and provisions in this instrument contained, as shall be necessary or advantageous to the parties of the second part, and as the parties of the first part may be justified in rendering without prejudice to the interests of their charter.

These presents further witness that the parties of the second part for themselves and their successors, in consideration of the grants, covenants and agreements herein contained, do covenant and agree to and with the said parties of the first part, and their successors, that the parties of the second part, their successors and assigns, shall and will yearly and every year during the terms hereby granted, or which may, as before provided, be hereafter granted, pay, or cause to be paid to the said parties of the first part, their successors and assigns, the said yearly rent above reserved, on the days and in the manner above prescribed.

And the parties of the second part, in like manner and for the like consideration, covenant and agree to and with the parties of the first part, that during the continuance of this demise, or of any future demise that may be made in pursuance of the provisions above contained, they, the parties of the second part their successors or assigns, will bear and pay to the State of New Jersey for taxes that may be laid by the authority of said State on the parties of the first part, or their property, such amount of money annually as shall be equivalent to one-half of one per cent on the capital stock of six hundred thousand dollars of the parties of the first part.

And it is further mutually covenanted and agreed by and between the parties to these presents, that in

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the event of a reduction of capital, the amount to be paid under the agreement herein contained, by the parties of the second part, or towards the taxes imposed, or which may be imposed by the Legislature of the State of New Jersey, shall be proportionately reduced.

And the parties of the second part, for themselves, their successors and assigns, further covenant and agree to and with the parties of the first part, their successors and assigns, that they the parties of the second part shall and will, during the demise or demises herein made or hereafter to be made, as above provided, keep and maintain the said railroad in as good repair as it is at the date of this demise, and further that they will keep and maintain the depots, offices and houses connected with said railroad, and above demised, in good repair, ordinary decay and wear and tear excepted; and that on the termination of the demise or demises, according to the provisions of these presents, they will surrender up the said railroad, depots, offices and houses and shops, and the personal property above described or its equivalent, viz: twenty thousand dollars to such person or persons, representing the parties of the first part, as shall be entitled to receive the same.

And the parties of the second part do hereby covenant and agree with the parties of the first part that the said parties of the second part and their assigns will keep and maintain and run said railroad and other premises hereby demised, in such manner, order and condition as the said parties of the first part are bound to keep and maintain and run the same by the charter of the said parties of the first part and the statutes supplementary thereto, and that they will indemnify and save harmless the said parties of the first part from all damages to which they may be subject by reason of said road and premises not being so kept, maintained and run.

And it is further agreed by and between the parties hereto, that if at the termination of this or any future demise, and on the cessation of the interest of the parties of the second part, of, in and to the demised premises, it shall appear that there is any depreciation of the demised premises by the use or neglect thereof, contrary to the agreement hereinbefore contained, that the same shall be appraised by three arbitrators, whereof one shall be named by the parties of the first part, and one shall be named by the parties of the second part, and a third shall be selected by the said two arbitrators thus named; and the award of a majority of said three arbitrators of the value or amount of such depreciation shall be conclusive on the parties to these presents, and shall be paid and discharged by the said parties of the second part; and it is in like manner further agreed by and between the parties to these presents, that if any erections or improvements shall, during the said term hereby demised, or any future term or terms hereafter demised, be made on said demised premises or appurtenant thereto, the same shall, at the termination of said term or terms, and the cessation of the interest of the parties of the second part of, in and to the same, by the expiration thereof, or other termination thereof, be valued by arbitrators to be appointed in like manner as last above provided, and the award of a majority of such arbitrators shall be conclusive as to the value of the said erections and improvements; and the parties of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns.

It is further agreed by the parties of the second part, that during the demise or devises hereinbefore made or agreed to be made, the directors and secretary of the parties of the first part shall, while holding such offices, be entitled to free passes over said railroad, to and from Paterson aforesaid and Jersey City, or other terminus of the road on the Hudson

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River; and if, or when the parties of the second part shall have received a lease of, and from the Paterson and Ramapo Railroad Company, of the railroad of such last named company, that, then, and in such case, the directors and secretary of the parties of the first part shall, while holding such offices, have the same privileges of free passes to and from Paterson aforesaid, to Suffern's Depot on the line of the New York and Erie Railroad.

And the parties of the first part further covenant that they will and shall, at any time or times hereafter, upon the reasonable request, and at the cost of the parties of the second part, make and execute all and every such further acts, conveyances and assurances, for the more effectually vesting the premises hereby intended to be granted in and to the parties of the second part, as by counsel learned in the law shall be reasonably devised, advised or required.

And the parties of the first part further covenant and agree to and with the parties of the second part, their successors and assigns, that they, the parties of the second part, or their assigns, paying the said yearly rent and performing the covenants and agreements on their part, they the parties of the second part, their successors and assigns shall and may, at all times, during the said term or terms above mentioned, peaceably and quietly have, hold and enjoy the demised premises, without let, suit, trouble or hindrance of or from the parties of the first part, their successors or assigns, or any other person or persons whomsoever.

In testimony whereof the parties to these presents have caused their respective common seals to be hereunto affixed, and these presents to be attested by their respective presidents and secretaries on the day and year first above written.

Sealed and delivered in the presence of

JOHN COLT, (L. S.)
President.

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Attest:

A. S. PENNINGTON, *Secy.*,
Pat. & H. R. R. Co.

Attest:

ROBERT BAYARD, *President*, (L. S.)
JOHN J. ZABRISKIE, *Secy.*,
Union R. R. Co.

SCHEDULE "A."

AN AGREEMENT made and entered into this tenth day of October, in the year of our Lord one thousand eight hundred and thirty-four, between the New Jersey Railroad and Transportation Company of the one part, and the President and Directors of the Paterson and Hudson River Railroad Company of the other part.

I. It is mutually agreed by and between the said companies that the Paterson and Hudson River Railroad Company shall use the road of the New Jersey Railroad and Transportation Company from the junction of the two roads on the west side of Bergen Ridge to the Hudson River, during the continuance of the charter of the New Jersey Railroad and Transportation Company, for the transportation of passengers and merchandise upon the terms and under the rules and regulations hereinafter contained.

II. The New Jersey Railroad and Transportation Company hereby agrees to lay down two permanent tracks on their road from the said junction to Jersey City, at a grade not exceeding forty feet to the mile, as soon as the same can conveniently be done, and within five years from the date hereof, and when the two tracks shall be completed the two companies shall use the same in the following manner, viz:—The cars of each company, and all others travelling on the said road, shall, in approaching the Hudson River, travel on the south track, and in returning travel on the north track, except when some necessary repairs are

making upon one track, when both companies and all others shall temporarily use the other track.

III. The cars of the Paterson and Hudson River Railroad Company, and the cars of any other railroad company which may hereafter construct a road intersecting the Paterson Road, west of the junction, shall have equal privileges on the road from the said junction to the Hudson River with the cars of the New Jersey Railroad and Transportation Company; and the Paterson and Hudson River Railroad Company, and such other railroad company as may intersect the Paterson Road, as aforesaid, shall have the liberty of running their cars as often over the said road, east of the junction, as they may find necessary; reserving the same right to the New Jersey Railroad and Transportation Company, Provided such other company as shall hereafter intersect the Paterson Road, as aforesaid, shall, on using said road, pay to the New Jersey Railroad and Transportation Company as much per passenger and as much per ton for merchandise as the Paterson and Hudson River Railroad Company, has herein agreed to pay to the New Jersey Railroad and Transportation Company, unless the Paterson and Hudson River Railroad Company shall charge more to such other company, in proportion to the distance travelled on their road, than the Paterson and Hudson River Railroad Company have agreed to pay, in which case such other company shall pay to the New Jersey Railroad and Transportation Company the same rates they pay to the Paterson and Hudson River Railroad Company in proportion to the distance travelled.

IV. The passenger cars of each of said companies shall have a preference over the burthen cars of either company, on the road east of said point of junction.

V. The Paterson and Hudson River Railroad Company, and such other railroad company as shall intersect the Paterson road, as aforesaid, shall have

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the privilege of traveling on the said road east of the junction, with as great velocity and to carry as heavy loads as are deemed safe and reasonable on the best regulated railroads, so that they do not in any case travel faster on the New Jersey Railroad, east of the junction, than they shall travel on the Paterson Railroad.

VI. The New Jersey Railroad and Transportation Company hereby agrees to lay down two sets of tracks on any branch which they may make from any point on their road to any landing or ferry on the Hudson River, and in approaching the Hudson River the cars of the several companies using the same shall take the right hand track, and in returning the other track; and all the agreements and regulations herein contained in relation to the use of the main line shall apply to the use of any branch of said road.

VII. In case the two Companies shall be desirous of starting the cars traveling the respective roads, either for the transportation of passengers or merchandise from the Hudson River or the junction at the same time or times, the car or cars of that Company which move with the greatest velocity on the road shall start first, but shall start precisely at the time appointed, and the others shall follow immediately. And in case the cars traveling on each road shall move with equal velocity, the cars traveling on one road shall start first for one week, and the cars traveling on the other road for the next week, and so on alternately afterwards week by week.

VIII. The merchandise cars traveling on either road shall not start from the Hudson River or the junction so as to retard the passenger cars traveling on either road in their regular trips on their intervening portion of the road; but shall start so long before the passenger cars set out on their regular trips, as to be out of their way, or else shall wait and start after them.

IX. In case it shall be found necessary for the accommodation of the cars transporting merchandise on the two roads, the New Jersey Railroad and Transportation Company agrees to construct, at some suitable place or places as near half-way from the Hudson River to the junction as is convenient, both on the main line of the road, and on any branch thereof proper turn-outs or passing places on the outside of each track.

X. The New Jersey Railroad and Transportation Company agrees to construct the junction of the two roads, and to continue the rails to the north line of their road, being thirty-three feet from the centre thereof, and to keep the same in good and sufficient repair. And it is mutually agreed between the two companies that the person attending the switches at the junction shall be the agent of the two companies, and shall be paid his salary equally by both companies.

XI. The New Jersey Railroad and Transportation Company agrees to keep the main line and any branch thereof between the junction and the Hudson River in good and sufficient repair, and that no track on said road east of the junction shall be narrower than the track now laid down on the Paterson road, nor more than one-eighth of an inch wider than the track on said Paterson road.

XII. And the Paterson and Hudson River Railroad Company does hereby agree with the New Jersey Railroad and Transportation Company to use that portion of the New Jersey Railroad east of the junction during the continuance of the charter of said Company, and to pay them for the use the following tolls, namely: For every passenger that shall enter upon the New Jersey Railroad six cents, and for every ton of merchandise twelve cents; but nothing is to be charged for the cars for transporting passengers or

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merchandise over said road east of the junction, nor for the moving power. And the said Paterson and Hudson River Railroad Company further agrees to use the said road east of the junction in a careful and proper manner, and to observe such necessary rules and regulations as the New Jersey Railroad and Transportation Company shall from time to time adopt and enact for the government of the road.

XIII. In case any misunderstanding shall arise between the two Companies in relation to the use of the road under this agreement, it is hereby mutually agreed, that the matter in difference shall be made a rule of the Court of Chancery of New Jersey, and shall be referred to three such competent and disinterested persons as the Chancellor for the time being shall appoint, whose decision, when approved by the Chancellor, shall be final and conclude the parties.

XIV. And the New Jersey Railroad and Transportation Company hereby agrees with the Paterson and Hudson River Railroad Company that they will construct a branch of their road from some suitable point east of the junction to the Hoboken Ferry, as soon as it can legally and reasonably be done, and within five years from the date hereof.

IN WITNESS WHEREOF the New Jersey Railroad and Transportation Company have caused their common seal to be hereunto affixed, and the same to be signed by their president, John S. Darcy, and also in witness whereof the president and directors of the Paterson and Hudson River Railroad Company have caused their common seal to be affixed, and the same to be signed by their president, Elias B. D. Ogden.

JOHN S. DARCY, *Pres.* (L. S.)

ELIAS B. D. OGDEN, *Pres.* (L. S.)

Signed sealed and delivered

in the presence of

A. S. PENNINGTON.

SCHEDULE "B."

AN AGREEMENT made and entered into this ninth day of September, 1852, in the year of our Lord one thousand eight hundred and fifty-two, between the New Jersey Railroad and Transportation Company, of the first part, and the President and Directors of the Paterson and Hudson River Railroad Company, of the second part.

Whereas, application has been made to the said party of the second part by the Union Railroad Company of the State of New York, to secure to them the right of running the engines and cars of the New York and Erie Railroad Company without hindrance or change over the road and lands of the said party of the first part, now belonging to them; from the junction of the roads of the parties hereto, near Bergen Hill, to the grounds of the party of the second part, at Jersey City, as now enjoyed by the said party of the second part under their contract with the said party of the first part by constructing tracks of sufficient width to accommodate the engines and trains of the New York and Erie Railroad Company as aforesaid, and with such distance between the two tracks that the cars at present used by the New York and Erie Railroad Company may pass each other with a clear space of at least eighteen inches between them; and the said party of the second part being satisfied that the same is practicable,

Now, therefore, it is hereby mutually agreed between the parties hereto as follows:

I. The party of the first part, for and in consideration of the sum of one dollar, and the covenants and agreements hereinafter mentioned, do hereby agree to permit the party of the second part, or the agents and workmen in their employ to enter upon, use and occupy their said road and grounds between the junction at Bergen Hill aforesaid and the grounds of the

party of the second part at Jersey City, for the purpose of laying down a rail on one side of each of the tracks now in use, so as to form in conjunction with the use of the inside rail of each track of the party of the first part for each widened track, two tracks each of six feet in width; and to have the power to remove the rails of the present tracks whenever it may be necessary, so that the distance between the two tracks may be sufficient for the cars of the New York and Erie Railroad Company to pass each other with the clear distance of eighteen inches above mentioned between them.

II. The party of the first part further agrees to and with the party of the second part, to allow them to contract with the said Union Railroad Company for the transportation of the passengers and freight coming over the said New York and Erie Railroad, over the said six feet tracks and grounds, upon the same terms and conditions as to price per passenger and per ton for freight, as are now stipulated in an agreement between the parties to these presents in relation to the passengers and freight carried by the parties of the second part for the said Union Railroad Company, over the said road and grounds of the parties of the first part, it being understood that the terms and conditions are as now appears by the quarterly settlements between the parties of these presents; the said party of the first part receiving the price per passenger and ton of freight as now fixed above and agreed to.

III. The party of the first part further agrees to and with the party of the second part, that if the said tracks hereinabove provided for the said Union Railroad Company should only prove to be for a temporary use of the last named company, and for the purposes above mentioned, the said party of the first part agree to permit the party of the second part to remove the two rails so laid down as aforesaid on the sides of the tracks now in use, together with the

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chairs and spikes, not, however, removing the ties or disturbing the road bed, leaving the road and grounds in as good condition for railroad uses as when entered on, natural wear and tear excepted. It being further understood and agreed, that if the said Union Railroad Company, or their assigns, should voluntarily cease to use the said widened tracks, and not remove the rails above mentioned for the space of ninety days, then the party of the first part shall be allowed to remove said rails, and not be required to allow anything for widening the cut and the tracks as aforesaid.

IV. Should the said Union Railroad Company or their assigns decide to conclude an agreement for the permanent use of the aforesaid tracks for the transportation of the passenger and freight of the said New York and Erie Railroad Company, with the party of the second part, during the charter of the latter company, said agreement being guaranteed by the New York and Erie Railroad Company, and the party of the first part have the permanent agreement above alluded to so guaranteed for the purposes aforesaid, secured to them by the party of the second part, then it is understood and agreed by the party of the first part that they will reimburse all costs and expenses incurred by the party of the second part in laying down the said rails and preparing the said tracks for the transportation of the passengers and freight of the said New York and Erie Railroad Company, and the use of the same, together with interest on the cost, from the time of their completion of the work. A statement of such cost and charges shall, on said completion, be furnished the party of the first part, and the said party of the first part will permit, if desired, the passengers and freight coming from or going to the New York and Erie Railroad to be passed over the said tracks and grounds upon the same terms and conditions as the parties of the second part are now

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allowed to carry them, as appears by the quarterly settlements now made by the parties to these presents, it being further understood that the use of the aforesaid tracks between the said junction and the grounds of the party of the second part in Jersey City is to be subject to any existing regulation in virtue of the permanent agreement between the parties to these presents, and any others that may be adopted in pursuance thereof.

V. It is agreed by the party of the second part, that in entering upon and preparing the grounds for the laying down of the rails hereinbefore above provided for, they will not themselves, nor allow their agents or workmen to obstruct or interfere with the running of the regular trains of the parties of the first part, and will prosecute the work to completion at the earliest possible day. And it is understood and agreed that the work be constructed under the joint supervision and counsel of the parties to these presents or such officers or agents as may be designated by them with the view of performing the same in the most expeditious and practical manner, and to cause as little obstruction or interference with the present uses of the railroad as possible; and that all damages sustained by the party of the first part shall be restored or paid for by the party of the second part to the party of the first part, the amount of which damages so paid shall be considered and allowed by the party of the first part as a part of the whole costs of the work, if the agreement becomes permanent as aforesaid. And in case of any disagreement by the parties hereto as to the amount of damages sustained, or of any other difference under this agreement, the same shall be referred to the decision of George H. Schuyler of the city of New York; and in case of his inability to act, then the same shall be referred to the final decision of the engineer of the Morris and Essex Railroad Company for the time being.

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VI. And it is further agreed, that after the work under the foregoing agreement is completed, and the engines and cars of the said Union Railroad Company, or of the New York and Erie Railroad Company enter upon the use of the same, as heretofore provided, that then the party of the first part are to repair and maintain the said widened tracks used by either of the above named companies in the same manner as is now performed under the present agreement between the parties to the presents.

In witness whereof the said parties hereto have interchangeably set their corporate seals, and caused the same to be attested by their presidents and secretaries.

J. PHILLIPS PHOENIX, *Presd.*
N. J. R. R. and Transportation Co'y.
JOHN COLE, *Presd.*

Scaled and delivered in the presence of

Attest:

W. A. WHITEHEAD, *Secy.*
N. J. R. R. & T. Co'y.

Attest:

A. S. PENNINGTON, *Secy.*
Pat. & H. R. R. R. Co'y.

SCHEDULE "C."

Referred to in Foregoing Lease.

2	8-Wheeled P. cars 60 seats.....	\$800	\$1,600.00
3	8 " " " 56 "	500	1,500.00
2	8 " old cars	300	600.00
2	4 " short	200	400.00
3	8 " baggage cars (good) ..	525	1,575.00
4	8 " platform	275	1,100.00
27	4 " box cars (short)	85	2,325.00
21	4 " open	70	1,470.00
2	4 " short gravel cars 200 & 170		370.00

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Paterson engine	\$3,000.00
Passaic	3,500.00
Whistler	1,200.00
McNeal	900.00
	<hr/>
	\$19,510.00

The New York and Erie Railroad Company, in consideration of the within lease having been assigned to them by the Union Railroad Company, and of one dollar to them in hand, paid by the Paterson and Hudson River Railroad Company, do hereby covenant and agree with said the Paterson and Hudson River Railroad Company, that the covenants in said lease contained, made by the party of the second part thereto, shall be well and truly kept and performed.

IN WITNESS WHEREOF, the said New York and Erie Railroad Company have caused their common seal to be set, and the names of their president and secretary to be affixed this tenth day of September, eighteen hundred and fifty-two.

Scaled and delivered in the presence of

BENJ. LODER, *Presd.*

NATHANIEL MARSH, *Secretary.*

AN ACT

to incorporate

THE PATERSON AND RAMAPO RAILROAD COMPANY.

Passed March 10, 1841.

AN ACT to incorporate the Paterson and Ramapo Railroad Company.

SEC. 1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same THAT Elisha B. Clark, Cornelius G. Garrison, Abraham Godwin, David Roe, Jacob M. Ryerson, Cornelius S. Van Wagoner, John

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S. Van Winkle, John G. Ackerson, Charles Kinney, Henry B. Hagerman, Francis Salmon, Jacob H. Hopper, Lauriston Hall, William G. Hopper, John Ward, Christian A. Wanamaker, and such other persons as may hereafter be associated with them, shall be, and they are hereby ordained, constituted and declared to be a body corporate and politic, in fact and in name, by the name of "The Paterson and Ramapo Railroad Company"; and by that name they and their successors and assigns shall and may have continued succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended, in all courts and places whatsoever; and shall have power to make and use a common seal, and the same at pleasure to alter; and they and their successors, by the same name and style, shall be capable of purchasing, holding and conveying any lands, tenements, goods and chattels necessary or expedient to the objects of this corporation, and shall be clothed with all the rights, powers and privileges pertaining to corporate bodies and requisite for the purposes aforesaid.

II. And be it enacted, That the capital stock of said company shall be four hundred thousand dollars, and shall be divided into shares of fifty dollars, each, which shall be deemed personal property, and transferable in such manner as the said corporation shall by their by-laws direct.

III. And be it enacted, That the above-named persons, or a majority of them, shall open books to receive subscriptions to the capital stock of the said corporation at such time or times and place or places, in this State, as they, or a majority of them, may think proper, giving notice thereof at least twenty days prior to the opening of said books, by publishing the same in the newspapers printed in Paterson and in a newspaper printed in the city of New York; and

that the said books shall be kept open for three days at least, from ten o'clock in the forenoon until three o'clock in the afternoon, and as much longer as the said commissioners, or a majority of them, shall think proper; and if more subscriptions be taken than the amount of the capital stock hereby authorized, it shall be the duty of the said commissioners, or a majority of them, to apportion the stock among the subscribers, in proportion to their subscriptions; but no apportionment shall be made of any subscription for five shares or less.

IV. And be it enacted, That at the time of subscribing for said stock, five dollars shall be paid to the above named persons, or some one of them, upon each share subscribed for, which money shall be paid over to the treasurer of the company, as soon as one shall be appointed; and when the said capital stock shall be subscribed for, and the books closed, and the apportionment made (if the same become necessary), it shall be the duty of the persons named in the first section of this Act, or a majority of them, to call a meeting of the stockholders, upon like notice as above, to choose seven directors, a majority of whom shall be residents in this State; and such election shall be made by ballot, by such of the stockholders as shall attend for that purpose, either in person or by lawful proxy, each share of the capital stock entitling the holder thereof to one vote; and the said named persons, or a majority of them, shall be inspectors of the first election of directors of the said corporation, and shall certify, under their hands, the names of those persons duly elected, and deliver over the subscription books to the said directors, and that annually thereafter, upon like notice being given by the directors for the time being, the stockholders shall in the same manner elect the same number of directors, a majority of whom shall be residents in this State; and the time and place of holding the first

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meeting of directors shall be fixed by the said persons named in the first section of this Act, or a majority of them; and the directors chosen at any of the elections of said corporation shall, as soon as may be after every election, choose out of their own number a president; and in case of the death, resignation, or removal of the president or any director, such vacancy or vacancies may be filled for the remainder of the year wherein they may happen by the said board of directors, or a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president pro tempore, who shall have such power and functions as the by-laws of the said corporation shall provide.

V. And be it enacted, That in case an election of directors should not be made during the day when by this Act it ought to have been made, the said corporation shall not be deemed to be dissolved, but such election may be afterwards held according to law, on notice as aforesaid; and the directors for the time being shall continue in office until an election shall take place.

VI. And be it enacted, That five directors of said corporation shall be a quorum to transact business; and they shall have power to call in the remainder of the capital stock by such instalments, not exceeding five dollars on each share at one time, and at such times as they may direct, and in case of the non-payment of any such instalment, to forfeit the share or shares upon which such default shall arise; and shall have power to appoint a secretary, treasurer, engineers, agents, and such workmen as may be required to transact the business of the company, with such compensation to them and the president as the board shall deem proper, and to take from the treasurer sufficient security for the due performance of his

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trust; and further, to make and prescribe such by-laws, rules, and regulations, as to them shall appear needful and proper; provided the same be not repugnant to the laws or constitution of this State or of the United States.

VII. And be it enacted, That the said company be, and they are hereby authorized and invested with all the rights and powers necessary and expedient to convey, lay out, and construct a railroad from a suitable place in or near the town of Paterson, through the Counties of Passaic and Bergen, to some suitable point or points in or near the division line between the township of Franklin, in the county of Bergen, and the State of New York, and to locate and form said railroad, not exceeding sixty-six feet in width, with as many sets of tracks and rails as they may deem necessary; and it shall be lawful for the said president and directors, their agents, engineers, and others in their employ, to enter upon all lands and waters, for the purpose of exploring, surveying, levelling, and laying out the route of such railroad, and of locating the same; and when the route and the location of said road shall have been determined upon, and a survey thereof deposited in the office of the Secretary of State, it shall then be lawful for said company, by its officers, engineers, agents, contractors and workmen, to enter upon, take possession of, hold, use, occupy and excavate any such lands, and to erect embankments, bridges, and all other necessary works thereon, and to lay rails and do all other things which may be suitable and necessary for the completion and repairs of the said railroad, and to carry into full effect the object of this Act; and may also take and use any stone, gravel, sand, clay, or other materials, wood and timber excepted, on or near the said route, which may be required for the construction of, repairing, or altering the said road, or any of the works or appendages, subject to such

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compensation to be made therefor as is hereinafter provided; provided always, that the payment of all damages for the occupancy of lands through which the said railroad may be laid out and located be made by the company, either to the owner or into court, as hereinafter provided for, before they or any person under their direction or in their employ shall enter upon or break ground upon the premises, excepting for the purpose of surveying and laying out said railroad, unless the consent of the owner or owners of such lands shall be first had in writing.

VIII. And be it enacted, That when the said company or its agents cannot agree with the owner or owners of such required lands or materials, for the use or purchase thereof, or when, by reason of the legal incapacity or absence of such owner or owners, no such agreement can be made, a particular description of the land or materials so required for the use of the said company in the construction of said road shall be given in writing, under the oath or affirmation of some engineer or proper agent of the company, and also the name or names of the occupant or occupants, if any there be, and of the owner or owners if known, and their residence, if the same can be ascertained, to one of the justices of the supreme court of this state, who shall cause the said company to give notice thereof to the persons interested, if known and in this State, or, if unknown or out of this State, to make publication thereof, as he shall direct, for any term not less than twenty days, and to assign a particular time and place for the appointment of the commissioners hereinafter named; at which time, upon satisfactory evidence to him of the service or publication of such notice aforesaid, he shall appoint, under his hand and seal, three disinterested, impartial, and judicious freeholders, commissioners to examine and appraise the said land or materials and to assess the damages, upon such notice to be given to

the persons interested as shall be directed by the justice making such appointment, to be expressed therein, not less than twenty days; and it shall be the duty of the said commissioners, having first taken and subscribed an oath or affirmation before some person duly authorized to administer an oath, faithfully and impartially to examine the matter in question, and make a true report according to the best of their skill and understanding, to meet at the time and place appointed, and proceed to view and examine the said lands or materials and make a just and equitable estimate or appraisement of the value of the same, and assessment of damages, to be paid by the company for such land or materials and damages aforesaid, and to make a report thereof under the hands and seals of the said commissioners, or any two of them, and file the same within ten days thereafter, together with the aforesaid description of the land or materials and the appointment and oaths or affirmations aforesaid, in the clerk's office of the county wherein said lands or materials may be, to remain of record therein, and shall be recorded by the said clerk; which report, or a copy thereof, certified by the clerk of said county, shall at all times be considered as plenary evidence of the right of the said company to have, hold, use, occupy, possess, and enjoy the said land or materials, after payment of the value and damages so assessed, and of the right of the said owner or owners to recover the amount of said valuation with interest and costs, in an action in any court of competent jurisdiction, in a suit to be instituted against the company, if they shall neglect or refuse to pay the same for twenty days after demand made of their treasurer, and shall constitute a lien upon the property of the company in the nature of a mortgage; and the said justice shall tax and allow such costs, fees, and expenses to the justice, commissioners, clerks, and other persons performing

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any of the duties prescribed in this section, as he shall think equitable and right, which shall in all cases be paid by the company; provided always, that should the said company, or the owner or owners of any land or materials, feel himself, herself, or themselves aggrieved by the decision of the commissioners aforesaid, he, she, or they may appeal to the next circuit court in the county wherein said lands or materials shall be.

IX. And be it enacted, That every appeal from the decision of commissioners appointed under the preceding section shall be made in writing, and filed with the clerk of the circuit court of the county wherein the lands or materials appraised by the said commissioners shall be; and notice in writing of such appeal shall be given to the opposite party within ten days after the filing thereof; and thereupon, without any further proceedings, the parties shall be considered as at issue, and the like proceedings shall be had, and the like process awarded, for the trial thereof by a jury, and for compelling the attendance of witnesses, as may be had or awarded for the trial of any other issue before the said court, and the like judgment shall be rendered on the verdict of the jury, with costs, if costs ought to be awarded; and such judgment shall be recorded in the same manner, and have the like force and effect as in any action of trespass or on the case prosecuted in the said court, and execution may be thereupon issued, as in other cases; and if the verdict of the jury shall be for a greater amount than was reported by the commissioners, or, upon an appeal made by the company, shall be for the same amount which was reported by the commissioners, costs shall be awarded against the said company; and if the verdict of the jury shall be for a less amount than was reported by the commissioners, or, upon an appeal made by the owner of the land or materials, shall be for the same amount which was reported by the commissioners, then each party shall

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pay his, her, or their own costs, and such appeal shall be brought on and disposed of at the first term of the court after the filing thereof, unless good and sufficient cause be shown to the court for a postponement; and the judgment of the circuit court rendered in such appeal shall be sufficient to authorize the company to take possession of and use the said land or materials; provided the amount of the said judgment shall first be paid to the party or parties recovering the same, or upon his, her, or their refusal to receive it, on tender thereof, it first be paid into the said court, to the clerk thereof.

X. And be it enacted, That in case any owner or owners of any such required lands or materials so appraised, or in favor of whom damages may have been so assessed, shall be feme covert, under age, non compos mentis, or resident out of this State, or shall refuse to receive the amount so awarded or assessed, then and in any such case the said company shall pay the amount or amounts so awarded to the last mentioned owner or owners respectively, or the damages so assessed into the Court of Chancery, to the clerk thereof, subject to the order of the said court, for the use of the owner or owners, or of the said person or persons so damnified; which payment shall have the same force and effect, and vest in the company the same rights and privileges as if paid to the owner or person damnified, or paid into the circuit court under the provisions of the next proceeding section, subject, however, to the right of appeal in the manner hereinbefore provided.

XI. And be it enacted, That it shall be the duty of the said Company to construct and keep in repair, good and sufficient bridges or passages over or under the said railroad, where any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be pre-

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vented thereby, and where the railroad shall intersect any farm or lands, they shall provide and keep in repair suitable wagon ways over or under the said railroad, so that persons may conveniently pass the same.

XII. And be it enacted, That the President and Directors of the said company shall have power to have constructed, or to purchase with the funds of the company, and to place on their railroad, all machines, engines, wagons, carriages and vehicles for the transportation of persons or any species of property thereon that they may think reasonable, expedient and right.

XIII. And be it enacted, That the President and Directors of the said company shall declare and make such dividends as they may deem prudent and proper, from time to time, of the net profits of the said railroad.

XIV. And be it enacted, That if any person shall wilfully impair, injure, destroy or obstruct the use of the railroad constructed under the provisions of this Act or any of their necessary works, bridges, carriages or machines, such person or persons so offending shall forfeit and pay to the said company any sum not exceeding two hundred dollars, at the discretion of the court or jury, to be by them recovered in an action of debt, with costs of suit, in any court having competent jurisdiction, and also shall be liable to pay to said company the amount of damages sustained thereon, with costs of suit, to be sued for in an action of trespass.

XV. And be it enacted, That the said company may have and hold real estate at the commencement and termination of said road not exceeding four acres at each place, and may erect and build thereon houses, warehouses, stables, machine shops, and such other buildings and improvements as they may deem

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expedient for the safety of property, and construction of carriages and other necessary uses, and take and receive the rents, profits and emoluments thereof; and shall have the privilege and authority to erect, build and maintain on the river Passaic, and such other streams as the road may cross, such piers, bridges and other facilities as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this Act, subject to the aforesaid restrictions.

XVI. And be it enacted, That the road authorized by this Act, be, and the same is hereby declared free for the passage of any railroad carriage thereon, with passengers or property, upon payment of the tolls prescribed by this Act: Provided always, that the said carriages so used thereon shall be so constructed and so regulated as to the time of starting, speed of traveling and amount of tonnage, as not to interfere with the carriages of the company, nor injure the said road.

XVII. And be it enacted, That if the said railroad shall not be commenced in two years from the fourth day of July next, and completed at the expiration of six years from the same time, that then, and in that case this Act shall be void.

XVIII. And be it enacted, That no part of the capital stock or moneys of the Company incorporated by this Act shall be used or employed by said company for banking purposes, under the penalty of forfeiting this charter.

XIX. And be it enacted, That at any time after the expiration of fifty years from the completion of the said road the Legislature of this State may cause an appraisement of said road and the appendages thereof to be made by six persons, three of whom shall be appointed by the chief justice of this State for the time being, the remaining three by the com-

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pany, who, or a majority of them, shall report the value thereof to the Legislature within one year from the time of their appointment; or, if they cannot agree, they shall choose a seventh, who, with the aforesaid six, shall report as aforesaid, or in case the said company shall neglect or refuse to appoint the said three persons on their part for two months after the said appointment by the said chief justice, then the three persons so appointed by him shall proceed to make such appraisement, which shall be binding on the said company; or in case the said six commissioners shall be appointed as aforesaid, and they cannot agree upon the seventh man, then, upon two weeks' notice to the said company, the said chief justice shall appoint such seventh man as aforesaid, to make such appraisement as aforesaid, and thereupon the State shall have the privilege for three years of taking the said road, upon the payment to the company of the amount of the said report within one year after electing to take said road, which report shall be filed in the office of the secretary of this State, and the whole property and interest of said road, and the appendages thereof, shall be vested in the State of New Jersey upon the payment of the amount so reported to the said company; and that it shall be the duty of the president of the company to lay before the Legislature, under oath or affirmation, when they shall so request, a full and fair statement of the costs of the said road, and the appendages thereof; provided always, that the aforesaid valuation shall be made without reference to the receipts or disbursements of the company, or advance of the stock; and the said valuation shall in no case exceed the first cost of the said railroad, with the lands and appendages thereof.

XX. And be it enacted, That it shall be lawful for the said company, at any time during the continuance of its charter, to make contracts and engage-

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ments with any other corporation, or with individuals for transporting or conveying any kind of goods, produce, merchandise, freight, or passengers between the northern termination of this road and the Hudson river, opposite to the city of New York, or between any intermediate point or points on the line thereof, and to enforce the fulfilment of such contracts; provided that every such contract and engagement for transporting or conveying any goods, merchandise, freight, or passengers, upon the Paterson and Hudson River Railroad, or by virtue or in pursuance of which any such goods, produce, merchandise, freight, or passengers shall be conveyed or transported on the said Paterson and Hudson River Railroad, shall be so made as to secure to this State the payment of five cents for each and every such passenger, and eight cents for each and every ton of such goods, produce, merchandise, and freight; and that before any such contract or engagement shall take effect, a copy thereof, certified by the president, secretary, or treasurer of the company hereby created, shall be filed with the treasurer of this State.

XXI. And be it enacted, That it shall be lawful for the said company to demand and receive, for carrying each passenger over said railroad, at the rate of six cents per mile, and for the transportation thereof of every species of property and freight, the loading and unloading thereof upon and from the cars of said company inclusive, at the rate of ten cents per mile for each ton weight; and when such passengers or property are carried over and upon said road in vehicles and by means not belonging to said company, but owned by others, the said company shall be empowered to demand and collect, as tolls therefor, at the rate of three cents per mile for each and every passenger, and at the rate of five cents per mile for each and every ton weight; and that the said company shall provide and maintain, at each

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end of the said road, suitable and sufficient warehouses for the reception and protection of all such goods, produce, merchandise, and freight as shall be brought to the same, to be transported on the said road in the carriages of the said company.

XXII. And be it enacted, That from and after the completion of the said road, or its use by the company for public travel, it shall be the duty of the treasurer of the company, under oath or affirmation, to make annual returns to the treasurer of this State for the time being, of the number of passengers and of the number of tons of goods, produce, merchandise and freight transported over said road, and thereupon to pay to the said treasurer of the State the sum of five cents for each and every passenger, and the sum of eight cents for each and every ton of freight so transported thereon; and that no other State tax shall be levied or assessed on the said company; and that the said annual returns of the treasurer shall also contain statements of the number of passengers and the number of tons of goods, produce, merchandise and freight transported by the company hereby created on the Paterson and Hudson River Railroad, and the number of each delivered by this company to any other company, person or persons, to be transported on said Paterson and Hudson River Railroad.

XIII. And be it enacted, That it shall be lawful for the Legislature, at any time hereafter to alter, amend, or modify this Act, whenever in their opinion the public good may require it.

Passed March 10, 1841.

AN ACT respecting the Paterson and Ramapo Railroad Company.

Whereas the Paterson and Ramapo Railroad Company was chartered in March, eighteen hundred and

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forty-one, and on account of the depressed state of the money market, the commissioners have not deemed it expedient to open the subscription books for the stock thereof; and whereas it is proper that the said charter should be continued in existence—therefore,

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the act entitled, "An Act to incorporate the Paterson and Ramapo Railroad Company," passed the tenth day of March, in the year of our Lord, one thousand eight hundred and forty-one, shall not become void if the said railroad shall not be commenced by the fourth day of July next, anything in the seventeenth section of the said act to the contrary, notwithstanding.

Passed Feb. 21, 1843.

AN ACT, respecting "The Paterson and Ramapo Railroad Company," incorporated by an Act passed March 10th, 1841."

Whereas, the subscribers to a majority of the stock of "The Paterson and Ramapo Railroad Company," have represented by their petition, that it is necessary for effecting the objects of the incorporation, that the company should be organized, although the whole capital is not yet subscribed for, and have asked that a law may be passed, authorizing the same—therefore,

SEC. 1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the commissioners named in the act incorporating the Paterson and Ramapo Railroad Company," or a majority of them, may call a meeting of the present subscribers for the capital stock of the said company, to choose seven directors, in the same manner that they might do, if all the shares were subscribed for; and that such

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election shall be conducted in all respects as is provided in the charter of the said company.

II. And be it enacted, That this Act shall go into effect immediately after the passage thereof.

Passed February 15, 1844.

A SUPPLEMENT to the Act entitled "An Act to incorporate the Paterson and Ramapo Railroad Company."

SEC. I. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same. That the twentieth and twenty-second sections of the act to which this is a supplement, shall be so construed as to secure to the State the payment of five cents only for each and every passenger, and of eight cents only for each and every ton of goods, produce, merchandise and freight, carried and transported over said railroad, and that the exemption from taxation contained in the said twenty-second section, shall be construed to extend only to taxes, for the use of the State, anything in the said act to the contrary notwithstanding.

II. And be it enacted, That this Act shall go into effect immediately after the passage thereof.

Passed February 28, 1844.

AN ACT modifying the Charter of the Paterson and Ramapo Railroad Company.

Be it enacted by the Senate and General Assembly of the State of New Jersey, as follows:

SEC. I. It shall be the duty of the Treasurer of the Paterson and Ramapo Railroad Company to pay to the treasurer of this State, annually a tax of one half of one per centum upon their capital stock expended, until the net earnings of the railroad shall amount annually to six per centum upon the cost thereof, and from and after that time a tax of one

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per centum; and that such payments shall be received and taken in full discharge and satisfaction of the transit duties of five cents a passenger, and eight cents a ton, provided for in the twenty-second section of their Act of Incorporation.

II. As soon as the road shall be completed it shall be the duty of the said company to make out a statement, to be verified by the oath or affirmation of the president and treasurer, showing the actual amount of the capital stock expended in the construction thereof, and file the same in the office of the Secretary of State; and it shall be the duty of the treasurer of said company to make to the treasurer of this State an annual statement, under oath or affirmation, at the end of each and every year from the completion of said road, and during the continuance of the charter of the said company, of the amount of the net earnings of the railroad for the next preceding year.

III. The Legislature at any time hereafter, may modify or repeal this act.

Approved, April 1, 1845.

AN ACT to extend the time limited for completing the Paterson and Ramapo Railroad.

Be it enacted by the Senate and General Assembly of the State of New Jersey, That the time of completing the railroad, limited in the seventeenth section of the act entitled, "An Act to Incorporate the Paterson and Ramapo Railroad Company," passed the tenth day of March, eighteen hundred and forty-one, be extended to the period of five years from the fourth day of July next.

Approved, February 5, 1847.

CHAPTER CXCVIII.

AN ACT to enable parties having claims against the New York and Erie Railroad Company, and others, using the Paterson and Hudson River Railroad, and

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the Paterson and Ramapo Railroad, to prosecute for such claims or damages, in the courts of this state, and to legalize the leases or contracts made by the Paterson and Ramapo Railroad Company and the Paterson and Hudson River Railroad Company to the Union Railroad Company.

WHEREAS, the New York and Erie Railroad Company are now in possession of the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad under certain leases and contracts made by said companies, and are now carrying on the business of said roads under said leases and contracts; and whereas, the New York and Erie Railroad Company being a foreign corporation, and any other corporation or individuals using said roads or either of them, and transacting the business of the same, ought to be liable to actions for damages done in operating said roads as fully as the said companies are by their charters now liable, and to effect that purpose, all doubts as to the authority of said companies to make such leases and contracts ought to be removed; and whereas, all persons having claims for debt or damages of any and every kind ought to be enabled to prosecute said foreign corporation in the courts of this state; therefore,

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That the New York and Erie Railroad Company, and any other corporation or individuals using the aforesaid roads, or either of them, shall be and they are hereby declared liable for all claims for debts, damages, omissions and delinquencies arising from the running or operating said railroads, and carrying freight and passengers on the same, as fully as the said the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company, are now liable by the laws of this state.

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2. And be it enacted, That whenever any action shall be commenced against the said the New York and Erie Railroad Company or any other foreign corporation using said roads, in any of the courts of this state, the first process to be made use of may be a summons or subpoena, a copy whereof shall be served on the president or one or more of the directors, or the superintendent, or on any station agent of said corporation six entire days before its return.

3. And be it enacted, That when the sheriff or other officer shall return such summons or subpoena "served" or "summoned," the defendants shall be considered as appearing in court, and may be proceeded against accordingly.

4. And be it enacted, That the power and authority of the said Paterson and Hudson River Railroad Company, and the Paterson and Ramapo Railroad Company, to make such leases and contracts, is hereby declared and affirmed, and said leases and contracts are hereby declared legal and valid; provided, that said leases and contracts shall not be held to grant any power, privilege or right, not granted to said companies, respectively by their charters, and the supplements thereto.

5. And be it enacted, That the Legislature may at any time alter, amend or repeal this act.

Approved March 14, 1853.

CHAPTER XXI.

AN ACT to authorize the Paterson and Ramapo Railroad Company to issue new bonds.

WHEREAS, the Paterson and Ramapo Railroad Company have heretofore issued their bonds, amounting in the aggregate to one hundred thousand dollars, payable on the first day of November, eighteen hundred and fifty-eight, with coupons attached for half-yearly interest at seven per centum per annum; and

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as security for the payment thereof, the said company executed a mortgage upon their road, property, and franchises, to John I. Palmer, William Samuel Johnson, and Edward Bement, as trustees for the holders of said bonds; which mortgage bears date the sixteenth day of October, eighteen hundred and forty-eight, and is recorded in the clerk's office of the County of Passaic, in Book D of mortgages, pages two hundred and forty-four, &c., and the said company propose to issue new bonds, with like coupons, to the same amount, and to negotiate the same in continuation of the original loan, and in lieu of the said first mentioned bonds, the said mortgage to remain as security for the payment of the said new bonds which may be issued for the purpose aforesaid, therefore,

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for "The Paterson and Ramapo Railroad Company" to issue bonds of the said company, to the amount of one hundred thousand dollars, of no less denomination than five hundred dollars, with coupons for the payment of interest half-yearly, for the purposes mentioned in the preamble to this act, payable to the owners or *bona fide* holders thereof, at such times as to them shall appear expedient, and can be agreed upon, not exceeding twenty years from November first, eighteen hundred and fifty-eight, with interest payable half-yearly, not exceeding seven per centum per annum; provided, that the said bonds, or the proceeds thereof, shall be applied only in lieu or redemption of the said bonds heretofore issued by said company.

2. And be it enacted, That the mortgage mentioned in the said preamble shall be and remain a valid and subsisting lien and security upon the road, property, and franchises of the said company, as described in the said mortgage, for the due payment

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of all such bonds as shall be issued by said company by virtue of this act, as fully and completely as if said bonds were recited and referred to therein.

3. And be it enacted, That the bonds so to be issued by the said company may be made convertible into stock at par, by the respective holders thereof, within such time from their date as the company shall designate therein.

Approved February 9, 1858.

LEASE OF ROAD.

THE
PATERSON & RAMAPO RAILROAD COMPANY
TO THE
UNION RAILROAD COMPANY.

THIS INDENTURE, made this ninth day of September, in the year one thousand eight hundred and fifty-two, between the Paterson and Ramapo Railroad Company, of the State of New Jersey, parties of the first part, and the Union Railroad Company, parties of the second part:—

WITNESSETH, that the parties of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, on the part and behalf of the said parties of the second part, their successors and assigns, to be paid, kept and performed, have granted, bargained and sold, demised and farm letten, and by these presents do grant, bargain and sell, demise and to farm let, unto the parties of the second part, their successors and assigns, all and singular the railroad of the parties of the first part, as it is now constructed and exists, and all the land and real property, forming or connected with, or appurtenant thereto, and all the rails, tracks, bridges, culverts, viaducts, turnouts, switches, fixtures and superstructures of every kind connected therewith, and also all their buildings erec-

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tions, depots, stations, station-houses, offices, factories, shops and edifices on, or adjacent to, or connected with, or appurtenant to the said road, as above described; and all the estate, right, title, interest, possession and demand of the parties of the first part, of, in and to the premises and every and any of them, and every part and parcel thereof; and also, all the rights, privileges, franchises, titles, powers, property, claims and pretensions of the parties of the first part to transport persons, mails and property of every description on said railroad, and to charge, demand, collect, sue for and receive (in the name of the parties of the first part, or otherwise, but for the exclusive benefit of the parties of the second part) money for tolls and for the transportation of persons, mails and merchandise, in as full and ample a manner as the parties of the first part were authorized to do by the laws of the State of New Jersey.

To have and to hold the said above-mentioned and described premises with the appurtenances, unto the parties of the second part, their successors and assigns, from the and including the fifteenth day of September one thousand eight hundred and fifty-two, for and during the existence and continuance of the charter of the parties of the first part, and the legal existence of the said The Paterson and Ramapo Railroad Company, by virtue and in pursuance of the Act of Incorporation of said company: they, the said parties of the second part, their successors and assigns, yielding and paying therefore unto the parties of the first part, and their assigns, yearly and every year during the said term hereby granted, the yearly rent or sum of twenty-six thousand five hundred dollars, in equal semi-annual payments, on the first days of January and July in each and every year.

It is however understood and agreed by and between the parties to these presents, that if the parties of the first part shall desire to alter the above-mentioned

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mode of payment of the said yearly rent of twenty-six thousand five hundred dollars, and shall furnish to the parties of the second part a list of their stockholders and the number of shares belonging to each stockholder respectively, that then the parties of the second part shall pay at a convenient office to be designated, the said rent to the stockholders, dividing the same pro rata, and according to the quantity of stock or number of shares held by each stockholder.

It is further understood and agreed by and between the parties to these presents, that the parties of the first part shall bear and discharge all the taxes that may be imposed on them the parties of the first part, or on their property and estate, by the Legislature of New Jersey, during the continuance of the demise or demises in this instrument made or agreed to be made.

And these presents further witness, that for the considerations above expressed, the parties of the first part further covenant and agree to and with the parties of the second part, their successors and assigns, that in case of a renewal or extension of the charter of the parties of the first part by an Act of the Legislature of New Jersey, or in pursuance of the laws of said State, they the parties of the first part will make and execute to the parties of the second part a new lease and demise of all the property and premises hereinbefore mentioned and referred to, for a term co-extensive in duration with the renewal or extended charter of the parties of the first part, at the same rents and under the same covenants (including a covenant for further renewal) as are contained in these presents: it being however understood and agreed that the parties of the second part are to pay and shall pay to the State of New Jersey all legislative charges for the renewals of such charter: and at the final termination of the demise of the premises to the parties of the second part, either at the close

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of this lease, or of any future renewal lease or leases that may be given, any erections or improvements on the said above-mentioned and demised property, that may be or may have been made by the parties of the second part at their own expense, shall be paid for by the parties of the first part to the parties of the second part, or their assigns, at their appraised and just value.

These presents further witness, that the parties of the second part, for and in consideration of the grants, covenants and agreements herein contained, do covenant and agree to and with the parties of the first part, that they the parties of the second part, will well and truly pay, or cause to be paid, the said yearly rent above reserved, at the times and in the manner above provided; and they further covenant and agree that, during the continuance of the term or terms above granted, or to be granted, they will maintain and keep said railroad in as good repair and condition as it is at the day of the date of these presents; and that they will, at the termination of this demise, or of any future demise, and when their interest in the demised premises shall cease, they will peaceably surrender and yield up said demised premises to the said parties of the first part, their successors and assigns, with said railroad, with its tracks, culverts, bridges, viaducts, ways, turnouts and switches, in as good condition as the same are at the date of these presents, and with the buildings, houses, depots, offices, shops and edifices, in as good a condition, reasonable wear and tear and ordinary decay only excepted, as the same are at the day of the date hereof.

It is further agreed, by and between the parties hereto, that if, at the said termination of this or any future demise, and on the cessation of the interest of the parties of the second part, of, in and to the demised premises, it shall appear that there is any de-

Exhibit R-15.

preciation of the demised premises, by the use or neglect thereof, contrary to the agreement last hereinbefore contained, that the same shall be appraised by three arbitrators, whereof one shall be named by the parties of the first part, and one shall be named by the parties of the second part, and a third shall be selected by the said two arbitrators thus named; and the award of a majority of said three arbitrators of the value or amount of such depreciation, shall be conclusive on the parties to these presents, and shall be paid and discharged by the said parties of the second part; and it is in like manner further agreed by and between the parties to these presents, that if any erections or improvements shall, during the said term hereby demised, or any future term or terms hereafter demised, be made on said demised premises, or appurtenant thereto, the same shall, at the termination of said term or terms, and the cessation of the interest of the parties of the second part, of, in and to the same by the expiration thereof, or other termination thereof, be valued by arbitrators to be appointed in like manner as last above provided, and the award of a majority of such arbitrators shall be conclusive as to the value of said erections and improvements, and the parties of the first part shall pay and discharge the amount so valued, to the parties of the second part or their assigns.

And the party of the second part further covenants and agrees to and with the party of the first part, that during the continuance of the demise, herein made, or of any future demise or demises of the property above-mentioned, the directors and secretary of the party of the first part shall, during their term of office, be entitled to free passes in the trains of the party of the second part, to and from Suffern's station, on the New York and Erie Railroad, to and from Jersey City, or other terminus of the Paterson and Hudson River Railroad, or Hudson River.

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These presents further witness that the parties of the first part, for the considerations aforesaid, covenant and agree, at any time or times hereafter, upon the reasonable request and cost of the parties of the second part, to make and execute such further acts, conveyances, and assurances in the law for the better confirmation of the premises hereby intended to be granted, and the better conveying the same into effect, as by the parties of the second part, or their assigns, or their counsel, learned in the law, shall be reasonably advised, devised or required. And the parties of the first part further covenant and agree, that the parties of the second part, or their assigns, paying the said yearly rent as above provided, and performing the covenants and agreements on their part to be performed, they the parties of the second part, and their assigns, shall and may, at all times during the term hereby granted, and during any future terms hereafter granted, as hereinbefore provided, peaceably and quietly have, hold and enjoy the said demised premises without any manner of let, suit, trouble, or hindrance of, or from the parties of the first part, their successors or assigns, or any person or persons whomsoever.

But it is further agreed, that if during the existence of the lease or leases, made, or to be made, to the parties of the second part, they, the said last named parties, shall make or construct any buildings or additions to the road herein mentioned, whereby additional taxes shall be charged or levied on said road, then the parties of the second part shall bear and discharge additional taxes.

And the parties of the second part do hereby covenant and agree with the parties of the first part, that the said parties of the second part, and their assigns, will keep and maintain and run said railroad and other premises hereby demised in such manner, order and condition, as the said parties of the first part

Exhibit R-15.

are bound to keep, run and maintain the same by the charter of the said parties of the first part, and the statutes supplementary thereto, and that they will indemnify and save harmless the said parties of the first part from all damages to which they may be subject by reason of said road and premises not being so kept, maintained and run.

In testimony whereof the parties to these presents have hereto interchangeably set their respective common seals, and have caused these presents to be attested by their respective presidents and secretaries.

Sealed and delivered in the presence of

GOUVENEUR MORRIS, *Pres't.* (L. S.)

Attest:

JOHN HOPPER, *Sec'y.*,

of Paterson & Ramapo R. R. Co.

ROBERT BAYARD, *Pres't.* (L. S.)

Attest:

JOHN J. ZABRISKIE, *Sec'y.*,

Union R. R. Co.

LEASE OF UNION ROAD, AND ASSIGNMENT
OF LEASES OF PATERSON ROAD AND
RAMAPO ROAD.

THE UNION RAILROAD COMPANY
TO THE
NEW YORK AND ERIE RAILROAD COMPANY.

THIS INDENTURE, made this tenth day of September, in the year one thousand eight hundred and fifty-two, between the Union Railroad Company, parties of the first part, and the New York and Erie Railroad Company, parties of the second part.

Exhibit R-15.

WITNESSETH, that the parties of the first part, for and in consideration of the rents, covenants and agreements hereinafter mentioned, reserved and contained, on the part and behalf of the said parties of the second part, their successors and assigns, to be paid, kept and performed, have granted, bargained and sold, demised, and to farm letten and by these presents do grant, bargain and sell, demise, and to farm let, unto the parties of the second part, their successors and assigns, all and singular, the railroad of the parties of the first part, as it is now constructed and exists, and all the land and real property, forming or connected with, or appurtenant thereto, and all the rails, tracks, bridges, culverts, viaducts, turnouts, switches, fixtures and superstructures of every kind or connected therewith; and also all their buildings, erections, depots, stations, station-houses, offices, factories, shops and edifices on, or adjacent to, or connected with, or appurtenant to the said road, as above described; and all the estate, right, title, interest, possession and demand of the parties of the first part of, in and to the premises, and every part and parcel thereof; and also all the rights, privileges, franchises, titles, power, property, claims and pretensions of the parties of the first part to transport persons, mails and property of every description on said railroad, and to charge, demand, collect, sue for and receive (in the name of the parties of the first part, or otherwise, but for the exclusive benefit of the parties of the second part), money for tolls and for the transportation of persons, mails and merchandise in as full and ample a manner as the parties of the first part were authorized to do by the laws of the State of New York, and their articles of association.

To have and to hold the said above-mentioned and described premises, with the appurtenances unto the parties of the second part, their successors and as-

Exhibit R-15.

signs, from and including the fifteenth day of September, one thousand eight hundred and fifty-two, for and during the existence and continuance of the charter of the parties of the first part, and the legal existence of the said the Union Railroad Company; they, the parties of the second part, their successors and assigns, yielding and paying therefor unto the parties of the first part, and their assigns, yearly and every year during said term hereby granted, the yearly rent or sum of three thousand five hundred dollars, in equal semi-annual payments, on the first days of January and July in each and every year.

And whereas the parties of the first part are now the holders and owners of certain demised premises and property subject to certain covenants and reservations by virtue of a certain indenture, bearing date the ninth day of September, one thousand eight hundred and fifty-two, made between the president and directors of the Paterson and Hudson River Railroad Company of the first part, and the Union Railroad Company of the second part, to which last-mentioned indenture, for the contents of the same, reference is hereby made. And whereas, also, the parties of the first part to these presents, are the holders and owners of certain other demised premises and property, subject to certain covenants and reservations, by virtue of certain other indenture, bearing date the ninth day of September, one thousand eight hundred and fifty-two, made between the Paterson and Ramapo Railroad Company of the first part, and the said the Union Railroad Company of the second part, to which last-mentioned indenture reference is hereby made for the contents and provisions of the same.

Now this indenture witnesseth, that for and in consideration of one hundred dollars, the receipt whereof is acknowledged, and also the covenants and agreements in this indenture, contained to be kept, performed and observed on the part of the parties

Exhibit B-15.

of the second part, the parties of the first part have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said parties of the second part the said first-mentioned indenture of lease bearing date the ninth day of September, in the year one thousand eight hundred and fifty-two, made as aforesaid by and between the president and directors of the Paterson and Hudson River Railroad Company and the Union Railroad Company; and also, the secondly above-mentioned indenture bearing date the ninth day of September, one thousand eight hundred and fifty-two, made between the Paterson and Ramapo Railroad Company and the Union Railroad Company, together with all and singular the premises therein mentioned and described, and the buildings thereon, and the property real and personal with the appurtenances in the said two indentures and each of them demised, conveyed and transferred, to have and to hold the same unto the parties of the second part, their successors and assigns, from the date of the date of these presents, for and during all the rest, residue and remainder yet to come of and in the terms respectively mentioned in the said indentures of lease, it being the intention of these presents to convey and vest in the parties of the second part, all the property, real and personal, covenants, agreements, rights, privileges and franchises, which, in and by said two indentures, and each of them, were and have been conveyed, demised, transferred, and vested in the parties of the first part; subject, however, to all the provisions, rents, covenants, conditions and agreements in the said two indentures respectively contained.

And the parties of the second part hereby expressly covenant and agree to and with the parties of the first part, to faithfully keep, observe, execute and perform, and be subject to, all the covenants, agree-

Exhibit R-15.

ments, engagements, conditions and provisions which in and by said two indentures respectively the parties of the first part have agreed and covenanted to keep, observe, perform and execute, and be subject to; and also to save harmless and indemnify the parties of the first part from all damage, costs, charges and expenses of every kind of, from, or arising out of, or caused by the said indentures respectively.

The parties of the second part further covenant to and with the parties of the first part, that they the parties of the second part will faithfully perform the covenants and observe the agreements and conditions to be kept, performed and observed by the grantees in a certain deed wherein one Edward Sullern is grantor, and in and by which deed was conveyed the land on which the Union Railroad is built.

The parties of the first part further covenant and agree to make and execute to the parties of the second part all such further assurances and conveyances to carry into effect and make valid and effectual these presents, as shall by counsel learned in the law be reasonably advised, devised and required.

And further the parties of the first part further covenant and agree to and with the parties of the second part, that they, the parties of the second part, paying the rent and performing the covenants and agreements aforesaid, shall and may at all times during the term and terms hereinbefore mentioned, peaceably and quietly have, hold and enjoy the above devised, and also the above assigned premises without any manner of let, suit, trouble or hindrance of or from the parties of the first part, their successors or assigns, or any other person or persons whomsoever.

Exhibit R-15.

**RICHARD POWLESON & WIFE
TO
THE PRESIDENT AND DIRECTORS OF THE
PATERSON AND HUDSON RIVER
RAILROAD COMPANY.**

Deed dated July 25, 1831; recorded January 11, 1832, Book I-3 of Deeds, page 512, Essex County, N. J.

DESCRIPTION.

All that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Acquackanonk, in the County of Essex and State of New Jersey, BEGINNING at a point in the center of said Rail Road as located about four thousand five hundred feet from Bench mark No. 1 near the Cold Spring at Paterson, and on the division line between the parties of the first part and Hartman C. Vreeland, thence extending with a width of sixty-six feet for two hundred and six feet and sixty feet width for four hundred and thirty eight feet Southerly as the said Rail Road runs, in all six hundred and forty four feet with the same width to the land of John Merseles; it being all that lot of land included within the limits of the said rail road as located belonging to the parties of the first part and containing ninety five hundredths of an acre.

**THE SOCIETY FOR ESTABLISHING USEFUL
MANUFACTURES
TO
THE PRESIDENT AND DIRECTORS OF THE
PATERSON AND HUDSON RIVER
RAILROAD COMPANY.**

Deed dated September 9, 1856.

DESCRIPTION.

"All those certain pieces, parcels or tracts of land situate in the City of Paterson, in the County of Passaic and State of New Jersey, more particularly de-

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scribed and bounded as follows, to wit: BEGINNING in the southerly line of Market Street at the distance of twenty five feet at right angles westerly from the westerly line of the Paterson and Ramapo Rail Road as then located, said beginning point being at the intersection of the westerly line of the lot known as the depot lot, with the southerly line of Market Street, running thence (1) Southerly along said depot lot parallel with the westerly line of said Paterson and Ramapo Rail Road, one hundred and sixty one feet, to the southwest corner of said depot lot, (2) Easterly along the southerly line of said lot twenty five feet to the westerly line of the Paterson and Ramapo Rail Road, (3) Southerly along said Rail Road twenty six hundred and twenty three feet to the northerly line of a lot late of Abraham Van Houten, deceased, (4) along the same North eighty one degrees and forty minutes West to a point distant thirty five feet in a normal line from the Westerly line of the said Paterson and Ramapo Rail Road at this point, (5) Northerly parallel with the Westerly line of said Rail Road, twenty seven hundred and eighty six feet and four tenths of a foot to the Southerly line of Market Street, (6) Easterly along Market Street ten feet and seven inches to the place of beginning."

Also conveys other land.

THE SOCIETY FOR ESTABLISHING USEFUL
MANUFACTURES
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.

Deed dated June 14, 1850; recorded July 18, 1851,
Book Q of Deeds, page 324 &c., Passaic County, N. J.

DESCRIPTION.

All that certain piece or strip of land situate in
the Town of Paterson, County of Passaic and State

Exhibit R-15.

of New Jersey, more particularly described and bounded as follows, to wit, BEGINNING at the line between lands of John R. Van Houten and lands leased by the said Society to D. K. Allen where the Rail Road of the party of the second part crosses the said line, thence with a uniform width of twenty five feet, running Southerly the several courses of the said Rail Road as located and surveyed across Market Street to a point near the Paterson and Hudson River Rail Road where the Rail Road of the party of the second part crosses the line between lands late of Abraham R. Van Houten and lands lately conveyed by Roswell L. Colt to the said Society, being a strip of land twenty five feet in width over which the Rail Road of the party of the second part now runs through the lands of the said Society lying between the street called Broadway in the said Town of Paterson and the Southern termination of the said Rail Road of the party of the second part according to the location and survey of their said Rail Road as deposited in the office of the Secretary of State of New Jersey. The center line of which location and survey of the said strip hereby conveyed is understood and hereby agreed to be the center line of the track of the said Rail Road as the rails are now laid and which said strip of land hereby conveyed extends twelve and a half feet each side of said center line. The said strip of land and premises hereby conveyed being necessary and expedient for the objects of the incorporation of the said party of the second part, and being conveyed to them hereby for the purposes of making and maintaining their Rail Road thereon.

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**JOHN R. VAN HOUTEN & WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

Deed dated November 26, 1847; recorded July 9, 1851, Book Q of Deeds, page 304 &c., Passaic County, N. J.

DESCRIPTION.

All those lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey,

BEGINNING on the South Side of Broadway at a stake in the centre line of the Rail Road as there located, running thence South four degrees and twenty minutes West including the width of Van Houten Street three hundred and ninety nine feet more or less to the land of the Society for Establishing useful manufactures in the possession of Daniel K. Allen with the width of twenty seven feet three inches on the West side of the centre line of the Rail Road as located and the width of twelve feet on the east side thereof at the present court yard fence at Broadway and thence diminishing the said width so that it shall be eight feet at a point sixty six feet from the said point on Broadway, the line between the two last mentioned points to be a straight line, and thence continuing the width of eight feet to the Society's line aforesaid. The above described being the premises upon which the Company are about to construct their Rail Road.

It being agreed that the Company are to erect and maintain a good and sufficient wall under the gable end of the kitchen and along their eastern line of the lots hereby conveyed from Broadway to Van Houten Street as high as the surface of those lots and are to remove and replace the necessary fences or to com-

Exhibit R-15.

pensate the said John R. Van Houten for so doing and are to grade down the street and sidewalk in front of his dwelling house and without further compensation are to have the privilege of taking the earth from his lots West of the lots hereby conveyed (between Broadway and Van Houten Street) down to within four feet of the grade of the Rail Road by causing a substantial dry stone wall to be built upon their West line between the said streets four feet in height.

ABRAHAM VAN HOUTEN & JOHN R. VAN
HOUTEN, RECEIVERS,
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.

Deed dated May 1st, 1848; recorded July 9th, 1851,
Book Q of Deeds, page 303 &c., Passaic County, N. J.

DESCRIPTION.

All that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey, BEGINNING at a stake in the center line of the Rail Road at the land formerly belonging to The Society for establishing useful manufactures, now said to belong to Morgan Colt, running thence with the centre line of the Rail Road as located there chains more or less in a Southerly direction to Broadway, with the width of sixty six feet, through the length of the strip, that is to say, thirty three feet wide on each side of the said centre line of course. It being the land upon which the said Railroad is located and being constructed between the said premises formerly belonging to The Society, and Broadway. The above consideration embraces value of land, fences and damages incident to locating and constructing the Rail Road over and upon the premises hereby conveyed.

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**MORGAN G. COLT
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

Deed dated June 14, 1850, recorded July 18, 1851,
Book Q of Deeds, page 323 &c., Passaic County, N. J.

DESCRIPTION.

All that certain strip, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey, BEGINNING at the North side or line of the farm of the said Morgan G. Colt in or near the Town of Paterson, lately conveyed to him by his Father Roswell L. Colt, Esquire, where the Rail Road of the said party of the second part, running Southerly enters upon said farm and running from thence Southerly the several courses of the said rail road as located and surveyed with a width of sixty six feet to the Southerly side or line of said farm where the said rail road leaves the same being a strip of land parcel of said farm sixty six feet in width over which the said rail road now runs according to the location and survey thereof as deposited in the office of the Secretary of State of New Jersey. The center line of which location and survey, and of the strip of land hereby conveyed, is understood and hereby agreed to be the center line of the track of the said rail road as the rails are now laid and the said strip of land hereby conveyed being and extending thirty three feet each side of said center line. The said strip of land and premises hereby conveyed being necessary and expedient for the objects of the incorporation of the said party of the second part, and being conveyed to them hereby for the purposes of making and maintaining their Rail Road thereon.

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**LINNEUS SCUDDER & WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

Deed dated September 12th, 1848; recorded July 9th, 1851, Book Q of Deeds, page 249, &c., Passaic County, N. J.

DESCRIPTION.

All those twelve lots of land situate, lying and being in the Town of Paterson, County of Passaic and State of New Jersey, part and parcel of a tract of thirty two acres lying on the bank of the Passaic River conveyed to Philip S. Crooke by Abraham Godwin by Deed dated June first, A. D. Eighteen hundred and thirty five and Recorded in the Clerk's office of Essex County in Book V-3 of Deeds, pages 19, 20 & 21 and which said lots on a map of said property dividing the same into streets and lots by R. Spencer, Surveyor of the City of New York, and by which the same was sold are known and designated by the Numbers Twenty five, Twenty six, Twenty seven, Twenty eight, Twenty nine, Thirty, Thirty one, Thirty two, Thirty three, Thirty four, Thirty five, Thirty six each twenty five feet front and rear and one hundred feet deep, Lots numbered Twenty five, Twenty six, Twenty seven and Twenty eight are situated at the South East corner of the second avenue and Lawrence Street, and Lots Numbered Twenty nine, Thirty, Thirty one, Thirty two, Thirty four, Thirty five, Thirty six adjoining on the South side of Lawrence Street between the second and third avenue. The foregoing premises being the same property conveyed by William H. Sweet of the City of New York, tin plate worker, and Abigail Ann his wife, to the said Linus Scudder by deed bearing date the twenty-ninth day of August, one thousand eight hundred and thirty six and Recorded in the Clerk's office of the County of Essex in Book P-4 of the records of the said County, Pages 39, 40 & 41.

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THE PATERSON AND RAMAPO RAILROAD
COMPANY

vs.

PHILIP S. COOKE.

Appraisal dated November 30, 1847, award dated December 30, 1847; recorded January 23, 1848, Book M, page 263 &c., Passaic County, N. J.

November 30th, 1847. Appointment of Robert S. Kennedy, Henry Hillyard and Samuel B. Halsey, Commissioners to appraise lands of Philip S. Crooke taken by said Company & Damages as follows, viz: "Situate in Paterson &c being part of the property late of Abraham Godwin, deceased, lying south of lands of Moody Cummings and Thomas Forbes, Beginning in the line between the said Crooke and said Thomas Forbes in the Northwestern boundary line of the Railroad as located there sixty six feet wide, at a point therein about ninety six feet and fifty eight hundredths East of the line of Straight Street, running thence South thirty degrees and thirty five minutes West about one hundred and ten feet along said boundary line of the Railroad to the Southern line of said Crooke's land there, thence Easterly along said Southern line about seventy one feet and a third to the South Easterly line of the Railroad as located there, thence North Easterly on a line parallel with the first mentioned line about one hundred and ten feet to the Northern line of his land there, & thence along said line Westerly seventy one & $\frac{1}{3}$ feet to the Beginning, and one chain wide."

December 30th, 1847. Award of said Commissioners. "Report the sum of Two hundred dollars for the value of the lands aforesaid, and the sum of Ten Dollars including the use of Streets by said Company for damages, making together the sum of Two hundred and ten dollars."

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THOMAS FORBES AND WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.

Deed dated October 7, 1847; recorded July 8, 1851,
Book Q of Deeds, pages 296 &c., Passaic County, N. J.

DESCRIPTION.

ALL that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey. BEGINNING in the line between lots one hundred and four and one hundred and five of the Godwin property, on the east side of Montgomery Street, at the northeast corner of lot one hundred and five, running thence westerly along the line of one hundred and five to the outside line of the railroad located there, sixty-six feet wide, thence south thirty degrees and thirty-five minutes West, along the outside line of the railroad to the line between lots one hundred and twenty-three and one hundred and twenty-two, thence along the line of one hundred and twenty-three and the rear line of one hundred and six and one hundred and five easterly to the line between one hundred and four and one hundred and five, thence along that line northerly to the place of beginning, embracing so much of lots one hundred and five, one hundred and six and one hundred and twenty-three as is embraced within the width of the railroad as located there. The above consideration having been agreed upon between the parties as embracing the value of the land, and all damages incidental to locating and constructing the railroad upon and over the premises hereby conveyed.

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THE PATERSON AND RAMAPO RAILROAD
COMPANY

VS.

MOODY CUMMINGS.

Appraisal dated November 30, 1847; award dated December 30, 1847; recorded in Book M of Deeds, page 215 &c., Passaic County, N. J.

November 30, 1847—Appointment of Robert L. Kennedy, Henry Hillard and Samuel B. Halsey to appraise value of land of Moody Cummings, taken by said company and damages, as follows in Paterson &c: "Being part of the property late of Abraham Godwin, deceased, one lot, beginning in the eastern line of said Cummings land lying on the south side of the street leading from the lower bridge in Paterson to the dwelling of Cornelius Van Winkle in the outside line of the railroad as located there sixty-six feet wide, running thence South thirty degrees and thirty-five minutes West along the outside line of the railroad about one hundred feet to the southern bounds of the land of the said Cummings at that place, thence along said boundary line easterly about thirty-two feet to his corner, and thence northerly along his eastern boundary about eighty feet to the point of beginning:

Also another lot near the southern end of the said Godwin plat adjoining lands conveyed by Thomas Forbes and wife to the said Railroad Company, Beginning at a point one hundred and fifty feet easterly from Straight Street, thence along the western boundary of said Cummings land there one hundred feet southerly, thence easterly along his southern boundary about fourteen feet to the outside line of said railroad as located there sixty-six feet wide, thence along the southeast outside line of the railroad North thirty degrees and thirty-five minutes East about ninety feet to the eastern boundary of said

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Cummings land, thence along the same northerly about fourteen feet to his corner, and thence westerly along his northern boundary about fifty feet to the place of beginning, and one chain wide, that is to say, half a chain wide on each side of said centre line of course as designated on a map of said premises annexed to the original application for the appointment of Commissioners in this case.

December 30th, 1847—Award of Commissioners.

"Report that the sum of one hundred and fifty dollars for the value of the lands aforesaid and the sum of thirty dollars including the use of streets by said company for damages, making together the sum of one hundred and eighty dollars."

**ARTHUR DONNELLY AND WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

Deed dated November 27, 1847; recorded July 9, 1851, Book Q of Deeds, pages 299 & 300, Passaic County, N. J.

DESCRIPTION.

ALL that Lot, Tract or Parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey. BEGINNING on the north side of Montgomery Street, in the line between lots numbers two hundred and two and two hundred and three of the Goodwin property; running thence westerly along Montgomery Street to the outside line of the railroad as located there, sixty-six feet wide, thence North thirty degrees and thirty-five minutes East, along the outside line of the railroad as located to the rear line of the lots of the said Arthur Donnelly; thence Easterly along said rear line to the line between two hundred and two and two hundred and three; thence Southerly along that

Exhibit R-15.

line, one hundred feet to the place of beginning on Montgomery Street, embracing so much of lots, two hundred, two hundred and one and two hundred and two, as is contained within the lines of the railroad located there sixty-six feet wide. The above consideration having been agreed upon between the parties, as including the value of the land and damages incident to locating the constructing the railroad upon and over the premises hereby conveyed.

JAMES MONCRIEF

TO

**THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

(Deed dated August 30, 1848; recorded February 10, 1852, Book R of Deeds, pages 27 & 28, Passaic County, N. J.)

DESCRIPTION.

ALL those lots, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey. BEGINNING in the line of land conveyed by Arthur Donnelly to the said Company, it being the eastern line of lot two hundred and two, running thence northerly along the line between lot two hundred and two and two hundred and three, one hundred feet, thence Easterly at right angles to that line, fifty feet to lot two hundred and five; thence southerly parallel with the first line one hundred feet to Montgomery Street as marked on the map; thence westerly along said street fifty feet to the place of beginning.

The premises hereby conveyed being lots marked two hundred and three and two hundred and four on the north side of Montgomery Street upon a map of property formerly belonging to General Abraham Godwin, now deceased.

Exhibit R-15.

**BETH HASTINGS & WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

Deed dated July, 1848; recorded July 9, 1851, Book
Q of Deeds, page 308 &c., Passaic County, N. J.

DESCRIPTION.

ALL that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey: BEGINNING in the centre of a street laid down on the map thereof as La-Fayette Street, in the Northwestern line of the Rail Road as located there sixty six feet wide, running thence Southwesterly with the outside line of the Railroad, until it strikes the line of division between the land of the parties of the first part and those lately of Arthur Donnelly, thence along said division line between them and also bounding on the North lands of James Moncrief until it strikes the South Western outside line of the said Rail Road, as located sixty-six feet wide, thence North Easterly with the course of said Road and along said outside line to the middle of the aforesaid street, thence Westerly along the middle of said street to the point of beginning. It being a part of the lots laid out upon the Goodwin property near the Passaic River, the conveyance of half of the street not being intended to cover more than whatever right the said parties of the first part have in the same.

Exhibit B-15.

**JOHN CASS & WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

Deed dated October 7, 1847; recorded July 9, 1851,
Book Q of Deeds, page 288 &c., Passaic County, N. J.

DESCRIPTION.

ALL that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey, BEGINNING at the line of the property purchases from the parties of the second part from Francis Jackson (a coloured person) in the centre line of the Rail Road as located at that place, running thence with the course of said Rail Road South thirty degrees and thirty five minutes West to the Southern line of the property purchased by the said John Cass from James Moneriel by deed dated April first, 1846, and recorded in Book K of Deeds for Passaic County, pages 56 &c with the width of sixty six feet through the length of the line that is to say thirty three feet on each side of the said line of course, the above consideration having been agreed upon between the parties as embracing the value of the land and all damages incident to locating and constructing the Rail Road over and upon the premises hereby conveyed.

**CHARLES DANFORTH & WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.**

Deed dated November 27, 1847; recorded July 9, 1851, Book Q of Deeds, page 305 &c., Passaic County, N. J.

DESCRIPTION.

ALL that lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and

Exhibit R-15.

being in the Township of Paterson, in the County of Passaic and State of New Jersey, BEGINNING on the South side of Franklin Street, in the line between Lots Two hundred and sixty five and Two hundred and sixty-six of the Godwin Property, running thence Westerly along the front of lot Two hundred and sixty six to the outside line of the Rail Road as located there sixty-six feet wide, thence South thirty degrees and thirty five minutes West along the outside line of the Rail Road as located to the rear line of the lots of the said Charles Danforth, thence Easterly along said rear line to the line between two hundred and sixty-five and two hundred and sixty-six, thence Northerly along that line one hundred feet to the place of beginning. Embracing so much of lots two hundred and sixty six and two hundred and sixty seven as is contained within the lines of the Railroad, located there sixty six feet wide. The above consideration having been agreed upon between the parties as including the value of the land and damages incident to locating and constructing the Rail Road upon and over the premises hereby conveyed.

FRANCIS JACKSON & WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.

Deed dated September 16, 1847; recorded July 9, 1851, Book Q, page 313 &c., Passaic County, N. J.

DESCRIPTION.

ALL that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey,

BEGINNING in the Northerly line of the property sold to the said Francis Jackson by Cornelius S. Van

Exhibit R-15.

Wagoner and wife by Deed Recorded in Book H of Deeds for Passaic County, pages 537 and 538, in the centre line of the Railroad as located at that place, running thence South thirty degrees and thirty five minutes West to the Southern line of said property so conveyed with the width of sixty six feet through the length of the strip, that is to say, thirty three feet on the southeast side of the line of course and thirty three feet on the North West side of said line, or so much thereof as lies within the said lot purchased from Mr. Van Wagoner, it being the premises upon which the said Company have located and are about to construct their Rail Road. The above consideration having been agreed upon between the said parties as embracing value of land, damages and expenses of moving the dwelling house off, and all damages incident to locating and constructing a Rail Road upon and over the premises hereby conveyed.

WILLIAM H. SWEET & WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.

Deed dated February 11, 1848; recorded July 9, 1851, Passaic County, N. J., Book Q of Deeds, page 307 &c.

DESCRIPTION.

ALL those lots, tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey, being part of the property of the late Abraham Godwin, deceased; BEGINNING on the South of and next adjoining the land of William F. Mason in the North West boundary line of said Rail Road as located there sixty six feet wide, running thence with the course of the Rail Road South thirty degrees and thirty five minutes West along said outside line one hundred and ten

Exhibit R-15.

feet more or less to the South line of said William H. Sweet's land, thence Easterly along his said South line about seventy one feet and one third to the South Eastern boundary line of said Rail Road, thence parallel with the first mentioned line about one hundred and ten feet to the Northern boundary of his land and thence Westerly along said boundary line about seventy one feet and a third to the beginning, and one chain wide, that is to say, half a chain wide on each side of the said centre line of course of said Rail Road as designated on a map of said premises annexed to an application made to Justice Nevins for the appointment of Commissioners respecting the above described premises and others and now on file in the Clerk's Office of the County of Passaic. The foregoing amount being the sum reported by the Commissioners duly appointed by the said Justice for the value of lands and for damages including the use by the Rail Road Company of the streets bounding the said premises and the same being adopted by these parties as including the value of the said lands and use of the streets and damages incident to locating and constructing the said Rail Road over and across the same.

WILLIAM F. MASON
TO
THE PATERSON & RAMAPO RAILROAD
COMPANY.

Deed dated January 3, 1848; recorded July 9, 1851, Passaic County, N. J., Book Q of Deeds, page 292 &c.

DESCRIPTION.

All that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey: BEGINNING about one hundred and fifty feet South of the street leading from the lower Bridge of Paterson to the dwelling of

Exhibit R-15.

Cornelius Van Winkle in the north line of the land of the said William F. Mason, and in the North Western boundary line of the Rail Road as located there sixty six feet wide, thence South thirty degrees and thirty five minutes West along said outside line of the Rail Road one hundred and ten feet to his South line, thence Easterly along the same about seventy one feet and thirty six hundredths to the South Eastern boundary of the Rail Road, thence along the same North thirty degrees and thirty five minutes East about sixty four feet to the Eastern boundary of his land, thence North along the same about forty five feet to his Northern boundary, and thence Westerly along the same about fifty four feet to the place of beginning. Being part of the property of the late Abraham Godwin, deceased, and being land upon which the said Company have located and constructed their Rail Road and for which consideration money is the amount assessed as value of land and damages on the thirtieth day of December, A. D. 1847, by Robert S. Kennedy, Samuel B. Halsey & Henry Hillard, Commissioners, as the same appears on file in the Clerk's Office of the County of Passaic and which is accepted by the said William F. Mason.

THE PATERSON AND RAMAPO RAILROAD
COMPANY

vs.

ROBERT M. BLACKWELL.

Appraisal dated November 30, 1847; award dated December 30, 1847; recorded January 23, 1848, Book M of Deeds, page 245 &c., Passaic County, N. J.

Appointment of Robert S. Kennedy, Henry Hillard and Samuel B. Halsey to appraise value of land and damages of Robert M. Blackwell taken by said company as follows:

"Situate in the Township (now City) of Paterson, County of Passaic and State of New Jersey, being

Exhibit R-15.

part of the property late of Abraham Godwin, decd., Beginning on the south side of the street leading from the Lower Bridge in Paterson to the dwelling of Cornelius Van Winkle in the outside line of the Rail Road as located there sixty six feet wide, running thence South thirty degrees and thirty five minutes West along the outside line of the Rail Road about one hundred and ten feet to the Western bounds of said Blackwell's land, thence along said Western line of his land Northerly about one hundred feet to the first mentioned street and thence along the same easterly about forty feet to the point of Beginning.

Award of Commissioners December 30th, 1847.

"Report the sum of Fifty Dollars for the value of the lands aforesaid and the sum of Twenty five dollars, including the use of streets by said Company, for damages making together the sum of seventy five dollars.

ADRIAN VAN HOUTEN, CORNELIUS VAN
HOUTEN AND WIFE, EDWARD VAN HOUTEN
AND WIFE, ALEXANDER MORROW
AND WIFE, JAMES SIMMONS AND
WIFE, JAMES McCARTY AND WIFE,
AND CHARLES HUGHES AND WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.

Deed dated September 27, 1847; recorded July 9, 1851, Passaic County, N. J., Book Q of Deeds, page 300 &c.

DESCRIPTION.

ALL that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey; BEGINNING in the line of land in possession of and now or late belong-

Exhibit R-15.

ing to Edward Van Houten, thence running South thirty degrees and thirty five minutes West six chains and twenty five links, more or less, to land formerly belonging to the Estate of the late Abraham Goodwin, deceased, with the width of sixty six feet through the length of the strip, that is to say, thirty three feet wide on each side of the said line of course. Containing sixty two hundredths of an acre be the same more or less. It being the land upon which the said Company have located and are about to construct their Rail Road.

The above consideration having been agreed upon between the said parties as embracing value of land, fences and damages incident to locating and constructing a Rail Road upon the premises hereby conveyed.

JAMES VAN BLARCOM AND WIFE
TO
THE PATERSON AND RAMAPO RAILROAD
COMPANY.

Deed dated September 13, 1847; recorded July 9, 1851, Book Q of Deeds, page 312 &c., Passaic County, N. J.

DESCRIPTION.

ALL that lot, tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Paterson, in the County of Passaic and State of New Jersey: BEGINNING in the line of land of John S. Van Winkle in the occupancy of Cornelius Van Winkle in the Bough, running thence South thirty degrees and thirty five minutes West ten chains and fifty one links more or less to the line of land formerly belonging to the State of New Jersey now in possession of Edward Van Houten, the width of thirty three feet through the length of the strip on the southeast side of the line of course

Exhibits R-16—R-17.

and the same width on the northwest side or so much of said width as is embraced in the land of the said James Van Blarcom. It being the land upon which the Company have located and are about to construct their Rail Road.

The above consideration having been agreed upon between the parties as embracing value of lands and damages incident to locating and constructing a Rail Road upon the premises hereby conveyed.

EXHIBIT R-16.

Eight blue prints entitled "Lands owned or controlled by the Erie Railroad Company, Main Line, Paterson, N. J."

EXHIBIT R-17.**CITY OF PATERSON, N. J.**

Assessed valuation of the properties of The Paterson and Hudson River Railroad Company and The Paterson and Ramapo Railroad Company for the year 1912.

Paterson and Hudson River Railroad: Between Acquackanonk Township line and the terminus of the road near Market Street, Paterson, 1.978 miles.

1st Class	\$306,010.00
2nd "	253,415.00
3rd "	28,200.00
Franchise (total value taken and apportioned on mileage basis) ..	5,665.00

Total \$593,290.00

Paterson and Ramapo Railroad: From a point taken as northerly terminus of Paterson and Hudson River Railroad near Market Street to Hawthorne Borough line, 1.647 miles.

1st Class	\$311,165.00
2nd "	107,258.00

Exhibit R-18.

3rd Class	\$75,910.00
Franchise (total value taken and apportioned on mileage basis) ..	1,141.00
Total	<u>\$495,474.00</u>

EXHIBIT R-18.

STATEMENT OF VALUE OF PHYSICAL
ELEMENTS OF PATERSON ANR HUDSON
RIVER RAILROAD
ERIE RAILROAD SYSTEM
IN NEW JERSEY.

1. Land	\$1,495,941
2. Clearing and grubbing.....	314
3. Graduation	154,634
5. Bridges, retaining walls and culverts	452,782
6. Track and appurtenances.....	577,823
7. Fencing	17,419
8. Crossings, cattle guards, gates and signs	18,793
9. Block signaling	34,363
10. Interlocking	37,097
11. Miscellaneous signals	1,446
12. Passenger and freight stations.....	17,358
15. Telegraph and telephone lines.....	11,741
16. Turn-tables, transfer tables, track scales and track cranes.....	3,691
20. Miscellaneous structures	3,154
21. Shop machinery, machine tools and appurtenances	1,047
28. Total value of all items as above....	<u>\$2,881,603</u>

Exhibit R-18.

STATE OF NEW JERSEY, } ss.
COUNTY OF UNION. }

Charles Hansel, being duly sworn according to law, on his oath says that he was appointed Expert in Charge to revalue railroad and canal property in New Jersey under Chapter 307, Laws, session of 1910, of the New Jersey Legislature, approved April 12, 1910; and that pursuant to said appointment, he entered upon his duties and valued the properties of the Paterson and Hudson River Railroad Company, among others; that the attached schedules with the exception of item one, the valuation of the land, were valuations so made by him and returned to the State Board of Assessors as a basis for taxation by that body; that as to item one, the value of land, as stated in the attached statement, is the assessment as made by the State Board of Assessors and appearing in the books and records of that body, to which books and records he has had access by reason of his official position that the valuations so made by him were compiled under his direction and supervision; and the facts, matters and things contained therein are true to the best of his knowledge and belief.

(SEAL)

CHARLES HANSEL.

Sworn to and subscribed before me
this 27th day of February, 1915.

RAYMOND W. OAKLEY,

Notary Public New Jersey.

EXHIBIT R-19.

**STATEMENT OF VALUE OF PHYSICAL
ELEMENTS OF PATERSON AND RAMAPO
RAILROAD
ERIE RAILROAD SYSTEM
IN NEW JERSEY.**

1. Land	\$429,469
2. Clearing and grubbing	1,800
3. Graduation	276,393
5. Bridges, retaining walls and cul- verts	228,444
6. Tracks and its appurtenances	654,482
7. Fencing	5,626
8. Crossings, cattle guards, gates and signs	18,290
9. Block signaling	39,774
10. Interlocking	64,747
11. Miscellaneous signals	1,617
12. Passenger and freight stations	69,577
13. Shop buildings and engine houses	13,261
15. Telegraph and telephone lines	15,040
16. Turn-tables, transfer tables, track scales and track cranes	1,926
20. Miscellaneous structures	15,882
21. Shop machinery, machine tools and appurtenances	360
28. Total value of all items as above	<hr/> \$1,836,688

Exhibit B-19.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.

Charles Hansel, being duly sworn according to law, on his oath says that he was appointed Expert in Charge to revalue railroad and canal property in New Jersey under Chapter 307, Laws, session of 1910, of the New Jersey Legislature, approved April 12, 1910; and that pursuant to said appointment he entered upon his duties and valued the properties of the Paterson and Ramapo Railroad Company, among others; that the attached schedules with the exception of item one, the valuation of the land, were valuations so made by him and returned to the State Board of Assessors as a basis for taxation by that body; that as to item one, the value of land, as stated in the attached statement, is the assessment as made by the State Board of Assessors and appearing in the books and records of that body, to which books and records he has had access by reason of his official position; that the valuations so made by him were compiled under his direction and supervision; and the facts, matters and things contained therein are true to the best of his knowledge and belief.

(SEAL.)

CHARLES HANSEL.

Sworn to and subscribed before me
this 27th day of February, 1913.

RAYMOND W. OAKLEY,
Notary Public New Jersey.

EXHIBIT R-20.

STATE OF NEW JERSEY.

Assessed valuation of the properties of the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad for the year 1913.

Paterson & Hudson River R. R.

Property used for Railroad Purposes—

Assessments by N. J. State Board of Assessors:

	Assessed Valuation.
Main Stem	82,214,318
Franchise	40,000
Property other than Main Stem.....	426,326
Property not used for Railroad purposes—	
Assessment by City of Paterson.....	27,500
" " " " Passaic.....	1,550
Assessment by Borough of East Rutherford	16,950
Total	82,727,044

Paterson & Ramapo R. R.

Property used for Railroad Purposes—

Assessments by N. J. State Board of Assessors:

Main Stem	\$1,207,520
Franchise	10,000
Property other than Main Stem.....	222,582
Property not used for Railroad purposes—	
Assessment by City of Paterson.....	75,950
Total	\$1,616,492

EXHIBIT R-21.

AGREEMENT

between

THE WESTERN UNION TELEGRAPH
COMPANY

and

ERIE RAILROAD COMPANY.

THIS AGREEMENT, made and entered into in duplicate this twenty-fifth (25th) day of September, 1907, by and between THE WESTERN UNION TELEGRAPH COMPANY, a corporation of the State of New York, party of the first part, hereinafter designated for convenience as the Telegraph Company; and the ERIE RAILROAD COMPANY, a corporation of the State of New York, party of the second part, hereinafter designated for convenience as the Railroad Company, for itself, and for and in behalf of the Chicago and Erie Railroad Company, the New Jersey and New York Railroad Company, the Erie Terminals Railroad Company, the New York, Susquehanna and Western Railroad Company, Wilkes-Barre and Eastern Railroad Company, and Bath and Hammondsport Railroad Company,

WITNESSETH: That

WHEREAS the Railroad Company now owns, leases or controls certain railroads intended to be covered by this contract in the territory generally described as lying east of Lake Michigan; and

WHEREAS the mileage of said railroads, as the same now is and may hereafter be, from time to time, is and shall be shown in a schedule hereto attached and marked Schedule A; and

WHEREAS the telegraph poles, wires and appurtenances which now are or may hereafter be owned or controlled by the Telegraph Company along said rail-

Exhibit H-21.

road are and shall be shown in a Schedule hereto attached and marked Schedule B; and

WHEREAS the telegraph poles, wires and appurtenances which now are or may hereafter be owned or controlled by the Railroad Company along said railroads are and shall be shown in a schedule hereto attached and marked Schedule C; and

WHEREAS, telegraph lines have heretofore been operated over the railroads of the Railroad Company in accordance with the provisions of contracts named in a schedule hereto attached and marked Schedule D; and

WHEREAS it is desired that an agreement be entered into between the parties hereto covering all railroads and branches or extensions now owned, leased or controlled, and all branches or extensions thereof and all minor railroads hereafter owned, leased or controlled by the Railroad Company in said territory, granting to the Telegraph Company the right to maintain and operate telegraph lines thereon, and providing for the maintenance and operation of the same by the Telegraph Company, all on the terms and conditions herein provided;

NOW THEREFORE, for and in consideration of the mutual covenants of the parties hereto, it is agreed between them as follows:

FIRST. The Railroad Company does hereby, so far as it lawfully may, agree to let, lease and demise and does by these presents let, lease and demise unto the Telegraph Company, its successors and assigns, the right to maintain along said railroads, the said poles, with wires thereon and the instruments, batteries, machinery, tools, loops, insulators, cross-arms, fixtures, and other appurtenances thereto belonging which may now or hereafter be owned or controlled by the Telegraph Company along any and all of the said railroads intended to be covered by this agree-

Exhibit R-21.

ment, as hereinbefore provided, and the same shall be shown in said Schedule B hereto annexed, with the right to erect and maintain on said poles additional wires as hereinafter provided, together with the right to operate and use all of said poles, wires, and other property; and the Railroad Company does hereby agree to let, lease and demise, and does by these presents let, lease and demise unto the Telegraph Company, its successors and assigns, all lines of poles, with the wires thereon, and the instruments, batteries, machinery, tools, loops, insulators, cross-arms, fixtures, and all other appurtenances thereto belonging, now or hereafter owned or controlled by the Railroad Company, along any or all of the said railroads intended to be covered by this agreement, as herein before provided, as shown in said Schedule C hereto annexed; with the right to erect and maintain on said poles additional wires as hereinafter provided; together with the right to operate and use all of said poles, wires, and other property hereby leased, and to enjoy the returns and profits thereof, as fully and effectually as could be done by the Railroad Company;

TO HAVE AND TO HOLD the same unto the Telegraph Company, its successors and assigns, during the continuance of this agreement, and subject to the uses and conditions hereinafter set forth.

It is understood and agreed that the rights and privileges given the Telegraph Company in this agreement are subject to all conditions and reservations affecting the tenure of the Railroad Companies for and in behalf of which this agreement is made, to the Railroads, premises and property in connection with which said rights and privileges are given.

During the continuance of this agreement said poles, wires, and other telegraph property shall be used, maintained, repaired, and renewed as hereinafter provided, and upon the termination of this

Exhibit R-21.

agreement, said poles, wires, and other telegraph property enumerated in the said Schedule C, and hereby leased to the Telegraph Company, or such poles, wires, and other telegraph property as may have been substituted therefor, in the proper repair, maintenance and renewal thereof, shall be returned to the Railroad Company in like good order and repair as when received by the Telegraph Company, and the Telegraph Company shall thereupon remove from said poles such wires and fixtures as it may have thereon.

(Then follow provisions as to taxes, construction and maintenance of wires, poles, and other equipment, &c.)

EIGHTH. The Railroad Company, so far as it lawfully may, hereby grants and agrees to assure to the Telegraph Company the exclusive right to do and conduct commercial or public telegraph business and to construct and maintain telegraph lines, to be operated either by telegraph or telephone instruments, or both (but not for the purpose of doing and conducting commercial or public telephone business), for the term of and subject to the conditions and limitations in this agreement provided, on, along, across and under the line, lands and bridges, and in the premises of the railroad now or hereafter covered by this agreement, and any extensions and branches thereof; and for that purpose the Railroad Company grants to the Telegraph Company during the continuance of this agreement, right of way and entry upon, along, across and under the line, lands and bridges of the railroads now or hereafter covered by this agreement, and any extensions and branches thereof, for the construction, maintenance, operation and use of lines of poles and wires, and underground or otherwise, for the commercial or public business aforesaid, with the right to put up or construct or

Exhibit R-21.

cause to be put up or constructed from time to time, under the supervision of said Joint Superintendent and at the sole cost of the Telegraph Company except as herein otherwise provided, such additional wires and such additional lines of poles and wires and underground or other lines, and to issue revocable licenses for the occasional and limited use of the poles covered by this agreement for such telegraph or telephone wires, as the Telegraph Company may deem expedient, and which may not in the judgment of the Railroad Company interfere with its business and purposes or the operation of its railroads; but no additional or second line of poles shall be placed on said lands or right of way already occupied by one line of poles, without the Railroad Company's consent.

Wherever the Telegraph Company now has two lines of poles on the Railroad Company's lands or right of way, the Telegraph Company shall have the right to keep said two lines on said lands or right of way during the continuance of this agreement.

(Then follow provisions as to liability by the parties for loss or damages &c., patent rights, expenses of operation, &c.)

The provisions of this agreement shall be and continue in force from the first day of October, one thousand nine hundred and seven (1907), until the thirtieth (30th) day of September, one thousand nine hundred and twenty-eight (1928).

(Then follow testimonum clause, names of the parties &c.; then follow schedules of wires referred to in agreement.)

Exhibits R-22 to R-24.

EXHIBIT R-22.

SUPPLEMENTAL AGREEMENT
between
THE WESTERN UNION TELEGRAPH
COMPANY
and
ERIE RAILROAD COMPANY.

Dated September 3rd, 1913.

This modifies Section 8 of Agreement marked R-21, giving the Telegraph Company the right to transpose the wires for telephone purposes.

EXHIBIT R-23.

Blue print entitled "Erie Railroad Company. Map showing track facilities at Paterson, New Jersey, March 1903. Chief Engineer's Office. Sidings, Tracks and Industries shown as located in December 1913."

EXHIBIT R-23A.

Same title as above with addition of "Revised to January 1914."

EXHIBIT R-24.

PATERSON CROSSING CASES.

Features which might have to be considered in any plan for eliminating crossings mentioned in city's petition.

MAIN LINE.

Passaic River Bridge.

Water level of Passaic River.

Fifth Avenue—grade crossing.

Montgomery St.—Not open across tracks but included in original petition.

Lawrence St.—Not open across tracks but included in original petition.

Exhibit R-24.

Fulton St.—Under grade crossing.

Harrison St.—Not opened across tracks but included in original petition.

Gouvonor St.—Undergrade crossing.

Tyler St.—Not opened across tracks but included in original petition.

Grand St., Essex St.—Undergrade crossing.

Taylor St.—Not opened across tracks but included in original petition.

Gould Ave.—Grade crossing.

Grove Ave.—Grade crossing.

Crooks Ave.—Grade crossing.

NEWARK BRANCH.

Getty Ave.—Grade crossing.

Main St.—Grade crossing.

Camden St.—Not open across tracks.

Atlantic St.—Not open across tracks.

Pacific St.—Overhead crossing.

Sussex St.—Not open across tracks.

Paxton St.—Not open across tracks. (City now trying to build bridge.)

Dakota St.—Not open across tracks.

Hazel St.—Overhead crossing.

Exhibit R-25.

EXHIBIT R-25.

ERIE RAILROAD COMPANY.

A.

Traffic Record.

Madison Avenue, Paterson, N. J., Saturday, November 29, 1913.

Hour	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	11	6	1	0	0	0	2	1	0
6-7	184	16	7	1	0	4	3	1	0
7-8	63	22	4	2	0	7	6	1	0
8-9	41	36	7	0	0	4	4	0	0
9-10	31	42	10	1	0	3	3	1	0
10-11	33	45	18	1	0	5	3	0	2
11-12	25	49	13	2	0	4	3	1	0
P.M.									
12-1	210	38	17	3	2	5	4	1	0
1-2	49	33	14	2	1	8	5	1	2
2-3	66	46	16	7	2	8	5	2	3
3-4	54	48	13	3	1	5	3	0	1
4-5	38	44	15	3	1	5	4	0	1
5-6	61	21	7	0	1	9	7	0	4
6-7	42	7	5	2	0	3	6	0	0
7-8	85	7	3	0	0	3	3	1	0
8-9	40	6	3	0	0	0	3	1	0
9-10	16	2	3	0	0	0	3	2	0
10-11	36	1	3	0	0	0	2	0	2
TOTALS	1084	469	159	27	8	75	69	13	15
11-28-13	1253	389	144	41	2	78	69	12	19
11-29-13	1084	469	159	27	8	75	69	13	15
Average	1168	429	151	34	5	76	69	12	17

RECORDS TAKEN BY

(5 A.M.-11 P.M.), Wm. J. Gemeinhardt.

Exhibit R-25.

ERIE RAILROAD COMPANY.

A.

Traffic Record.

Madison Avenue, Paterson, N. J., Friday, November 28, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autom	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	13	8	0	0	0	1	2	1	0
6-7	153	13	2	9	0	7	6	0	1
7-8	81	18	6	5	0	4	4	0	0
8-9	57	40	7	2	0	6	4	1	1
9-10	23	38	13	0	0	6	4	0	2
10-11	30	34	19	0	0	2	2	0	0
11-12	50	30	11	3	0	2	2	0	0
P.M.									
12-1	152	29	12	5	0	6	4	2	2
1-2	70	22	9	1	0	3	1	1	2
2-3	46	36	14	1	0	4	3	1	0
3-4	22	41	11	1	0	7	5	1	1
4-5	40	31	10	2	0	8	3	1	1
5-6	98	14	15	5	1	8	6	2	4
6-7	243	24	9	6	1	11	8	0	3
7-8	72	4	4	1	0	3	4	0	0
8-9	36	2	2	0	0	0	4	1	0
9-10	46	1	0	0	0	0	2	0	0
10-11	21	0	0	0	0	0	3	1	2
TOTALS	1253	289	144	41	2	78	60	12	19

RECORDS TAKEN BY

(5 A.M.-11 P.M.), Wm. J. Gemeinhardt.

Exhibit R-25.

ERIE RAILROAD COMPANY.

B.

Traffic Record on Straight Street, Paterson, N. J.,

Thursday, November 13th, 1913.

Hour	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	15	3	3	1	0	5	4	1	0
6-7	346	4	4	1	0	9	7	0	4
7-8	110	21	3	1	1	14	11	0	9
8-9	60	27	3	1	0	7	5	1	4
9-10	45	35	14	1	0	11	7	0	7
10-11	40	45	10	0	1	8	3	0	6
11-12	62	38	11	2	0	4	4	0	0
P.M.									
12-1	385	19	6	4	2	9	3	1	13
1-2	63	25	7	0	0	14	4	2	13
2-3	66	15	11	1	0	11	4	0	6
3-4	80	40	15	0	1	5	4	1	0
4-5	87	27	7	0	0	7	5	0	3
5-6	120	23	9	3	0	16	8	2	12
6-7	443	10	5	0	0	10	13	0	0
7-8	89	3	3	1	0	7	6	0	1
8-9	41	3	1	1	0	7	5	3	0
9-10	17	3	3	0	0	6	3	0	7
10-11	15	0	1	0	0	4	3	0	2
TOTALS	2084	337	115	17	5	154	101	11	87
11-11-13	2114	316	98	26	4	174	99	14	120
11-12-13	1668	300	102	24	3	155	103	8	86
11-12-13	2084	337	115	17	5	154	101	11	87
Average	1955	318	105	22	4	161	101	11	98

RECORDS TAKEN BY
All Items Except Pedestrians.(5 A.M.-10 A.M.), (1 P.M.-3 P.M.), (6.30 P.M.-7.30 P.M.), H. B. Davenport.
(10 A.M.-1 P.M.), (3 P.M.-6.30 P.M.), (7.30 P.M.-11 P.M.), A. S. Hathaway.

Pedestrians.

(5 A.M.-10 A.M.), (12 M.-3 P.M.), (5 P.M.-7.30 P.M.), H. B. Davenport. (10
A.M.-12 M.), (3 P.M.-5 P.M.), (7.30 P.M.-11 P.M.), A. S. Hathaway.

Exhibit R-25.

ERIE RAILROAD COMPANY.

B.

Traffic Record on Straight Street, Paterson, N. J.,

Wednesday, November 12th, 1913.

Hour	Pedestrians	Home Sewing Machines	Automobiles	Bicycles	Motorcycles	Gasoline Cars	Passenger Trains	Freight Trains	Over Shops
A.M.									
5-6	21	0	1	1	0	4	4	0	1
6-7	223	7	0	0	0	7	6	0	0
7-8	93	18	5	2	1	8	11	1	0
8-9	27	26	7	0	0	10	5	0	0
9-10	35	31	12	2	0	8	7	0	0
10-11	26	35	12	0	0	10	4	0	0
11-12	62	27	6	1	0	3	4	0	0
P.M.									
12-1	360	18	9	4	0	9	3	1	14
1-2	58	23	8	4	0	12	3	1	0
2-3	34	37	6	0	2	15	5	1	0
3-4	52	32	7	1	0	8	4	0	0
4-5	46	35	7	1	0	14	3	0	10
5-6	100	14	9	6	0	10	7	0	0
6-7	407	8	2	2	0	9	13	0	0
7-8	57	3	2	0	0	6	6	0	1
8-9	45	0	2	0	0	8	5	3	0
9-10	16	1	2	0	0	8	3	1	0
10-11	6	0	1	0	0	6	4	0	0
TOTALS	1668	300	100	24	2	155	103	0	00

RECORDS TAKEN BY

Pedestrians.

(5 A.M.-6 A.M.), (10 A.M.-11 A.M.), (2 P.M.-4 P.M.), (8 P.M.-11 P.M.),
L. F. Kleen. (7 A.M.-10 A.M.), (11 A.M.-3 P.M.), (4 P.M.-8 P.M.), W. L. Blakeney.

All Items Except Pedestrians.

(5 A.M.-7 A.M.), (8 A.M.-2 P.M.), (4 P.M.-7 P.M.), (9 P.M.-11 P.M.), L. F.
Kleen. (7 A.M.-8 A.M.), (3 P.M.-4 P.M.), (7 P.M.-9 P.M.), W. L. Blakeney.

ERIE RAILROAD COMPANY.

B.

Traffic Record on Straight Street, Paterson, N. J.,

Tuesday, November 11th, 1913.

	Pedestrians	Heavy Trucks Vehicles	Autom	Wagons	Motorcycles	Carton Trucks	Passenger Trains	Freight Trains	Orill Engines
6	15	0	1	1	0	6	4	2	0
7	215	3	2	0	0	9	6	1	3
8	137	15	4	3	1	14	11	0	10
9	65	30	6	2	0	5	5	0	1
10	41	20	3	0	0	10	5	1	2
11	35	33	10	1	2	15	3	0	20
12	39	33	12	2	0	6	4	0	2
1	433	18	7	6	0	12	4	2	11
2	40	20	11	1	0	10	5	2	4
3	29	21	6	1	0	13	4	1	18
4	120	20	7	3	0	7	4	0	6
5	73	36	6	1	0	9	5	1	3
6	150	16	6	1	0	13	6	0	19
7	438	6	6	4	0	9	11	0	0
8	60	3	6	0	0	9	7	1	1
9	27	1	1	0	0	6	5	2	0
10	29	3	0	0	0	9	3	0	10
11	16	1	0	0	0	10	5	1	9
TOTALS	2114	216	98	26	4	174	90	14	120

RECORD TAKEN BY

All Items Except Gates, Trains and Pedestrians.

(8 A.M.-9 A.M.), (11 A.M.-3 P.M.), (4 P.M.-6 P.M.), (9 P.M.-11 P.M.), H. E. Davenport. (9 A.M.-11 A.M.), (3 P.M.-4 P.M.), (6 P.M.-9 P.M.), Robt. Hoppen, Jr.

Pedestrian, Gates and Trains.

(3 A.M.-7 A.M.), (9 A.M.-3 P.M.), (3 P.M.-7 P.M.), Robt. Hoppen, Jr. (7 A.M.-11 A.M.), (8 P.M.-3 P.M.), (7 P.M.-11 P.M.), H. E. Davenport.

Exhibit R-25.

ERIE RAILROAD COMPANY.

B.

Traffic Record on Clay Street, Paterson, N. J.,
Thursday, November 13th, 1913.

Hour	Pedestrians	Motor Cars	Automobiles	Bicycles	Motorcycles	Street Cars	Passenger Trains	Freight Trains	Street Wagons
A.M.									
5-6	35	7	0	1	0	3	4	1	0
6-7	491	13	3	3	0	9	7	0	4
7-8	134	36	3	0	0	14	11	0	0
8-9	111	25	3	1	0	7	5	1	0
9-10	64	40	9	2	0	11	7	0	7
10-11	75	29	3	1	0	8	3	0	0
11-12	39	65	0	3	2	4	4	0	0
P.M.									
12-1	586	18	3	2	0	9	3	1	10
1-2	80	22	3	1	0	14	4	2	10
2-3	98	15	7	1	0	11	4	0	0
3-4	135	40	2	3	0	8	4	1	0
4-5	134	36	10	7	0	7	5	0	1
5-6	144	23	5	2	0	18	8	2	12
6-7	504	9	4	2	1	10	13	0	0
7-8	160	3	0	2	1	7	6	0	7
8-9	123	1	0	0	1	7	5	3	0
9-10	86	0	0	2	0	6	3	0	7
10-11	53	0	0	1	0	4	5	0	3
TOTALS	3023	419	64	26	5	154	101	11	67
11-11-13	3438	487	75	32	3	174	99	14	120
11-12-13	2983	447	39	27	5	135	97	8	80
11-13-13	3003	439	65	26	5	154	101	11	67
Average	2941	421	66	28	4	161	99	11	66

RECORDS TAKEN BY

All items except Pedestrians.

(8 A.M.-10 A.M.), (1 P.M.-3 P.M.), (6.30 P.M.-7.30 P.M.), H. B. Davenport.
(10 A.M.-1 P.M.), (3 P.M.-6.30 P.M.), (7.30 P.M.-11 P.M.), A. S. Hathaway.

Pedestrians.

(8 A.M.-10 A.M.), (12 M.-3 P.M.), (3 P.M.-7.30 P.M.), H. B. Davenport.
(A.M.-12 M.), (3 P.M.-6 P.M.), (7.30 P.M.-11 P.M.), A. S. Hathaway.

Exhibit R-25.

ERIE RAILROAD COMPANY.

B.

Traffic Record on Clay Street, Paterson, N. J.,

Tuesday, November 11th, 1913.

	Pedestrians	Motor Vehicles	Automobiles	Tricycles	Motorcycles	Clayton Cars	Passenger Trains	Freight Trains	Unit Engines
A.M.									
5-6	36	9	0	3	0	6	4	2	0
6-7	430	9	0	3	0	9	6	1	2
7-8	113	31	0	0	0	15	11	0	10
8-9	110	20	9	1	0	5	5	0	1
9-10	52	46	5	2	0	10	5	1	2
10-11	51	46	8	3	0	15	3	0	20
11-12	67	47	8	1	0	6	4	0	2
P.M.									
12-1	561	31	10	5	0	12	4	2	11
1-2	106	24	8	1	2	10	5	2	6
2-3	64	31	6	2	0	12	4	1	12
3-4	115	41	3	1	0	7	4	0	6
4-5	60	43	5	2	0	9	5	1	3
5-6	133	26	5	2	0	12	8	0	12
6-7	569	5	2	2	1	9	11	0	0
7-8	103	0	2	2	0	9	7	1	1
8-9	83	0	2	0	0	6	5	2	0
9-10	72	0	1	0	0	9	2	0	10
10-11	44	0	0	0	0	10	5	1	9
TOTALS	2819	497	75	28	3	174	90	14	120

RECORDS TAKEN BY

All Items Except Trains and Gates Including Pedestrians.

(8 A.M. to 9 A.M.), (11 A.M. to 3 P.M.), (4 P.M. to 8 P.M.), (9 P.M. to 11 P.M.), H. B. Davenport. (9 A.M. to 11 A.M.), (2 P.M. to 4 P.M.), (8 P.M. to 9 P.M.), Robt Hoppen, Jr.

Trains and Gates.

(5 A.M. to 7 A.M.), (9 A.M. to 2 P.M.), (3 P.M. to 7 P.M.), Robt. Hoppen, Jr. (7 A.M. to 9 A.M.), (2 P.M. to 3 P.M.), (7 P.M. to 11 P.M.), H. B. Davenport.

Exhibit R-25.

ERIE RAILROAD COMPANY.

B.

Traffic Record on Clay Street, Paterson, N. J.,
Wednesday, November 12th, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Cars Down	Passenger Trains	Freight Trains	Oil Engines
A.M.									
5-6	1	6	0	1	0	4	4	0	1
6-7	390	10	0	1	0	7	6	0	
7-8	127	25	0	2	1	8	11	1	0
8-9	76	25	10	0	0	10	5	0	7
9-10	64	38	3	1	2	8	7	0	2
10-11	47	43	5	1	0	10	4	0	7
11-12	62	49	6	2	0	3	4	0	0
P.M.									
12-1	603	20	2	4	0	9	5	1	14
1-2	98	27	6	2	1	12	3	1	9
2-3	73	54	10	2	0	5	5	1	7
3-4	110	25	2	3	0	8	4	0	5
4-5	274	90	6	3	0	14	5	0	10
5-6	146	22	4	2	1	10	7	0	7
6-7	446	8	3	1	0	9	13	0	0
7-8	220	2	0	1	0	6	6	0	1
8-9	82	8	2	0	0	8	5	3	2
9-10	81	3	0	0	0	8	5	1	3
10-11	62	0	0	1	0	6	4	0	3
TOTALS	2962	447	59	27	5	155	97	8	86

RECORDS TAKEN BY

All Items Except Pedestrians.

(5 A.M.-7 A.M.), (8 A.M.-2 P.M.), (4 P.M.-7 P.M.), (9 P.M.-11 P.M.), L. F. Kleen. (7 A.M.-8 A.M.), (2 P.M.-4 P.M.), (7 P.M.-9 P.M.), W. L. Blakeney.

Pedestrians.

(5 A.M.-6 A.M.), (9 A.M.-11 A.M.), (2 P.M.-4 P.M.), (9 P.M.-11 P.M.), L. F. Kleen. (6 A.M.-9 A.M.), (11 A.M.-2 P.M.), (4 P.M.-9 P.M.), W. L. Blakeney.

ERIE RAILROAD COMPANY.

C.

Traffic Record on Cedar Street, Paterson, N. J.,

Saturday, November 29th, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	32	2	0	0	0	7	5	0	5
6-7	383	3	0	0	0	9	6	0	4
7-8	130	22	1	0	0	12	12	0	4
8-9	75	33	4	1	0	11	4	0	8
9-10	147	50	1	0	0	14	5	0	10
10-11	67	42	3	0	0	7	3	0	4
11-12	124	53	5	0	0	6	3	0	4
P.M.									
12-1	465	27	4	0	0	11	5	1	8
1-2	110	32	1	3	0	6	4	0	3
2-3	144	33	0	1	1	12	8	2	6
3-4	152	37	1	0	0	7	6	0	3
4-5	133	23	3	1	0	6	5	0	1
5-6	80	10	1	0	0	12	6	1	8
6-7	62	8	1	0	0	9	6	0	2
7-8	82	4	0	0	0	8	6	0	2
8-9	44	2	0	0	0	7	5	0	2
9-10	26	3	0	0	0	8	2	1	7
10-11	10	1	0	0	0	9	4	0	5
TOTALS	2266	385	25	6	1	161	95	5	86

RECORDS TAKEN BY

(5 A.M. to 7 P.M.). (7.50 P.M. to 11 P.M.), A. S. Hathaway. (7 P.M. to 7.50 P.M.), C. R. Myers.

11-28-13	2309	345	24	8	0	166	101	6	82
11-29-13	2266	385	25	6	1	161	95	5	86
Average	2332	365	24	7	1	163	98	6	84

Exhibit R-25.

ERIE RAILROAD COMPANY.

C.

Traffic Record on Cedar Street, Paterson, N. J.,

Friday, November 28th, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	32	3	0	0	0	3	4	0	0
6-7	430	6	0	2	0	10	8	0	3
7-8	122	22	1	2	0	13	8	0	8
8-9	93	31	2	0	0	8	8	1	2
9-10	71	42	6	0	0	4	4	0	0
10-11	74	47	4	0	0	9	4	0	5
11-12	90	48	1	0	0	5	4	0	1
P.M.									
12-1	567	13	1	1	0	11	3	1	7
1-2	113	24	2	0	0	15	4	1	11
2-3	39	28	2	0	0	12	4	0	11
3-4	70	24	1	1	0	12	7	1	4
4-5	98	37	2	0	0	13	5	0	9
5-6	113	13	1	1	0	12	8	0	3
6-7	360	5	0	1	0	11	11	0	0
7-8	60	1	1	0	0	8	6	0	2
8-9	42	1	0	0	0	6	6	1	0
9-10	21	0	0	0	0	7	2	0	8
10-11	4	0	0	0	0	7	5	1	8
TOTALS	2399	345	24	8	0	166	101	6	82

RECORDS TAKEN BY

(5 A.M. to 7.30 P. M.), (8.30 P. M. to 11 P. M.), A. S. Hathaway. (7.30 P.M. to 8.30 P.M.), C. R. Myers.

ERIE RAILROAD COMPANY.

D.

Traffic Record.

Market Street, Paterson, N. J., Saturday, November 8, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.										
5-6	285	4	13	1	3	0	4	5	0	6
6-7	1670	24	31	10	24	1	7	6	0	0
7-8	1490	30	121	30	30	1	13	11	0	1
8-9	1270	33	161	91	24	1	10	5	1	3
9-10	1258	37	150	99	18	1	9	5	0	3
10-11	1080	34	166	98	7	1	9	3	0	4
11-12	1385	28	161	114	24	1	13	6	1	8
P.M.										
12-1	3060	36	118	102	40	2	6	3	1	4
1-2	2000	40	126	88	23	2	14	6	1	5
2-3	2000	35	101	90	24	3	13	8	0	6
3-4	2590	40	130	98	22	1	16	7	2	8
4-5	2225	40	69	82	26	6	15	5	0	11
5-6	3140	35	75	79	22	2	13	7	2	2
6-7	2050	32	37	59	7	10	11	8	0	0
7-8	2004	41	35	33	5	0	13	7	0	1
8-9	2775	29	16	37	3	0	15	6	2	3
9-10	2292	26	16	32	2	0	5	7	1	0
10-11	1570	29	14	27	0	0	6	4	1	0
TOTALS	33144	570	1536	1170	303	22	181	109	12	65

RECORDS TAKEN BY

(5 A.M.-8.30 A.M.), (9.15 A.M.-3.30 P.M.), (7 P.M.-11 P.M.), Robt. Hoppen, Jr.
 (8.30 A.M.-9.15 A.M.), (3.30 P.M.-7 P.M.), L. F. Kleen.

Two Books.

(5 A.M.-9 A.M.), (10 A.M.-2.30), W. L. Blakeney. (9 A.M.-10 A.M.), (3.30 P.M.-7.30 P.M.), (8 P.M.-11 P.M.), H. B. Davenport. (2.30 P.M.-3 P.M.), L. F. Kleen.
 (7.30 P.M.-8 P.M.), Robt. Hoppen, Jr.

Passenger Trains, Drill Engines, Gates and Trolley Cars.

(5 A.M.-5 P.M.), (8 P.M.-9 P.M.), L. F. Kleen. (5 P.M.-8 P.M.), H. B. Davenport.
 (9 P.M.-11 P.M.), W. L. Blakeney.

Horse Vehicles, Autos, Bicycles, Motorcycles.

(5 A.M.-2 P.M.), (7 P.M.-7.45 P.M.), H. B. Davenport (2 P.M.-7 P.M.), (7.45 P.M.-11 P.M.), W. L. Blakeney.

	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
11-8-13	28363	553	1608	1453	509	46	196	103	17	59
11-8-13	30389	563	1574	1500	476	85	187	100	9	53
11-8-13	33144	570	1536	1170	303	22	181	109	12	65
Average	30932	592	1573	1374	429	51	188	103	13	59

Exhibit R-25.

ERIE RAILROAD COMPANY.

D.

Traffic Record.

Market Street, Paterson, N. J., Wednesday, November 5, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.										
5-6	235	3	17	0	3	0	12	5	1	5
6-7	1710	26	38	14	37	3	8	5	3	0
7-8	1416	30	118	32	30	1	13	12	1	0
8-9	1760	32	147	113	34	3	11	5	1	1
9-10	900	32	135	98	21	2	14	6	0	4
10-11	880	33	183	122	20	2	10	3	0	5
11-12	1100	31	175	113	30	0	12	5	1	5
P.M.										
12-1	3100	36	97	147	114	11	11	3	0	6
1-2	1400	31	112	130	31	4	10	6	1	6
2-3	1312	34	150	123	28	1	9	3	1	7
3-4	1730	35	100	90	50	5	7	5	2	0
4-5	1760	37	150	110	40	5	10	5	0	1
5-6	2150	44	100	100	30	3	17	8	1	10
6-7	2790	43	50	89	31	5	20	13	0	0
7-8	2210	29	17	53	6	0	15	5	2	4
8-9	1670	28	9	56	2	0	15	6	1	3
9-10	1350	24	7	37	0	1	4	3	1	0
10-11	960	25	3	26	2	0	8	4	1	2
TOTALS	28363	553	1608	1453	509	46	196	102	17	59

RECORDS TAKEN BY

Passenger Trains, Freight Trains, Drill Engines, Gates and Trolley Cars.

(5 A.M.-10.30 A.M.), L. F. Kleen. (10.30 A.M.-2.00 P.M.), Robt. Hoppen, Jr. (2 P.M.-7 P.M.), (8 P.M.-11 P.M.), H. B. Davenport. (7 P.M.-8 P.M.), A. S. Hathaway.

Pedestrians.

(5 A.M.-2 P.M.), (8 P.M.-11 P.M.), W. L. Blakeney. (2 P.M.-8 P.M.), H. B. Davenport. (5 A.M.-1.20 P.M.), (1.55 P.M.-7 P.M.), (7.55 P.M.-11 P.M.), Robt. Hoppen, Jr., (1.20 P.M.-1.55 P.M.), (7 P.M.-7.55 P.M.), L. F. Kleen.

Automobiles, Horse Vehicles, Bicycles, Motorcycles.

(5 A.M.-9 A.M.), (10 A.M.-2 P.M.), H. B. Davenport. (9 A.M.-10 A.M.), (2 P.M.-8 P.M.), (9 P.M.-11 P.M.), W. L. Blakeney. (8 P.M.-9 P.M.), A. S. Hathaway.

Exhibit R-25.

ERIE RAILROAD COMPANY.

D.

Traffic Record.

Market Street, Paterson, N. J., Thursday, November 6, 1913.

Hours	Pedestrians	Trolley Cars	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.										
5-6	222	3	23	3	2	0	11	6	0	6
6-7	1800	27	38	9	28	2	9	3	1	7
7-8	1340	33	131	39	20	2	14	10	1	0
8-9	2000	30	150	113	53	1	8	5	0	1
9-10	860	32	120	85	20	2	5	6	0	6
10-11	964	33	134	114	15	4	8	2	0	7
11-12	1170	33	137	109	38	2	9	5	2	2
P.M.										
12-1	3380	32	102	141	101	14	8	5	0	4
1-2	1630	38	122	103	40	5	9	3	2	3
2-3	1290	33	132	104	33	10	12	4	0	7
3-4	1910	38	130	115	64	5	7	4	0	1
4-5	1840	33	138	123	61	9	9	5	1	0
5-6	2250	42	130	131	50	3	16	7	1	8
6-7	2100	48	64	84	32	6	21	13	0	0
7-8	2760	32	11	62	11	7	12	7	0	4
8-9	2243	28	5	62	5	5	11	5	0	3
9-10	1700	29	3	64	4	4	3	7	0	0
10-11	930	19	4	39	0	4	5	3	1	0
TOTALS	30389	563	1574	1500	476	85	187	100	9	53

RECORDS TAKEN BY
Pedestrians.

(5 A.M.-6 A.M.), (7 A.M.-2 P.M.), W. L. Blakeney. (6 A.M.-7 A.M.), (2 P.M.-1.30 P.M.), H. B. Davenport. (5 A.M.-8.30 A.M.), (9.30 A.M.-2 P.M.), (3 P.M.-7 P.M.), L. F. Kleen. (8.30 A.M.-9.30 A.M.), (2 P.M.-3 P.M.), Robt. Hoppen, Jr. (7 P.M.-11 P.M.), A. S. Hathaway.

Passenger Trains, Freight Trains, Drill Engines, Gates and Trolley Cars.

(5 A.M.-7 A.M.), (1.30 P.M.-2 P.M.), (7 P.M.-11 P.M.), H. B. Davenport. (7 A.M.-1.30 P.M.), (2 P.M.-7 P.M.), Robt. Hoppen, Jr.

Horse Vehicles, Autos, Bicycles, Motorcycles.

(5 A.M.-6 A.M.), (3.15 P.M.-7 P.M.), W. L. Blakeney. (6 A.M.-2 P.M.), (7 P.M.-11 P.M.), H. B. Davenport. (3 P.M.-3.15 P.M.), Robt. Hoppen, Jr.

Exhibit R-25.

ERIE RAILROAD COMPANY.

E.

Traffic Record.

Ellison Street, Paterson, N. J., Saturday, November 29, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.								
5-6	17	6	0	0	7	6	0	1
6-7	205	6	2	0	7	5	1	0
7-8	196	48	2	0	11	10	0	0
8-9	301	45	2	1	7	5	1	2
9-10	191	48	5	1	7	6	0	0
10-11	160	47	2	2	3	2	0	1
11-12	330	72	16	2	9	5	1	4
P.M.								
12-1	480	43	6	0	6	5	0	3
1-2	254	47	12	2	5	5	0	1
2-3	271	43	7	4	10	8	2	0
3-4	275	44	13	5	6	5	0	2
4-5	300	41	3	4	4	5	0	2
5-6	189	26	4	0	9	8	1	1
6-7	254	15	1	3	8	8	0	0
7-8	264	5	1	0	7	7	0	0
8-9	282	4	1	0	7	6	1	0
9-10	242	2	2	0	3	2	1	0
10-11	203	0	0	0	5	4	1	0
TOTALS	4414	542	79	24	121	102	9	18
11-26-13	3825	693	140	39	120	105	7	24
11-29-13	4414	542	79	24	121	102	9	18
Average	4121	617	109	31	120	103	8	21

RECORDS TAKEN BY

(5 A.M.-4 P.M.), (5 P.M.-11 P.M.), B. S. Brameld. (4 P.M.-5 P.M.), C. F. Myers.

Exhibit R-25.

ERIE RAILROAD COMPANY.

E.

Traffic Record on Ellison St., Paterson, N. J.,

Friday, November 28th, 1913.

Hour	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Gains Down	Passenger Trains	Freight Trains	Drill Engine
A.M.								
5-6	25	5	0	1	5	4	1	0
6-7	190	7	0	5	6	7	0	0
7-8	206	46	1	3	9	9	0	0
8-9	167	73	9	4	9	7	1	1
9-10	176	96	21	2	5	5	0	0
10-11	204	55	17	0	3	3	0	0
11-12	218	58	11	1	8	6	1	3
P.M.								
12-1	592	56	8	6	5	4	0	1
1-2	218	47	12	2	8	5	1	6
2-3	217	58	13	2	7	4	0	6
3-4	203	40	19	3	10	6	1	3
4-5	218	61	11	7	4	5	0	0
5-6	425	37	6	1	8	9	0	4
6-7	300	26	8	3	10	11	0	0
7-8	188	13	2	0	7	7	0	0
8-9	87	3	1	0	7	6	0	1
9-10	88	10	1	0	2	2	0	0
10-11	106	2	0	0	7	5	2	0
TOTALS	3528	693	140	39	120	105	7	24

RECORDS TAKEN BY

(5 A.M.-3 P.M.), B. S. Brameld. (3 P.M.-4 P.M.), C. R. Myers. (4 P.M.-10 P.M.), B. S. Brameld. (6 P.M.-8 P.M.), W. L. Blakeney. (8 P.M.-11 P.M.), B. S. Brameld.

Exhibit R-25.

ERIE RAILROAD COMPANY.

F.

Traffic Record on Van Houten Street, Paterson, N. J.,
Saturday, November 29th, 1913.

Hour	Pedestrians	Horse Drawn Vehicles	Automobiles	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Detail Engines
A.M.									
5-6	12	3	0	0	0	7	5	1	1
6-7	160	12	0	3	0	7	5	1	1
7-8	170	35	4	8	0	11	12	0	0
8-9	125	30	18	4	0	7	5	1	1
9-10	87	42	28	9	0	7	5	0	0
10-11	120	44	38	8	0	3	2	0	1
11-12	270	37	31	9	0	8	6	0	2
P.M.									
12-1	206	41	43	17	1	5	5	0	0
1-2	190	32	45	16	1	5	5	0	1
2-3	190	36	41	14	3	10	8	2	0
3-4	140	35	37	14	3	7	6	0	0
4-5	193	39	50	19	3	6	5	0	0
5-6	112	11	39	4	1	10	8	1	1
6-7	130	10	18	5	1	8	8	0	0
7-8	153	9	17	3	0	8	7	1	0
8-9	155	3	18	0	0	5	5	1	0
9-10	88	4	15	1	0	4	3	1	0
10-11	133	2	10	3	1	5	4	1	0
TOTALS	2684	434	440	133	13	123	105	10	8
11-28-13	2674	367	293	88	4	118	102	8	10
11-29-13	2684	434	440	133	13	123	105	10	8
Average	2679	400	366	110	8	120	103	9	9

RECORDS TAKEN BY

(5 A.M. to 8.30 A.M.), (9.30 A.M. to 5.30 P.M.), (6.30 P.M. to 11 P.M.), M. L. Zabriskie. (8.30 A.M. to 9.30 A.M.), T. C. Brameld. (5.30 P.M. to 6.30 P.M.), H. B. Davenport.

Exhibit R-25.

ERIE RAILROAD COMPANY.

F.

Traffic Record on Van Houten Street, Paterson, N. J.,

Friday, November 28th, 1913.

Hour	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
6-7	10	2	0	0	0	5	4	1	0
7-8	188	11	2	7	1	7	7	0	0
8-9	157	39	5	13	0	9	9	0	0
9-10	145	87	19	10	0	9	7	1	1
10-11	110	25	19	5	1	5	5	0	0
11-12	98	25	25	2	0	3	3	0	0
12-1	136	31	30	8	0	7	6	1	1
P.M.									
1-2	420	27	26	10	1	5	4	0	1
2-3	174	15	26	1	0	7	3	1	3
3-4	133	25	30	3	0	5	3	1	1
4-5	83	31	26	6	1	9	6	1	3
5-6	170	28	22	8	0	5	5	0	0
6-7	146	19	23	4	0	9	8	0	1
7-8	294	4	12	10	0	11	13	0	0
8-9	120	3	6	1	0	6	6	0	0
9-10	134	4	11	0	0	7	6	0	0
10-11	50	0	5	0	0	2	2	0	0
11-12	104	1	6	0	0	7	5	2	0
TOTALS	2674	367	293	88	4	118	102	8	10

RECORDS TAKEN BY

(5 A.M. to 1.30 P.M.), (5 P.M. to 6 P.M.), H. B. Davenport. (1.30 P.M. to 5 P.M.), (6 P.M. to 11 P.M.), M. L. Zabriskie.

Exhibit R-25.

ERIE RAILROAD COMPANY.

G.

Traffic Record.

Broadway, Paterson, N. J., Thursday, November 13, 1913.

Hours	Pedestrians	Trailing Cows	Motor Driven Vehicles	Autom	Bicycles	Motorcycles	Street Cams	Passenger Trains	Freight Trains	Swiss Engines
A.M.										
5-6	36	8	9	1	2	0	9	6	0	2
6-7	277	23	13	4	9	0	6	6	0	1
7-8	240	26	16	10	1	0	6	9	0	0
8-9	202	20	23	12	6	0	9	6	1	1
9-10	208	26	27	24	4	0	7	5	0	1
10-11	239	31	33	21	3	0	3	1	0	1
11-12	231	26	27	24	2	1	6	5	1	1
P.M.										
12-1	440	40	21	22	9	1	3	5	0	0
1-2	383	27	26	26	6	0	8	5	0	2
2-3	261	40	21	13	6	0	7	4	0	0
3-4	540	42	24	27	7	0	8	4	0	2
4-5	500	34	26	21	3	3	7	4	1	2
5-6	701	26	20	43	9	0	8	6	0	2
6-7	776	41	11	19	3	2	10	11	0	0
7-8	709	24	10	16	2	0	3	6	0	0
8-9	640	28	8	23	0	0	7	6	1	0
9-10	450	20	0	13	0	1	4	3	0	2
10-11	322	25	0	9	0	0	5	4	1	0
TOTALS	7395	593	249	354	71	8	120	96	5	17
11-11-13	7066	592	264	300	68	8	120	97	17	24
11-12-13	7954	567	460	222	27	10	117	105	8	19
11-12-13	7395	593	249	354	71	8	120	96	5	17
Average	7479	590	291	322	75	8	122	99	10	17

RECORDS TAKEN BY

All Items Except Pedestrians.

(6 A.M.-2 P.M.), (4 P.M.-7 P.M.), (6 P.M.-11 P.M.), L. F. Kleen. (3 A.M.-4 A.M.), (3 P.M.-4 P.M.), (7 P.M.-8 P.M.), W. L. Blakeney.

Pedestrians.

(5 A.M.-1 P.M.), (3 P.M.-7 P.M.), (6 P.M.-11 P.M.), W. L. Blakeney. (1 P.M.-3 P.M.), (7 P.M.-8 P.M.), L. F. Kleen.

Exhibit R-25.

ERIE RAILROAD COMPANY.

G.

Traffic Record.

Broadway, Paterson, N. J., Wednesday, November 12, 1913.

	Pedestrians	Trailing Cows	Udder Down	Acting	Blindfold	Motorcycles	Light Down	Passenger Trains	Freight Trains	Local Engines
0	18	4	8	0	1	0	4	5	1	0
1	208	22	4	6	5	0	6	5	1	0
2	211	20	16	5	5	0	11	10	0	0
3	245	28	21	19	5	1	7	6	0	1
4	195	33	32	32	7	1	9	9	0	1
5	237	34	33	14	3	0	5	8	0	1
6	250	34	49	15	7	0	6	6	0	1
7	440	34	55	17	13	1	5	6	0	1
8	358	40	58	26	4	2	3	2	0	1
9	422	34	56	29	2	1	5	4	2	1
10	547	37	34	33	11	3	6	4	0	1
11	742	33	107	24	7	1	7	6	0	1
12	675	37	20	23	6	0	10	9	0	1
13	680	44	15	27	6	0	11	12	0	0
14	653	34	4	19	2	0	7	8	0	0
15	622	35	8	12	2	0	6	5	1	0
16	604	28	3	9	1	0	4	3	1	0
17	456	27	0	6	0	0	6	4	2	0
TOTALS	7954	587	482	323	87	50	117	105	8	10

RECORDS TAKEN BY

All Items Except Pedestrians.

(3 A.M.-4 A.M.), (9 A.M.-2 P.M.), (4 P.M.-7.30 P.M.), H. B. Davenport. (8 A.M.-9 A.M.), (3 P.M.-4 P.M.), (7.30 P.M.-11 P.M.), Robt. Hoppen, Jr.

Pedestrians.

(5 A.M.-6 A.M.), (7 A.M.-1 P.M.), (1 P.M.-4 P.M.), (9 P.M.-11 P.M.), Robt. Hoppen, Jr. (6 A.M.-7 A.M.), (6 P.M.-9 P.M.), H. B. Davenport.

ERIE RAILROAD COMPANY.

G.

Traffic Record.

Broadway, Paterson, N. J., Tuesday, November 11, 1913.

Time	Pedestrians	Trailing Cars	Motor Driven Vehicles	Autom	Motorcycles	Motorcycles	Motor Driven	Passenger Trains	Freight Trains	Death Baggage
A.M.										
5-6	31	0	11	1	1	0	6	4	0	0
6-7	340	27	0	4	3	0	6	0	0	1
7-8	255	20	23	5	0	0	12	11	1	1
8-9	294	25	30	7	4	1	6	0	1	2
9-10	185	25	21	23	6	0	9	7	0	3
10-11	222	24	26	19	3	0	9	0	1	3
11-12	222	22	27	23	6	0	10	4	3	3
P.M.										
12-1	444	27	27	23	6	0	5	4	0	1
1-2	372	25	22	20	7	3	7	3	0	1
2-3	241	22	24	27	5	1	6	4	1	4
3-4	512	44	29	24	2	1	7	4	1	2
4-5	350	44	22	23	9	0	8	6	0	1
5-6	472	25	19	20	5	0	7	7	0	1
6-7	662	41	16	25	3	0	11	11	0	0
7-8	614	22	3	16	3	0	6	6	0	3
8-9	560	25	6	26	3	1	6	6	0	0
9-10	547	27	3	7	0	1	3	4	0	0
10-11	345	27	0	3	0	0	6	6	3	0
TOTALS	7000	502	364	386	68	6	120	97	17	24

RECORDS TAKEN BY

All Items Except Pedestrians.

(3 A.M.-6 A.M.), (9 A.M.-3 P.M.), (3 P.M.-7 P.M.), (9 P.M.-11 P.M.), W. L. Blakesley. (9 A.M.-9 A.M.), (2 P.M.-3 P.M.), (7 P.M.-9 P.M.), L. F. Kleen.

Pedestrians.

(5 A.M.-9 A.M.), (9 A.M.-12 N.), (1 P.M.-3 P.M.), (4 P.M.-6 P.M.), (7 P.M.-9 P.M.), L. F. Kleen. (9 A.M.-9 A.M.), Robt. Hoppen, Jr. (3 P.M.-4 P.M.), (5 P.M.-6 P.M.), (9 P.M.-9 P.M.), (9 P.M.-11 P.M.), W. L. Blakesley.

ERIE RAILROAD COMPANY.

II.

Traffic Record.

Fair Street, Paterson, N. J., Saturday, November 29, 1913.

Minutes	Push-Urlass	Heavy Drums Vehicles	Autom	Motorcycles	Motorcycles	Motor Drums	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	5	0	0	0	0	1	4	1	1
6-7	56	4	0	1	0	7	6	1	1
7-8	51	7	1	3	0	11	12	0	0
8-9	39	10	1	3	0	7	5	1	1
9-10	39	16	3	3	0	7	6	0	0
10-11	73	11	6	1	0	3	3	0	1
11-12	77	18	4	1	0	8	8	0	3
P.M.									
12-1	139	11	3	3	0	3	5	0	0
1-2	94	21	5	0	0	3	5	0	1
2-3	94	16	6	0	1	10	9	1	0
3-4	60	13	3	4	0	7	5	1	0
4-5	59	19	4	3	0	5	5	0	0
5-6	73	8	3	3	0	9	8	1	3
6-7	54	6	1	1	0	6	6	0	0
7-8	52	3	3	0	0	7	7	1	0
8-9	70	1	0	0	0	5	5	0	1
9-10	46	0	3	0	0	5	4	1	0
10-11	35	0	1	0	0	5	4	1	0
TOTALS	1194	163	42	34	1	117	103	9	10
11-04-12	938	114	30	30	0	110	104	7	10
11-09-12	1124	163	40	34	1	117	103	9	10
Average	1031	139	37	37	1	116	103	8	10

RECORDS TAKEN BY

(5 A.M.-6 P.M.), (6:45 P.M.-11 P.M.), M. P. Kinkel. (6 P.M.-6:45 P.M.),
C. N. Myers.

Exhibit R-25.

ERIE RAILROAD COMPANY.

H.

Traffic Record.

Fair Street, Paterson, N. J., Friday, November 28, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Orill En. Pass
A.M.								
5-6	5	1	0	0	4	4	0	0
6-7	54	3	0	4	8	8	0	0
7-8	56	10	2	1	9	9	0	0
8-9	45	16	2	4	8	7	1	1
9-10	55	11	4	0	5	5	0	0
10-11	37	12	2	2	3	3	0	0
11-12	54	21	0	0	7	6	1	1
P.M.								
12-1	131	3	2	0	4	4	0	1
1-2	71	7	2	1	7	4	1	2
2-3	77	7	5	1	6	3	0	3
3-4	52	9	3	2	9	6	1	2
4-5	44	5	2	1	4	5	0	0
5-6	50	5	2	2	8	7	2	0
6-7	88	3	2	0	11	12	0	0
7-8	50	1	2	1	7	7	0	0
8-9	27	0	2	0	5	5	0	0
9-10	24	0	1	1	3	3	0	0
10-11	18	0	0	0	7	6	1	0
TOTALS	938	114	33	20	115	104	7	10

RECORDS TAKEN BY

(7.15 A.M.-6 P.M.), (7 P.M.-11 P.M.), M. P. Kitchel. (5 A.M.-7.15 A. M.),
(6 P.M.-7 P.M.), C. R. Myers.

Exhibit R-25.

ERIE RAILROAD COMPANY.

I.

Traffic Record on Hamilton Avenue, Paterson, N. J.,
Tuesday, December 2nd, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	17	1	0	2	0	6	5	1	0
6-7	153	8	1	3	0	8	7	1	0
7-8	150	18	4	6	0	9	9	0	0
8-9	127	19	14	5	2	7	6	0	1
9-10	106	20	13	3	0	7	6	0	1
10-11	52	17	12	2	0	4	2	0	2
11-12	138	28	9	3	0	6	6	0	1
P.M.									
12-1	295	22	10	13	0	5	6	0	0
1-2	122	21	9	9	0	4	2	1	1
2-3	95	17	22	2	0	7	4	0	4
3-4	160	21	13	1	1	7	4	1	2
4-5	184	25	16	7	2	5	5	0	0
5-6	147	18	21	3	0	8	9	0	1
6-7	237	4	10	4	0	11	12	0	0
7-8	179	3	2	0	0	6	6	1	6
8-9	100	4	3	0	0	3	5	1	0
9-10	75	1	1	1	0	3	3	0	0
10-11	70	0	1	0	0	8	4	2	2
TOTALS	2407	247	161	64	5	116	101	8	15
12-1-13	2394	298	159	71	3	119	100	13	8
12-2-13	2407	247	161	64	5	116	101	8	15
	2401	272	160	67	4	117	100	10	11

RECORD TAKEN BY

(5 A.M. to 10 A.M.), (11 A.M. to 9 P.M.), (10 P.M. to 11 P.M.), M. L. Zabriskie.
(10 A.M. to 11 A.M.), T. C. Brameld. (9 P.M. to 10 P.M.), W. L. Blakeney.

ERIE RAILROAD COMPANY.

I.

Traffic Record on Hamilton Avenue, Paterson, N. J.,
December 1st, 1913—(Monday).

Hours	Parians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Cabs Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5- 6	22	3	0	1	0	6	5	1	0
6- 7	143	13	0	5	0	6	6	0	0
7- 8	140	21	2	3	0	9	9	0	0
8- 9	138	22	7	2	0	7	6	2	0
9-10	88	22	5	0	0	5	5	0	0
10-11	82	31	9	3	0	4	3	0	0
11-12	102	34	9	6	0	8	6	2	1
P.M.									
12- 1	312	22	24	13	1	4	4	0	0
1- 2	125	18	19	7	0	6	4	2	1
2- 3	106	24	16	4	0	5	4	1	0
3- 4	139	29	11	6	1	9	4	0	5
4- 5	155	25	17	7	0	5	5	0	0
5- 6	170	18	18	5	1	8	8	0	1
6- 7	210	14	9	5	0	12	12	0	0
7- 8	185	1	6	0	0	8	7	0	0
8- 9	89	1	2	3	0	7	5	2	0
9-10	111	0	3	1	0	4	4	0	0
10-11	77	0	2	0	0	6	3	3	0
TOTALS	2394	298	150	71	3	119	100	13	8

RECORD TAKEN BY

(5 A.M. to 8.30 A.M.), (9.30 A.M. to 6.30 P.M.), (7.30 P.M. to 11 P.M.), M. L. Zabriskie. (8.30 A.M. to 9.30 A.M.), M. P. Kitchel. (6.30 P.M. to 7.30 P.M.), H. J. Stroebel.

ERIE RAILROAD COMPANY.

J.

Traffic Record.

Lafayette Street, Paterson, N. J., Tuesday, December 2, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	20	9	0	0	0	5	6	0	0
6-7	405	13	2	1	0	7	6	1	0
7-8	135	32	2	1	0	10	10	0	0
8-9	40	24	8	1	0	11	6	0	5
9-10	37	20	5	0	0	10	8	0	3
10-11	47	43	7	0	0	6	3	0	3
11-12	44	25	5	0	0	8	15	1	3
P.M.									
12-1	115	9	5	0	0	5	5	0	0
1-2	62	21	3	1	0	3	3	1	1
2-3	65	13	2	0	0	5	4	0	1
3-4	23	26	2	0	0	7	4	1	2
4-5	102	21	5	4	0	5	5	1	2
5-6	153	24	7	2	0	8	8	0	1
6-7	360	5	1	0	0	10	12	0	1
7-8	91	3	0	0	0	5	5	1	0
8-9	30	1	0	0	0	6	6	1	0
9-10	94	1	1	0	0	3	3	1	1
10-11	16	0	0	1	0	5	4	2	0
TOTALS	1839	290	55	11	0	119	113	10	23
12-1-13	2715	328	50	18	5	119	100	11	20
12-2-13	1839	290	55	11	0	119	113	10	23
Average	2277	309	52	14	2	119	106	10	21

RECORDS TAKEN BY

(5 A.M.-11 P.M.), C. R. Myers.

Exhibit R-25.

ERIE RAILROAD COMPANY.

J.

Traffic Record.

Lafayette Street, Paterson, N. J., Monday, December 1, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	35	11	1	1	1	7	6	0	1
6-7	430	11	1	1	0	6	6	0	0
7-8	180	35	2	1	0	10	10	0	0
8-9	85	20	2	1	0	7	5	1	1
9-10	135	30	7	1	0	5	5	0	0
10-11	111	25	5	1	0	7	2	0	5
11-12	90	32	2	2	0	8	4	2	3
P.M.									
12-1	232	20	5	0	2	5	5	0	0
1-2	65	20	5	1	0	6	3	2	1
2-3	68	27	4	1	0	6	4	1	3
3-4	55	28	2	2	0	5	4	0	3
4-5	120	24	2	1	0	6	5	0	2
5-6	200	28	5	2	0	8	8	0	1
6-7	503	13	7	1	0	12	13	0	0
7-8	133	2	0	1	1	7	7	0	0
8-9	78	2	0	0	1	7	6	2	0
9-10	135	0	0	1	0	3	3	0	0
10-11	60	0	0	0	0	4	4	3	0
TOTALS	2715	328	50	18	5	119	100	11	20

RECORDS TAKEN BY

(5 A.M.-11 P.M.), C. R. Myers.

ERIE RAILROAD COMPANY.

K.

Traffic Record on Franklin Street, Paterson, N. J.,
Tuesday, December 2nd, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5-6	9	1	0	0	0	0	6	0	0
6-7	212	5	0	2	0	8	8	0	0
7-8	50	5	0	3	0	10	9	0	0
8-9	26	4	1	0	0	6	5	0	1
9-10	17	7	1	0	0	9	7	0	4
10-11	14	11	2	0	0	6	3	0	3
11-12	12	2	1	0	0	8	5	1	3
P.M.									
12-1	120	2	1	0	1	5	5	0	0
1-2	21	5	2	0	0	3	3	1	1
2-3	32	3	0	0	0	5	4	1	1
3-4	54	8	0	2	0	7	4	1	2
4-5	33	4	1	0	0	4	5	0	0
5-6	80	6	0	0	0	8	8	0	0
6-7	83	2	0	1	0	7	12	0	0
7-8	47	1	0	0	0	0	4	1	0
8-9	89	0	0	2	0	0	6	1	0
9-10	23	0	0	1	0	0	3	0	0
10-11	16	0	0	1	0	0	4	2	0
TOTALS	938	66	9	12	1	86	101	8	15
12-1-13	1262	87	8	8	0	94	96	11	19
12-2-13	938	66	9	12	1	86	101	8	15
Averages	1100	76	8	10	1	90	98	9	17

RECORDS TAKEN BY

(7 A.M. to 6 P.M.), C. R. Myers. (5 A.M. to 7 A.M.), (7.30 P.M. to 11 P.M.),
J. C. Currie. (6 P.M. to 7.30 P.M.), W. L. Blakeney.

Exhibit R-25.

ERIE RAILROAD COMPANY.

K.

Traffic Record on Franklin Street, Paterson, N. J.,
Monday, December 1st, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
5- 6	12	2	0	0		0	6	0	1
6- 7	185	6	0	2		6	6	0	1
7- 8	81	10	1	1		12	8	0	0
8- 9	44	4	1	1		7	5	1	1
9-10	40	8	0	0		5	5	0	0
10-11	21	5	1	0		7	2	0	8
11-12	55	7	1	0		8	4	2	3
P.M.									
12- 1	210	7	1	2		5	5	0	0
1- 2	30	8	2	1		7	3	2	1
2- 3	25	6	0	0		6	4	1	2
3- 4	22	6	0	0		5	4	0	1
4- 5	27	6	0	0		5	5	0	0
5- 6	213	6	0	1		9	8	0	1
6- 7	134	2	0	0		12	13	0	0
7- 8	76	3	0	0		0	6	1	0
8- 9	47	1	0	0		0	5	2	0
9-10	29	0	1	0		0	3	0	0
10-11	11	0	0	0		0	4	2	0
TOTALS	1262	87	8	8	0	94	96	11	19

RECORDS TAKEN BY

(5 A.M. to 7 A.M.), B. S. Brameld. (7 A.M. to 8 A.M.), Wm. J. Gemeinhardt.
(8 A.M. to 5.30 P.M.), C. R. Myers. (5.30 P.M. to 11 P.M.), T. C. Brameld.

Exhibit R-25.

ERIE RAILROAD COMPANY.

L.

Traffic Record.

Keen Street, Paterson, N. J., Tuesday, December 2, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.								
5-6	12	3	0	0		5	1	0
6-7	122	4	1	5		6	1	0
7-8	44	11	0	2		9	0	0
8-9	59	11	3	1		6	0	0
9-10	44	9	0	0		5	0	7
10-11	31	9	3	1		3	0	4
11-12	24	10	3	1		5	1	4
P.M.								
12-1	197	13	4	3		5	0	0
1-2	53	12	2	0		2	1	1
2-3	19	10	1	1		4	0	1
3-4	47	10	1	3		3	1	3
4-5	41	13	0	1		5	0	0
5-6	66	8	0	0		8	0	1
6-7	191	10	0	4		12	0	0
7-8	94	0	0	0		7	1	0
8-9	77	0	0	0		4	1	0
9-10	42	1	0	0		4	0	0
10-11	15	0	0	0		4	2	0
TOTALS	1178	140	17	22	0	97	9	21
12-1-13	1298	143	29	21	0	101	11	23
12-2-13	1178	140	17	22	0	97	9	21
Average	1238	141	23	21	0	99	10	22

RECORDS TAKEN BY

(5 A.M.-7 A.M.), (6 P.M.-11 P.M.), M. P. Kitchel. (7 A.M.-6 P.M.), Wm. J. Gemeinhardt.

Exhibit R-25.

ERIE RAILROAD COMPANY.

L.

Traffic Record.

Keen Street, Paterson, N. J., Monday, December 1, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Cats Down	Passenger Trains	Freight Trains	Porter Engines
A.M.								
5-6	14	4	0	0		6	1	1
6-7	115	3	2	1		6	0	8
7-8	70	12	1	3		10	0	0
8-9	100	22	2	2		6	1	1
9-10	50	12	4	0		6	0	0
10-11	43	14	4	0		3	0	10
11-12	34	6	1	1		2	2	4
P.M.								
12-1	195	8	2	7		5	0	0
1-2	40	11	1	1		3	3	1
2-3	38	13	3	1		5	0	2
3-4	48	11	6	1		3	0	2
4-5	45	12	2	0		5	0	2
5-6	125	6	1	0		8	1	0
6-7	179	6	0	3		11	0	0
7-8	122	2	0	1		8	0	0
8-9	39	0	0	0		6	1	0
9-10	22	0	0	0		4	0	0
10-11	19	0	0	0		4	2	0
TOTALS	1298	142	29	21	0	101	11	23

RECORDS TAKEN BY

(8 A.M.-8 A.M.), (8 P.M.-11 P.M.), M. P. Kitchel. (8 A.M.-5 P.M.), Wm. J. Gemeinhardt.

ERIE RAILROAD COMPANY.

M.

Traffic Record.

Warren Street, Paterson, N. J., Tuesday, December 2, 1913.

Hour	Pedestrians	Horse Drawn Vehicles	Autos	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.									
3-6	8	4	0	0	0	5	5	1	0
6-7	149	6	2	3	0	6	6	1	0
7-8	72	14	0	1	0	10	9	0	0
8-9	90	13	2	2	0	6	6	0	0
9-10	31	8	1	1	0	9	5	0	5
10-11	24	14	2	2	0	8	3	0	4
11-12	86	20	2	3	0	7	5	1	4
P.M.									
12-1	202	16	3	10	0	5	5	0	0
1-2	42	13	3	2	0	4	3	1	1
2-3	34	13	0	2	0	9	4	0	2
3-4	102	14	3	4	0	8	4	1	3
4-5	69	12	1	4	0	4	5	0	0
5-6	66	3	0	0	0	8	8	0	2
6-7	178	9	3	0	0	10	12	0	0
7-8	101	2	3	0	0	7	6	1	0
8-9	44	0	0	0	0	5	6	1	0
9-10	25	0	0	0	0	3	3	0	0
10-11	22	0	0	0	0	7	4	2	0
TOTALS	1345	161	25	34	0	121	99	9	21
12-1-13	1225	163	26	27	1	130	96	11	25
12-2-13	1345	161	25	34	0	121	99	9	21
Average	1285	162	25	30	1	125	98	10	23

RECORDS TAKEN BY

(3 A.M.-7 A.M.), M. P. Kitchel. (7 A.M.-12 N.), (1 P.M.-11 P.M.), Wm. J. Gemeinhardt. (12 N.-1 P. M.), H. B. Davenport.

Exhibit R-25.

ERIE RAILROAD COMPANY.

M.

Traffic Record.

Warren Street, Paterson, N. J., Monday, December 1, 1913.

Hours	Pedestrians	Horse Drawn Vehicles	Automobiles	Bicycles	Motorcycles	Class Buses	Passenger Trains	Freight Trains	Dead Animals
A.M.									
5-6	14	2	0	0	0	6	6	0	1
6-7	145	7	2	2	0	6	6	0	0
7-8	83	11	0	0	0	11	11	0	0
8-9	50	10	3	3	0	6	4	1	1
9-10	32	12	3	1	0	6	6	0	1
10-11	36	15	4	0	0	0	3	0	8
11-12	20	16	4	1	0	9	3	3	3
P.M.									
12-1	191	12	3	6	0	3	3	0	0
1-2	51	16	1	4	1	6	4	1	2
2-3	50	13	1	1	0	10	5	0	3
3-4	105	9	2	3	0	6	3	0	1
4-5	63	16	1	3	0	6	3	0	2
5-6	82	5	3	0	0	7	6	0	1
6-7	151	17	1	1	0	10	11	0	0
7-8	68	2	1	0	0	7	6	1	0
8-9	41	0	0	3	0	7	3	2	0
9-10	36	0	0	0	0	4	4	0	0
10-11	6	0	0	0	0	3	3	3	0
TOTALS	1225	163	26	27	1	120	95	11	20

RECORDS TAKEN BY

(5 A.M.-8 A.M.), A. S. Hathaway. (8 A.M.-11 P.M.), Wm. J. Gemeinhart.

Exhibit R-25.

ERIE RAILROAD COMPANY.

N.

Traffic Record.

River Street, Paterson, N. J., Thursday, November 20, 1913

Time	Pedestrians	Trolley Cars	Heavy Trucks	Automobiles	Bicycles	Motorcycles	Gates Down	Passenger Trains	Freight Trains	Drill Engines
A.M.										
5-6	57	1	14	6	1	0	6	5	1	0
6-7	346	13	26	3	13	1	6	6	0	0
7-8	350	13	40	3	14	0	6	6	0	0
8-9	341	12	74	14	5	3	5	5	0	0
9-10	162	12	69	18	5	0	9	6	1	3
10-11	147	11	82	20	5	0	6	2	0	4
11-12	149	10	64	27	10	0	6	6	1	3
P.M.										
12-1	340	11	66	19	20	4	4	4	0	0
1-2	295	13	51	24	10	6	11	3	1	6
2-3	187	12	69	32	8	1	5	3	1	0
3-4	198	12	55	31	10	6	7	5	0	3
4-5	270	11	71	33	7	2	6	5	0	3
5-6	546	13	56	39	11	2	6	3	0	3
6-7	756	16	31	16	20	3	11	13	0	0
7-8	500	11	32	12	3	3	7	6	1	0
8-9	305	8	4	12	1	0	5	5	1	0
9-10	346	8	3	5	1	0	4	3	1	0
10-11	183	7	0	3	0	3	4	4	0	0
TOTALS	5888	196	777	311	143	25	123	97	8	20
11-12-13	3204	184	763	365	163	19	117	96	10	24
11-19-13	3227	196	726	321	136	35	123	100	8	19
11-20-13	3458	196	777	311	143	32	123	97	8	20
Average	5373	193	736	322	143	28	121	97	8	21

RECORDS TAKEN BY

All Items Except Pedestrians.

(5 A.M.-6 A.M.), (9 A.M.-1 P.M.), (3 P.M.-7 P.M.), (4 P.M.-6 P.M.), H. B. Davenport. (6 A.M.-9 A.M.), (2 P.M.-4 P.M.), (7 P.M.-11 P.M.), L. F. Kleen. (1 P.M.-3 P.M.), W. L. Blakeney.

Pedestrians.

(5 A.M.-6 A.M.), (10 A.M.-2 P.M.), (3 P.M.-7 P.M.), (6 P.M.-11 P.M.), W. L. Blakeney. (8 A.M.-10 A.M.), (2 P.M.-3 P.M.), L. F. Kleen. (7 P.M.-9 P.M.), H. B. Davenport.

ERIE RAILROAD COMPANY.

N.

Traffic Record.

River Street, Paterson, N. J., Tuesday, November 18, 1913.

Hours	Pedestrians	Trucking Cars	Motor Driven Vehicles	Autom	Bicycles	Motorcycles	Gasoline Buses	Passenger Trains	Freight Trains	Switch Engines
A.M.										
5-6	44	1	31	0	4	0	0	6	1	4
6-7	631	14	29	2	15	0	6	4	1	1
7-8	296	13	53	14	13	1	0	10	0	1
8-9	171	10	60	23	6	0	7	5	0	0
9-10	111	12	75	25	3	0	9	6	1	0
10-11	98	11	65	24	2	1	5	2	0	4
11-12	120	12	76	36	9	1	7	5	1	2
P.M.										
12-1	543	13	55	23	20	2	3	3	0	0
1-2	163	7	51	23	5	4	8	4	0	3
2-3	126	8	34	23	9	1	7	6	1	3
3-4	173	6	40	20	12	1	4	3	0	1
4-5	245	10	60	27	10	2	6	5	1	0
5-6	506	10	46	37	11	2	7	7	1	0
6-7	917	14	19	19	13	1	10	9	1	0
7-8	410	12	17	10	6	0	8	7	1	0
8-9	236	12	7	19	3	1	5	8	0	1
9-10	225	11	2	9	0	1	3	3	0	0
10-11	152	8	0	4	0	0	4	6	1	0
TOTALS	5804	144	755	355	102	19	117	96	10	24

RECORDS TAKEN BY

All Items Except Pedestrians.

(5 A.M.-4 A.M.), (2 P.M.-4 P.M.), (6 P.M.-11 P.M.), L. F. Kleen. (6 A.M.-4 A.M.), (4 P.M.-5 P.M.), H. B. Davenport. (9 A.M.-2 P.M.), (5 P.M.-6 P.M.), W. L. Blakeney.

Pedestrians.

(6 A.M.-8 A.M.), (7 P.M.-11 P.M.), W. L. Blakeney. (6 A.M.-11 A.M.), (12 N.-4 P.M.), L. F. Kleen. (11 A.M.-12 N.), (4 P.M.-7 P.M.), H. B. Davenport.

ERIE RAILROAD COMPANY.

N.

Traffic Record.

River Street, Paterson, N. J., Wednesday, November 19th, 1913.

Hour	Pedestrians	Trailing Cars	Motor Trucks	Autom	Bicycles	Motorcycles	Clown Cars	Passenger Trains	Freight Trains	Switch Engines
A.M.										
5-6	60	3	10	0	1	0	5	5	1	0
6-7	673	11	21	0	7	1	7	6	0	1
7-8	260	16	60	12	15	2	10	13	1	0
8-9	193	10	48	25	12	1	5	4	0	1
9-10	137	12	51	23	3	0	6	6	0	0
10-11	124	8	50	16	2	0	3	3	0	0
11-12	161	10	79	19	7	1	10	6	0	4
P.M.										
12-1	516	12	42	10	25	3	5	4	0	0
1-2	243	10	56	20	2	2	7	4	0	2
2-3	155	12	37	27	3	4	9	5	1	4
3-4	303	11	60	24	16	5	7	3	0	2
4-5	285	11	81	45	10	2	6	5	0	2
5-6	494	12	52	21	10	1	7	8	0	1
6-7	773	17	17	12	21	6	12	12	0	0
7-8	359	12	8	10	2	3	7	5	1	0
8-9	283	11	3	15	0	2	6	5	1	0
9-10	271	9	2	6	0	1	6	5	2	0
10-11	25	7	0	4	0	0	4	3	1	0
TOTALS	5027	196	726	321	126	25	123	140	8	19

RECORDS TAKEN BY

All Items Except Pedestrians.

(5 A.M.-6.30 A.M.), (6.30 A.M.-1 P.M.), (3 P.M.-7 P.M.), (8 P.M.-11 P.M.),
 H. B. Davenport. (6.30 A.M.-6.30 A.M.), W. L. Blakeney. (1 P.M.-5 P.M.), (7 P.M.-
 9 P.M.), L. F. Kleen.

Pedestrians.

(5 A.M.-6 A.M.), (9 A.M.-6 P.M.), (6 P.M.-11 P.M.), L. F. Kleen. (6 A.M.-9
 A.M.), W. L. Blakeney. (5 P.M.-6 P.M.), H. B. Davenport.

Exhibits R-26 to R-43.

R-26 for identification.

Original data embraced in R-25.

BLUE PRINTS OF VIEWS.

- R-27. Madison Avenue.
- R-28. Straight and Clay Streets.
- R-29. Cedar Street.
- R-30. Market Street.
- R-31. Ellison Street.
- R-32. Van Houten Street.
- R-33. Broadway.
- R-34. Fair Street.
- R-35. Hamilton Avenue.
- R-36. Lafayette Street.
- R-37. Franklin Street.
- R-38. Keen Street.
- R-39. Warren Street.
- R-40. River Street.

EXHIBIT R-41.

Photographs of Crossings.

EXHIBIT R-42.

Agreement between Erie R. R. Co. and Weidmann Silk Dyeing Co., dated July 12, 1911. Same as R-62.

EXHIBIT R-43.

Time Table. Printed in testimony at page 326.

EXHIBIT R-44.

ERIE RAILROAD SYSTEM.

The following table shows the Operating Revenues, Operating Expenses, and Operating Income for the period 1903 to 1913, expressed in mills per traffic unit, viz.: Revenue Ton Miles plus Passenger Miles:

	1903	1910	1913	Five Year Average 1903-1907	Five Year Average 1908-1912
	(Mills)	(Mills)	(Mills)	(Mills)	(Mills)
Total Operating Revenues (including outside operations)	7.79	7.97	7.71	7.83	7.90
Maintenance of Way & Structures,	.64	.77	.78	.70	.81
Maintenance of Equipment,	.97	1.33	1.29	1.19	1.38
Transportation & Traffic Expenses,	2.70	2.74	2.78	2.84	2.85
General Expenses,	.15	.16	.16	.17	.16
Outside Operations Expenses	.39	.46	.42	.42	.45
Total Operating Expenses	4.85	5.46	5.43	5.32	5.65
Taxes,	.17	.21	.25	.18	.21
Total Operating Expenses and Taxes,	5.02	5.67	5.68	5.50	5.86
Operating Income,	2.77	2.30	2.03	2.33	2.04

Office of the Comptroller.
December 22, 1913.

EXHIBIT R-45.**ERIE RAILROAD COMPANY.**

Statement showing cost to repair in kind, damage to track, roadway, bridges, structures, etc., also expense involved in cleaning creek channels, track ditches, etc., as a result of flood conditions in March and April, 1913.

Division	Amount.
Meadville	\$33,787.85
Mohoning	96,903.09
Cincinnati	80,193.34
Chicago and Erie.....	4,906.61
	<hr/>
	\$215,790.89

NOTE: The above cost does not include loss of gross revenue sustained during the months of March and April as a result of flood conditions, which was quite heavy, but difficult to arrive at in figures.

EXHIBIT R-46.**ERIE RAILROAD COMPANY.**

(Erie Grand Division.)

Statement showing cost to repair, in kind, damage to track, roadway, bridges, structures, etc., also the expense involved in cleaning creek channels, track ditches, etc., as a result of the flood conditions in March and April, 1913.

Division.	Amount.
Delaware	\$2,792.53
Susquehanna	7,703.26
Wyoming	290.93
Rochester	2,697.26
Alleghany	4,158.46

Exhibit R-47.

Division.	Amount.
Buffalo	\$10,291.05
Bradford	869.18
Genessee River	1,944.70
	<hr/> \$30,747.37

NOTE: The above cost does not include loss of gross revenue sustained during the month of March or April as a result of flood conditions, which was quite heavy, but difficult to arrive at in figures.

EXHIBIT R-47.

ORIGINAL PETITION OF PATERSON.

Paterson, N. J., March 15th, 1913.

To the Board of Public Utilities,
State of New Jersey.

Gentlemen:

The petition of the Board of Finance of the City of Paterson, respectfully shows unto your Honorable Body, that the Erie Railroad Company operates a railroad, running through the City of Paterson, in the County of Passaic, and the State of New Jersey, and entering the said City at the border line of the Township of Acquacknonk, and thence running in a north-westerly direction to about Taylor Street, in the said City, where it assumes a northerly direction, running to about Godwin Street in the said City, where it assumes a northeasterly direction, finally crossing the City line into the Borough of Hawthorne, at the Passaic River.

And your petitioner shows, that in passing through the City the said Railroad crosses a great number of streets and highways at grade, and that such crossings are dangerous to public safety, and that public travel on the streets and highways, crossing are greatly impeded by reason of such crossing.

Exhibit R-47.

Your petitioner further shows that the said Erie Railroad Company operates such Railroad by virtue of lease from two separate Railroad Companies; that it operates the part of such Railroad south of Market Street in the said City by virtue of a lease from the Paterson and Hudson River Railroad Company; and it operates the part of such railroad north of Market Street by virtue of a lease from the Paterson and Ramapo Railroad Company.

That the said Railroad crosses Market Street, one of the principal thoroughfares of Paterson at grade, and that by reason of the great number of engines, passenger and freight trains crossing the said point, travel along said Market Street is greatly impeded and hindered, and that lives of persons compelled to use said street at this point are greatly endangered.

That your petitioners are unable to set forth, whether the right-of-way leased by the said Erie Railroad Company at this point is owned by the Paterson and Hudson River Railroad Company, or by the Paterson and Ramapo Railroad Company, but asserts that the same is owned by one or the other of said Companies.

Your petitioner shows, that upon said Market Street, the Public Service Railway Company operates two lines of street cars, one running east and west on Market Street, over the said crossing, and the other running along Market Street west of the said crossing, and proceeding along another street or highway, known as Park Avenue, to the east of said crossing, which last named street begins at the said crossing and runs to the eastward.

That in the opinion of your petitioners, more pedestrians and vehicles use this crossing than any other crossing in the State of New Jersey, and that by reason thereof, traffic is impeded to a greater extent

Exhibit R-47.

than at any other such crossing within the knowledge of your petitioner.

Your petitioner further shows that the Public Service Electric Company maintains certain lines of wires over this crossing, both under and above said crossing; that the Passaic Water Company maintains certain pipes for the distribution of potable water, under the tracks of the said railroad; the Public Service Gas Company maintains certain pipes for the distribution of gas, under said crossing, and through the said streets.

(2) Your petitioner further shows that said railroad crosses Cedar Street at grade, and that the main line of said railroad at this point is owned by the Paterson and Hudson River Railroad Company, but the Erie Railroad Company owns and operates certain other side tracks at this crossing; said crossing interferes with and impedes very seriously the traffic over the said highway, and that same is extremely dangerous to public safety.

(3) Your petitioner further shows that the said railroad crosses Clay Street at grade, and that the main line of said railroad at this point is owned by the Paterson and Hudson River Railroad Company, but the Erie Railroad Company owns and operates certain tracks at this crossing; said crossing interferes with and impedes very seriously the traffic over said highway, and that same is extremely dangerous to public safety.

(4) Your petitioner further shows, that said railroad crosses Madison Avenue at grade; that the main line tracks at this point are owned by the Paterson and Hudson River Railroad Company; said crossing is extremely dangerous to public safety, and impedes travel on said Madison Avenue.

(5) That the said Erie Railroad Company also crosses Ellison Street in the City of Paterson, and

Exhibit R-47.

that the right-of-way at this point is owned by the Paterson and Ramapo Railroad Company; that no street railway lines use this crossing.

(6) That the said Erie Railroad Company crosses Van Houten Street, in the City of Paterson, and that the right-of-way at this point is owned by the Paterson and Ramapo Railroad Company; that no street car lines use this crossing.

(7) Broadway is crossed by the line of said Railroad Company, and that the right-of-way at this point is owned by the Paterson and Ramapo Railroad Company; that a street railroad is maintained at this point by the Public Service Railway Company, which operates a line east and west of Broadway at this point; that the Passaic Water Company owns a system of water pipes under this crossing; that the Public Service Gas Company owns and operates a system of pipes for the distribution of gas under this crossing; and that the Public Service Electric Company maintains a line of electric wires for supplying current over this crossing and also under same; that the New York Telephone Company also operates a series of conduits, used in and about for its telephone system under this crossing.

(8) That the said Railroad Company also crosses Fair Street in the City of Paterson, and that the right-of-way at this point is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(9) That the said Railroad Company also crosses Hamilton Avenue in the City of Paterson, and that the right-of-way at this point is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(10) That the said Railroad Company also crosses Tyler Street in the City of Paterson, and that the right-of-way at this point is owned by the Paterson

Exhibit R-47.

and Ramapo Railroad Company; that no street car line uses this crossing.

(11) That the said Railroad Company also crosses Governor Street in the City of Paterson, and that the right-of-way is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(12) That the said Railroad Company also crosses Lawrence Street in the City of Paterson, and that the right-of-way is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(13) That the said Railroad Company also crosses Montgomery Street in the City of Paterson, and that the right-of-way is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(14) That the said Railroad Company also crosses Lafayette Street in the City of Paterson, and that the right-of-way is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(15) That the said Railroad Company also crosses Franklin Street at this point in the City of Paterson, and that the right-of-way is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(16) That the said Railroad Company also crosses Keene Street in the City of Paterson, and that the right-of-way is owned by the Paterson and Ramapo Railroad Company; that no street car line uses this crossing.

(17) That the said Railroad Company also crosses Warren Street in the City of Paterson, and that the right-of-way is owned by the Paterson and Rama-

Exhibit R-47.

po Railroad Company; that no street car line uses this crossing.

(18) That the said Railroad Company also crosses River Street at a very acute angle, and that by reason thereof, the same is a very dangerous crossing, and that travel is impeded greatly thereupon. The right-of-way at this point is owned by the Paterson and Ramapo Railroad Company; that a street railway is maintained at this crossing by the Public Service Railroad Company, which operates a line east and west on River Street at this point, and that the Passaic Water Company owns a system of water pipes under this crossing; that the Public Service Gas Company owns and operates a system of pipes for the distribution of gas under this crossing; that the Public Service Electric Company maintains a line of electric wires for supplying electric current over this crossing and also under same; that the New York Telephone Company also operates a series of conduits in and about, for its telephone system under this crossing.

That all the above crossings are dangerous to public safety and greatly impede and interfere with travel over the said streets.

Your petitioner further shows that because of the nearness of these crossings, one to the other, and because of the grades of said streets and the conditions in the vicinity thereof, it is impossible to substitute a crossing not at grade at any one, without changing all of them from grade. When of the said crossings is altered so as to substitute a crossing not at grade, it will be necessary to change all the others, and that the question of the change of the same should be considered at one time, so that whatever change is made in one crossing, should be considered with reference to changes made at each of the others.

Your petitioner therefore prays that your Honorable Board shall fix a time and a place for a hearing before it, to determine what changes or alterations

Exhibit R-47.

should be made at the above named crossings, and requests that an order be made, directing the said Railroad Company to make such alterations that the said Railroad shall no longer cross the public streets or highways at grade, and your petitioner will therefore pray, etc.

BOARD OF FINANCE,
Per (Signed) John J. Brophy,
Clerk to the Board of Finance.

Exhibit R-48.

EXHIBIT R-48.
STATEMENT OF SIGNAL AND INTERLOCKING EXPENDITURES.

Division	Year Ending June 30th, 1911	Year Ending June 30th, 1912	Year Ending June 30th, 1913	Since June 30, 13, to date.	Contemplated	Interlocking	Totals
Terminal	Interlocking	104,834.00	12,000.00			191,004.67	
	Automatic signals.	30,001.07					30,001.07
New York	Interlocking	96,979.00	96,979.00			53,504.00	
	Automatic signals.	16,406.00	53,131.35				61,677.69
Delaware	Interlocking						
	Automatic signals.			66,197.12		1,540.00	164,133.00
Susquehanna	Interlocking	131,448.33				67,379.00	
	Automatic signals.			1,500.04	16,471.50		131,448.33
Buffalo	Interlocking	17,000.00	54,000.00	145,203.16		17,500.00	
	Automatic signals.			27,000.00	113,500.00		160,000.00
Mahoning	Interlocking						
	Automatic signals.					33,037.00	113,500.00
Cincinnati	Interlocking		33,037.00				
	Automatic signals.		61,379.43	116,532.05	17,964.55		173,879.03
Chicago & Erie	Interlocking		43,540.00	10,000.00	33,540.00	67,000.00	
	Automatic signals.				210,470.00		310,470.00
NJ and NY	Interlocking						
	Automatic signals.		33,464.30				33,464.30
Totals.		304,657.48	213,133.35	307,133.59	334,611.73	604,673.38	1,807,793.17
Total to 1911 ...		\$304,657.48				Contemplated	334,611.73
Total to 1913 ...			\$508,791.00				604,673.38
Total to 1913 ...			\$508,791.00				
Total to date (Jan. 9, 1913) ...			\$508,791.00	\$1,305,430.76			
Total expended and contemplated.							\$1,807,793.17

EXHIBIT R-49.

(Same as R-47 for Identification. See p. 348.)

ERIE RAILROAD INDUSTRIAL SIDINGS IN
PATERSON, N. J.

Industry	Identification	Length	Agreement	Average cars per month
1. Leslie Elliott Co.	v Boiler Works	881	9/8/12	4
2. Cooke Locomotive Works	v Locomotives	(5000)		88
3. Parake Steel Co.	v Steel	(5000)		8
4. R. H. McDonald	v Storage	(75)		11
5. G. A. Zabriskie	v Flour	(75)		8
6. Com. Lumber & Mill Wk. Co.	xv Lumber	306	6/14/12	..
7. C. Kelly (T. L.)	a Bldg. material	(300)		6
8. M. Goble	xa			
9. Nat'l Fuel & Supply Co.	a Wood			8
10. Standard Oil Co.	a Oil			23
11. John Agnew & Co. (a)	v Bldg. material	(2000)		} 900
(b)	v Coal	(400)		
(c)	v	(200)		
12. Samuel Smith & Son	v Boilers	290		10
13. Rogers Locomotive Co.	y Locomotive	yd trk.		86
14. James Wilson & Son	t Coal	(600)		135
15. McNab & Harlin	b Castings	(1000)		33
16. Jas. W. Graham & Co.	b Brewery			8
17. Nat'l Biscuit Co.	b Biscuits			
18. Morris & Co.	v Beef	(100)		61
19. Paterson Vehicle Co.	y Vehicles			1
20. Paterson Beef Co.	xv Beef	(75)		
21. E. M. Stiles	y Lumber			8
22. The Herman Co.	v Wholesale Grocers	(250)		96
23. Sulzberger Sons Co.	v Beef	(100)		18
24. David G. Rogers	xv	(50)	10/20/00	
25. Armour & Co.	v Beef	(400)		14
26. Hinchliffe Brg. Co.	v Coal	(350)		31
27. Katz Bros.	v Brewery	(150)		28
28. P. S. Van Kirk Co.	f Lumber	587	6/25/07	23
29. A. H. Smith	st	330	1/20/00	
30. Myer & DeVoght	v Grain	(120)		16
31. Armstrong Sons Co.	c Coal	(900)	2/21/00	12
32. A. H. Smith	c Stone	(75)		4
33. D. Fullerton & Co.	c Beef	(120)		80
34. Atherton Grain Co.	c Grain	(90)		7
35. J. A. Lydecker	c Grain	(90)		8
36. Public Service Gas Co. (a)	v Coal	411	6/21/11	} 100
(b)	v Oil	600	5/23/07	
37. J. Van Den Handle	v Coal	(200)		5
38. Swift & Co.	v Meat Scrap	395	10/9/12	9
39. H. M. Post	v Coal	(400)		37
40. Ashley & Bailey	v Coal	400	2/20/00	
41. Nat'l Silk Dyeing Co.	v Coal	700	12/20/11	1
42. Grasselli Chemical Co.	v Chemicals	(150)		1

Exhibit R-49.

EXHIBIT R-49 (Continued).

Industry	Use	Material	Length	Agreed	Value
43. Weidman Silk Dyeing Co. (a)	v	Coal	(300)	6/20/05	
(b)	v	Storage house	800	7/12/11	
(c)	v	Coal	(400)	5/11/10	
(d)	v			5/11/10	
44. L. Lapot	v	Scrap iron	104	8/27/07	
45. Southerland & Edwards	v	Rope	270	12/30/11	
46. Nicholson File Co.	v	Files	245	12/21/04	
47. Hygeia Ice Co.	x	Ice		11/12/04	
48. Puglia & Gramatica	v	Coal	904	7/8/00	
49. Auger & Simon Silk Dye Co.	xv		275	2/14/06	
50. Paterson Consol. Ice Co.	x	Ice		11/14/10	
51. Van Winkle-Bromley Lbr. Co.	v	Lumber	232	5/11/11	
52. Gulf Refining Co.	d	Oil	(150)	2/15/11	
53. Diamond Coal Co.	v	Coal	(200)		
54. William Dunkley	d	Charcoal			
55. Bon Arbor Chemical Co.	b	Chemicals			
56. Centre Paper & Box Co.	c	Paper boxes	(100)		
57. Waldo Silk Ribbon Co.	c	Silk mach.			
58. Passaic Water Co.	d				
59. Hamilton Lumber Co.	t	Lumber			
60. Fuller's Express Co.	v	Express	(500)		
61. Olive Oil Soap Co.	f				

Legend

- v. Exclusive siding.
- x. Not in use.
- a. Joint siding.
- y. Yard track.
- t. Team delivery track.
- b. Joint siding.
- f. Joint siding.
- c. Joint siding.
- d. Joint siding.
- c. Joint siding.

(Figures in brackets) Estimated lengths of sidings.

Exhibit R-50.

EXHIBIT R-50.

THIS AGREEMENT, made in duplicate this Eighth day of July in the year one thousand nine hundred and Twelve by and between Erie Railroad Company (hereinafter called the Railroad Company) of the first part, and Leslie Elliott & Company, a co-partnership consisting of David Leslie and William Elliott, Jr., (hereinafter called the Shipper),

WITNESSETH

THAT, WHEREAS the shipper desires the construction of side-tracks, about 881 feet long, near Paterson in the County of Passaic and State of New Jersey which side-track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side-tracks about 881 feet in length, extending from a point of connection in the west bound main track. Said point of connection being 259 feet south or east along south rail of the west bound track from a point where said south rail intersects with the south or easterly line of Iowa Avenue, continued across the said south rail, thence extending in an easterly direction and parallel to the west bound main track 418 feet; thence beginning at a point of connection 208 feet from the switch point of the first described side track and extending in a north or westerly direction 463 feet, in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said sidetrack

Exhibit R-50.

which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials, and the cost of all the labor used in the construction of said side-tracks, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Four thousand five hundred and thirty seven and 10/100 (\$4537.10) dollars, which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side-track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than seven feet to the nearest rail of said side-track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Exhibit R-50.

Sixth: That portion of said side-tracks located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-tracks located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-tracks and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side-tracks involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-tracks, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employee; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said

Exhibit R-50.

side-tracks, or the cars standing thereon, providing for the giving of notice thereof to the employes of the Railroad Company operating upon said side-tracks.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-tracks.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY.

By J. C. STUART,
Vice President.

Witness as to party of the first part:

A. N. DUGAN.

LESLIE ELLIOTT & COMPANY,

By WM. ELLIOTT, JR.

Witness as to party of the second part:

M. C. MURRAY.

A correct copy:

D. B.

Secretary.

Exhibit R-51.

EXHIBIT R-51.

THIS AGREEMENT, made in duplicate this fourteenth day of September in the year one thousand, nine hundred and twelve, by and between the ERIE RAILROAD COMPANY (hereinafter called the Railroad Company) of the first part, and the Commercial Lumber & Millwork Company, a Corporation, existing under, and by virtue of the Laws of the State of New Jersey (hereinafter called the shipper) of the second part,

WITNESSETH:

THAT, WHEREAS, the Railroad Company has constructed, owns and is now operating a side track about 306 feet long, near Paterson, in the County of Passaic, and State of New Jersey.

THAT, WHEREAS, the shipper desires the construction of an extension to said side track of about 35 feet, which side track extension the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side track extension about thirty five (35) feet in length, extending in a southerly direction from the end of the existing side track, in substantially the location and position shown by the red lines upon the plan hereto attached and made a part hereof,—said existing side track being shown in yellow lines.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side track and extension, which shall be located outside of the lands of the Railroad Company, including such con-

Exhibit R-51.

sents and permits as may be necessary for the construction and operation of said side track and extension over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side track and extension, as hereinafter provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials, and the cost of all the labor used in the construction of said side track extension, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of one hundred fifty one and 32/100 (\$151.32) dollars, which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track, and extension thereto, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side track, or nearer than seven feet to the nearest rail of said side track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Exhibit R-51.

Sixth: That portion of said side track located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side track, and without unnecessary damage to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side track and extension involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side track and extension, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employes, or by any other cause; and all risk of injury to the persons of or of death of its officers or members, or of any of its employes, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employes; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the

Exhibit R-51.

government of its employes while on or about said side track, or the cars standing thereon, providing for the giving of notice thereof to the employes of the Railroad Company operating upon said side track extension.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days previous notice in writing of such cancellation and termination, but, until so canceled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By DAVID BOSMAN,
Vice President.

Witness as to party of the first part

R. A. PEEL,

COMMERCIAL LUMBER &
MILLWORK COMPANY,

By GEORGE W. BOGEN,
Treas. & Gen. Manager.

Witness as to party of the second part,

GUSTAV A. HUNZIKER,
Secy.

Exhibit R-52.

EXHIBIT R-52.

THIS AGREEMENT, made in duplicate this twentieth day of October in the year 1905, by and between the Erie Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the David G. Rogers Company, of Paterson, New Jersey, hereinafter called the party of the second part.

WITNESSETH:

THAT WHEREAS, The party of the second part has requested the Railroad Company to construct a certain side track, which shall connect the road and tracks of the Railroad Company with the premises of the party of the second part, and

WHEREAS, The Railroad Company is willing to construct said side track as hereinafter provided.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter stated, it is agreed as follows:

First: The Railroad Company agrees to construct a side track 215 feet long, as shown by the parallel red lines on the map hereto attached and hereby made a part of this agreement.

Second: The party of the second part agrees to procure all consents and permits from the local authorities and from the property owners and others, which shall be necessary for the construction of said side track and the operation of cars and engines there free from all claim for injury to property or otherwise, and hereby gives to the Railroad Company, its successors and assigns the right to enter upon the premises of the party of the second part for the purpose of constructing that portion of said side track, which shall be located outside the lands and right of way of the Railroad Company and for the removal of the materials thereof as herein provided.

Exhibit R-52.

Third: The party of the second part will, at its own proper cost and expense do all the grading as directed by the Railroad Company, furnish the cross and switch ties, rails, frogs, switches, splices, spikes, bolts, guard rails, switch points and switch stands delivered on the site of said side track and pay for all labor required in the construction of said side track.

Fourth: The Railroad Company hereby agrees to keep the siding in such repair as it may deem necessary for the safe transaction of business and the party of the second part agrees to pay to the party of the first part on demand, the actual market value of the material furnished for the repairs, based on the cost of the material, the labor in handling and in transportation to the siding, the Railroad Company to determine what repairs are necessary to the siding.

Fifth: The said party of the second part will not erect or cause to be erected any platform, shed or other structure along or over said side track without leaving sufficient clearance for the cars and engines of the Railroad Company, and without the written approval of the said Railroad Company of the plans and specifications of such structure.

Sixth: That all materials, namely: rails, frogs, switches, splices, bolts, guard rails, switch points and switch stands furnished by the David G. Rogers Company in the construction of said side track, may be removed by the said Company, its successors and assigns at any time, the party of the first having no claim whatever upon such material, either in law or in equity, nor will it at any time make claim thereto, but the same is the sole and exclusive property of the said David G. Rogers Company and not a fixture appurtenant to the land.

Seventh: The party of the second part assumes all risk of injury to the person of its officers, or of

Exhibit R-52.

any of its employes, and all loss of or damage to its property by fire, or otherwise, occasioned by, arising out of, or connected with the construction, maintenance or operation of said side track, whether caused by negligence of the said Railroad Company, its servants, agents, employes or otherwise, and hereby releases said Railroad Company, its successors and assigns from all claims for such loss or damage to property and for injuries to the persons of its officers, or of any of its employes and agrees to indemnify and save harmless said Railroad Company, its successors and assigns from all claim for such loss, damage or injury as aforesaid.

Eighth: The party of the second part further agrees to promulgate and enforce proper and suitable rules for the government of its employes, who may be working on or around said side track and the cars standing thereon, to the that when so at work, notice may be given to the employes of the Railroad Company and the danger of accidents thereby reduced.

Ninth: This agreement shall carry to and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

ERIE RAILROAD COMPANY,

By F. D. UNDERWOOD.

CRAIG GRAVES.

As to the party of the first part

DAVID G. ROGERS COMPANY,

By DAVID G. ROGERS,

Pres.

As to the party of the second part.

EXHIBIT R-53.

THIS AGREEMENT, made in duplicate this twenty-fifth day of June, in the year one thousand nine hundred and seven by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company) of the first part, and P. S. VAN KIRK COMPANY, a corporation, organized under the laws of New Jersey (hereinafter called the Shipper), of the second part,

WITNESSETH:

THAT, WHEREAS, the Railroad Company has heretofore constructed and is now operating for the Shipper at Paterson, in the County of Passaic and State of New Jersey, a side track, beginning at a point of connection with the Railroad Company's west bound main track near Montgomery Street and extending therefrom in a curve to the north and east across Lawrence Street, a distance of about five hundred eighty-seven (587) feet, substantially as indicated on the plan hereto attached, which side track is the property of the Railroad Company; and

WHEREAS, The Shipper desires the construction of an additional side track in connection with the side track above described, which additional side track the Railroad Company is willing to construct upon the conditions hereinafter set forth; and it is further desired that the ownership, maintenance and operation of both said side tracks shall be covered by this agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said additional side track about three hundred (300) feet in length, beginning at a point of connection with the existing

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side track above described at a point near Lawrence Street and extending therefrom across said Lawrence Street to the coal pockets of the Shipper, in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same, and to remove therefrom the materials in said side track, as hereinafter provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials, other than rails and fastenings, and the cost of all the labor used in the construction of said side track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Four hundred ninety-two and 94/100 (\$492.94) Dollars, which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and value of all materials, other than rails or fastenings used in repairing or maintaining said side tracks such value being based upon the cost of such materials

Exhibit B-53.

and the labor in handling and transporting the same to said side tracks.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side tracks or nearer than six feet to the nearest rail thereof, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side tracks located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control, and all materials used in the construction and maintenance of those portions of said side tracks located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side tracks and, without unnecessary injury to said premises, to remove therefrom the materials furnished and owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side tracks involves a risk of injury to persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side tracks, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such

Exhibit R-33.

injuries are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage or injury so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side tracks, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side tracks.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination, but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, successors and assigns, respectively.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
Gen. Manager.

Witness as to party of the first part:

GEO. P. BRYAN.

P. S. VAN KIRK COMPANY,

By P. S. VAN KIRK,
President.

Witness as to party of the second part:

W. S. RIGGIN,
Paterson.

EXHIBIT R-54.

THIS AGREEMENT, made in duplicate this 29th day of January, in the year one thousand nine hundred and nine, by and between Erie Railroad Company, (hereinafter called the Railroad Company), of the first part, and A. H. Smith, of Paterson N. J., (hereinafter called the Shipper), of the second part,

WITNESSETH :

THAT, WHEREAS the Shipper desires the construction of a side track, about 350 feet long, near River Street, Paterson, in the County of Passaic and State of New Jersey, which side-track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side-tracks about 350 feet in length, extending from a point of connection in the siding located between Keene and Lafayette Streets in the City of Paterson and extending to the property of the Shipper, in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove

Exhibit R-54.

therefrom the materials in said side-track, as herein-after provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials, other than rails and fastenings, and the cost of all the labor used in the construction of said side-track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Seven Hundred Seventy-Six Dollars and Ten Cents (\$776.10), which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials, other than rails and fastenings, used in repairing or maintaining said side-track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than six feet to the nearest rail of said side-track, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side track located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the lands of the Railroad Company shall be and

Exhibit R-54.

remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement the Railroad Company shall have the right to enter upon the premises occupied by said side-track, without unnecessary injury to said premises to remove therefrom the materials furnished and owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side-track involves a risk of injury to persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage or injury so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least sixty days' previous notice in writing of such can-

Exhibit R-55.

cellation and termination, whenever it becomes necessary to change or to abandon said side-track on account of any changes in the grade of the street, crossed by said side-track or on account of any changes or improvements that the Railroad Company may make in its said railroad, but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, successors and assigns respectively.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART.

Witness as to party of the first part:

J. B. DICKSON.

ARCHIBALD H. SMITH.

Witness as to party of second part:

C. JOYCE.

EXHIBIT R-55.

THIS AGREEMENT, made in duplicate, this day of February 21st, in the year 1906, by and between the Erie Railroad Company, hereinbefore called the Railroad Company, party of the first part, and the Armstrong Sons Company, of Paterson, New Jersey, hereinafter called the party of the second part,

WITNESSETH:

THAT WHEREAS, the party of the second part has requested the Railroad Company to relocate a certain side track, which shall connect the railroad and tracks of the Railroad Company with the premises

Exhibit R-55.

and coal trestle of the party of the second part, at Paterson, New Jersey, and,

WHEREAS, the Railroad Company is willing to relocate said side track as hereinafter provided:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter stated it is agreed as follows:

First: The Railroad Company agrees to relocate a side track 250 feet long in substantially the location as shown by parallel red lines on the map hereto attached and hereby made a part of this agreement, said side tracks to be and remain the property of the Railroad Company.

Second: The party of the second part agrees to procure all consents and permits from the local authorities and from the property owners and others which shall be necessary for the relocation of said side track and the operation of cars and engines thereon free from all claim for injury to property or otherwise, and hereby gives to the Railroad Company, its successors and assigns the right to enter upon the premises of the party of the second part for the purpose of constructing that portion of said side track which shall be located outside the lands and right of way of said Railroad Company and for the removal of the materials thereof, as herein provided:

Third: The party of the second part will at its own proper cost and expense do all the grading as directed by the Railroad Company and pay for all labor required in the relocation of said side track. The party of the second part will at its own proper cost and expense erect, in accordance with the specifications and subject to the approval of the Railroad Company, a coal trestle 190 ft. in length.

Fourth: The Railroad Company agrees to keep the siding in such repair as it may deem necessary for the safe transaction of business and the party of the second part agrees to pay to the party of the first

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part, on demand the actual market value of the material furnished for the repairs, based on the cost of the material, the labor in handling, and in transportation to the siding, the Railroad Company to determine what repairs are necessary to the siding.

Fifth: The party of the part agrees to keep the coal trestle above mentioned in good repair, necessary for the safe transaction of business, the Railroad Company to determine what repairs are necessary for such safe transaction of business and the operation of cars over said trestle.

Sixth: The said party of the second part will not erect or cause to be erected, any platform, shed or other structure along or over said side track, without leaving sufficient clearance for the cars and engines of the Railroad Company and without the written approval of the said Railroad Company of the plans and specifications of such structure.

Seventh: That all materials, namely: rails, frogs, switches, splices, spikes, bolts, guard rails, switch points and switch stands furnished by the Railroad Company in the construction of said side track, may be removed by the said Railroad Company, its successors or assigns, at any time, the party of the second part having no claim whatever upon such material, either in law or in equity, nor will it, at any time, make claim thereto, but the same is the sole and exclusive property of the Railroad Company and not a fixture appurtenant to the land.

Eighth: The party of the second part assumes all risk of injury to the persons of its officers, or of any of its employes and all loss of or damage to its property by fire, occasioned by, arising out of, or connected with the construction, maintenance or operation of said side track, whether caused by negligence of the said Railroad Company, its servants, agents, employes or otherwise and hereby releases said Railroad Company, its successors and assigns from all

Exhibit R-55.

claim for such loss of, or damage to property and for injuries to the persons of its officers, or of any of its employes and agrees to indemnify and save harmless said Railroad Company, its successors and assigns from all claim for such loss, damage or injury as aforesaid.

Ninth: The party of the second part further agrees to promulgate and enforce proper and suitable rules for the government of their employes, who may be working on or around said side track, and the cars standing thereon to the end, that when so at work, notice thereof may be given to the employes of the Railroad Company and the danger of accidents thereby reduced.

Tenth: This agreement shall carry to and be binding upon the successors and assigns of the respective parties hereto.

Eleventh: The party of the second part hereby expressly agree to vacate, at any time; upon sixty days' written notice by the Railroad Company, that portion of the lands of the Railroad Company occupied by the trestle of the party of the second part, the same being enclosed by yellow lines on the map hereto attached.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

ERIE RAILROAD COMPANY,

By G. A. RICHARDSON,
Vice President.

DAVID BOSMAN, *Secretary,*
as to the party of the first part.

ARMSTRONG SONS COMPANY,

By ARMSTRONG SONS CO.,
per Wm. Armstrong, *Treas.*

JOHN H. ARMSTRONG, *Sec.,*
as to the party of the second part.

Exhibit R-56.

EXHIBIT R-56.

THIS AGREEMENT, made in duplicate this 21st day of August in the year one thousand nine hundred and eleven by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company), of the first part, and the Public Service Gas Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey with office at Paterson, N. J. (hereinafter called the Shipper), of the second part,

WITNESSETH:

THAT, WHEREAS, the shipper desires the construction of a side-track, about 411 feet long, near Paterson in the County of Passaic and State of New Jersey which side-track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side-track about 411 feet in length, extending from a point of connection in the present siding, said point being opposite the westerly end of the present freight house and extending in a southwesterly direction four hundred and eleven (411) feet, in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Com-

Exhibit R-56.

pany the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials, and the cost of all the labor used in the construction of said side-track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of one thousand seven hundred and twenty-nine and 54/100 dollars, which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side-track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than seven feet to the nearest rail of said side-track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side-track located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the

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lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed *fixtures appurtenant* to the land.

Seventh: It is understood that the movement of cars and engines over said side-track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least

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ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-track.

Tenth: To permit the construction of said side track it is necessary to relocate the present siding, placing the switch points or connection fifteen (15) feet easterly of the present location, which side track is covered by agreement dated May 23rd, 1907; the present location being shown in broken white lines, and the proposed relocation being shown in broken red lines on said plan. It is understood that the Shipper will pay the cost of such relocation and that such cost is covered by paragraph "Third" hereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
Vice President.

Witness as to party of the first part:

A. N. DUGAN.

PUBLIC SERVICE GAS COMPANY,

By Geo. J. ROBERTS,
Vice President.

Witness as to party of the second part:

EDWIN W. HINE,
Secretary.

*Exhibit R-57.***EXHIBIT R-57.**

THIS AGREEMENT, made in duplicate this 23rd day of May, in the year one thousand nine hundred and seven, by and between the **ERIE RAILROAD COMPANY**, (hereinafter called the "Railroad Company") of the first part, and **PUBLIC SERVICE CORPORATION OF NEW JERSEY**, a corporation of the State of New Jersey, (hereinafter called the "Shipper") of the second part,

WITNESSETH:

THAT WHEREAS, the Railroad Company is now operating for the Shipper at River Street in the City of Paterson, County of Passaic, State of New Jersey a side track beginning at a point of connection with the Railroad Company's existing siding opposite the northerly side of Lyon Street and extending therefrom in a curve to the south and west a distance of about six hundred (600) feet, which side track is the property of the Railroad Company, and

WHEREAS, the Shipper desires that the location of the aforesaid siding be changed and an extension thereto about nineteen and one-half (19½) feet in length be constructed all substantially as indicated on the blue print hereto attached, and

WHEREAS, the Railroad Company is willing to make the change in location of said side track and to construct the extension thereto as aforesaid on the conditions hereinafter set forth, and it is further desired that the ownership, maintenance and operation of said side track as relocated and extended be covered by this agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

Exhibit R-57.

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials, and perform the work of changing the location of the existing siding from the location and position shown by the parallel broken white lines to that indicated by the parallel broken red lines on the plan hereto attached and hereby made a part hereof, and of constructing the extension to said side track as relocated about nineteen and one-half ($19\frac{1}{2}$) feet in length.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side track as hereinafter provided.

Third: The Shipper agrees to pay the cost of grading and of all materials other than metal materials, and the cost of all labor used in the relocation of said side track and the construction of the extension thereto, together with the usual percentages added for superintendence and use of tools, and upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Three hundred and seventy-five dollars and ninety-two cents (\$372.92) which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall pay to the Shipper the difference, and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Exhibit R-57.

Fourth: The Shipper shall pay to the Railroad Company promptly the cost of all labor and the value of all materials other than metal material, used in repairing or maintaining said side track constructed as hereinbefore provided, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track.

Fifth: The Shipper shall, at its own cost and expense, construct the trestle upon which the latter portion of said side track as relocated and extended (about 180 feet in length) is to be constructed, subject to the approval as to plan and construction of the Engineer of the Railroad Company, and shall maintain said trestle in such condition as the Railroad Company shall deem necessary for the safe operation of cars and engines thereon.

Sixth: The Shipper shall not erect or allow to be erected any platform, shed or other structure over said side track or nearer than six feet to the nearest rail thereof, without the written approval of the Railroad Company of the plans and specifications therefor in order that sufficient clearance may be left for the cars of the Railroad Company.

Seventh: That portion of said side track located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side track, and without unnecessary injury to said premises, to remove therefrom the materials owned and furnished by it, which said materials shall not be deemed fixtures appurtenant to the land.

Exhibit R-57.

Eighth: It is understood that the movements of cars and engines over said side track involves a risk of injury to persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of, or damage to its property, occasioned by, or arising out of, the construction and maintenance of said side track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents, or employes, or by other cause, and all risk of injury to persons of its officers, or members, or of any of its employes, occasioned by, or arising out of such construction, maintenance and operation, unless such injuries are shown to have been caused solely by the negligence of the Railroad Company, its agents or employes; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage or injury so assumed by it, and from all costs and expenses connected therewith.

Ninth: The Shipper further agrees to promulgate and enforce rules for the government of its employes while on or about said side track, or the cars standing thereon, providing for the giving of notice thereof to the employes of the Railroad Company operating upon said side track.

Tenth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination, but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their successors and assigns, respectively.

Exhibit R-58.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
General Manager.

GEO. P. BRYAN.

Witness as to the party of the first part.

PUBLIC SERVICE CORPORATION
OF NEW JERSEY,

By H. B. CARLTON,
Vice President.

Witness as to party of the second part:

FREDERICK EVANS,
Sec'y.

EXHIBIT R-58.

THIS AGREEMENT, made in duplicate this 9th day of October, in the year one thousand nine hundred and twelve, by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company of the first part), and Swift & Company, a corporation of the State of New Jersey, (hereinafter called the Shipper), of the second part,

WITNESSETH:

THAT, WHEREAS the Shipper desires the construction of a side-track, about 395 feet long, near Pater-son in the County of Passaic and State of New Jersey which side-track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained it is agreed as follows:

First: The Railroad Company agrees upon, the terms hereinafter mentioned to furnish the necessary

Exhibit R-58.

labor and materials and construct that portion of said side-track about 152 feet in length, extending from a point of connection in present siding, said point being 430 feet north of the northerly end of River Street freight house and extending in a south westerly direction to the right of way line of said Railroad Company in substantially the location and position as shown by red lines upon the plan attached hereto and made a part hereof. The Shipper to furnish the necessary labor and material and construct that portion of said side track about 243' in length extending from right of way line of Railroad Company in a south westerly direction across Wait Street and onto the property of the Shipper in substantially the location and position as shown by the yellow lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

Third: The Shipper agrees to construct at its entire expense that portion of the track outside of the right of way of the Railroad Company. The Railroad Company will construct at its expense that portion of the track from the switch point to its right of way line.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said portion of the said side track outside of the right of way of the Railroad Company, such value being based

Exhibit R-58.

upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than seven feet to the nearest rail of said side-track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side-track located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side-track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said sidetrack, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employes, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employes, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the

Exhibit R-58.

Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By DAVID BOSMAN,

Vice President.

Witness as to party of the first part:

H. A. KELM.

SWIFT & COMPANY,

By L. F. SWIFT,

President.

Witness as to party of the second part:

C. A. PEACOCK,

H. J. NELSON.

Exhibit R-59.

EXHIBIT R-59.

THIS AGREEMENT made in duplicate this 26th day of February in the year one thousand nine hundred and eight, by and between **ERIE RAILROAD COMPANY** (hereinafter called the "Railroad Company") of the first part, and **THE ASHLEY AND BAILEY COMPANY**, a corporation of the State of New Jersey (hereinafter called the "Shipper") of the second part.

WITNESSETH

THAT WHEREAS, the Shipper desires the construction of a side-track, about 486 feet long, and a trestle about 150 feet long under a portion of said side track, near Paterson, in the County of Passaic and State of New Jersey, which side track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and material and construct said side track about 486 feet in length extending southerly from a siding at Wood Street to the property of the Shipper, in substantially the location and position as shown by the parallel solid red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to re-

Exhibit R-59.

move therefrom the materials in said side track, as hereinafter provided

Third. The Shipper agrees to pay the cost of the grading and of all materials and the cost of all the labor used in the construction of said side track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of fourteen hundred eight dollars and seventy eight cents (\$1408.78) which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side track, or nearer than six feet to the nearest rail of said side track, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side track located upon the lands of the Railroad Company shall be and remain under its exclusive control, but all materials used in the construction and maintenance of the whole side track shall be and remain the property of the shipper. Upon the termination of this agreement

Exhibit R-59.

and upon payment to the Railroad Company of the cost of such removal the Railroad Company shall remove from that portion of said side track located upon the lands of the Railroad Company the materials furnished and owned by the Shipper, and deliver the same to the Shipper.

Seventh: The Shipper further agrees to build before said side track is constructed, and thereafter maintain at its own expense, a trestle 150 feet long under a portion of the said side track in substantially the location indicated by yellow lines on the said plan hereto annexed and in accordance with the plans and specifications of the Railroad Company, and agrees to repair at its own expense said trestle whenever such repairs are deemed necessary by the Railroad Company.

Eighth: It is understood that the movement of cars and engines over said side track and trestle involves a risk of injury to persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side track and trestle, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage or injury so assumed by it, and from all costs and expenses connected therewith.

Ninth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the govern-

Exhibit R-60.

ment of its employes while on or about said side track and trestle, or the cars standing thereon, providing for the giving of notice thereof to the employes of the Railroad Company operating upon said side track.

Tenth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, successors and assigns, respectively.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART.

Witness as to party of the first part:

J. B. DICKSON.

THE ASHLEY AND BAILEY COMPANY,

By J. J. BAILEY, *Treas.*

Witness as to party of the second part:

S. LONGBOTHAM.

EXHIBIT R-60.

THIS AGREEMENT, made in duplicate this 20th day of December in the year one thousand nine hundred and eleven by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company), of the first part, and NATIONAL SILK DYEING COMPANY, a corporation of the State of New Jersey, (hereinafter called the Shipper), of the second part,

WITNESSETH

THAT WHEREAS, the Shipper desires the construction of a side-track, about 600 feet long, and a 182

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feet extension to an existing side track near Paterson in the County of Passaic and State of New Jersey which side-track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side-track about 600 feet in length, extending from a point of connection in the present side track as relocated, said point being 152 ft. from the switch point of the present side track in its relocated position and extending in a southwesterly direction six hundred (600) feet, and to relocate and extend said present side track from the position shown in broken white lines to that shown in broken red and solid red lines on the plan attached, said side tracks as relocated and constructed being in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials, and the cost of all the labor used in the construction, relocation and extension of said side-track, together with the usual percentages added for superintendence and use of tools,

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and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Two Thousand Eight Hundred Fifty-seven 50/100 (Letter of Jan. 30/12) dollars, which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side-track, six hundred feet in length, of which about 103 feet is located on the right of way of the Railroad Company and about 497 feet located outside the right of way of the Railroad Company, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than seven feet to the nearest rail of said side-track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side-track located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the ter-

Exhibit R-60.

mination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side-track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the

Exhibit R-61.

respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessors, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
Vice-President.

Witness as to party of the first part:

A. N. DUGAN.

NATIONAL SILK DYEING COMPANY,

By C. L. LEYER,
President.

Witness as to party of the second part:

FRANK MAASE, *Secretary.*

EXHIBIT R-61.

THIS AGREEMENT made in duplicate this 20th day of June, 1905, by and between the ERIE RAILROAD COMPANY, hereinafter called the "Railroad Company," party of the first part, and the WEIDMAN SILK DYEING COMPANY, a corporation duly organized under the laws of the State of New Jersey, having its principal office at Paterson, N. J., hereinafter called the "Weidman Company," party of the second part,

WITNESSETH:

WHEREAS, The party of the first part operates a line of railroad extending through the City of Paterson, N. J., and said Weidman Company desires to construct a subway or tunnel across the right of way

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and underneath the tracks of said Railroad Company to connect its buildings upon either side thereof, which said Railroad Company is willing to have done upon the terms and conditions hereinafter provided.

Now THEREFORE, in consideration of the premises and the covenants and conditions hereinafter contained and of the sum of One Dollar (\$1.00) paid by said Weidman Company to said Railroad Company, the receipt whereof is hereby acknowledged, said Railroad Company hereby consents that said Weidman Company may construct and operate its subway or tunnel across the right of way and lands and under the tracks of the said Railroad Company, in the location and manner and in accordance with the dimensions as shown more particularly on the maps and plans attached hereto and which are hereby made a part of this agreement, subject to the following conditions, which said Weidman Company hereby agrees to keep and perform.

First: The subway shall be constructed of concrete so laid that the top of the structure shall be no less than two feet six inches below the base of the lowest rail of the Railroad Company's present tracks, and in a manner satisfactory to and under the supervision of the Chief Engineer of said Railroad Company and for that purpose said engineer may employ a competent inspector, whose wages shall be paid by the Weidman Company upon the presentation of bills by the Railroad Company. Said subway shall be so constructed and maintained as not to interfere with said Railroad or with the transaction of the business of the Railroad Company, its successors or assigns, and at the sole cost and expense of the Weidman Company.

Second: The work of temporarily supporting the tracks and structures of the said Railroad Company, during the construction of the subway, shall be done

Exhibit R-61.

by the Railroad Company in such manner as shall be deemed safe and necessary to the transaction of the Railroad Company's business in the opinion of the Chief Engineer, or his inspector and the labor and material required in such work shall be paid for by the Weidman Company upon the presentation of a bill by the Railroad Company.

Third: The subway shall be maintained in safe condition and repair by the Weidman Company, its successors and assigns, at its sole cost and expense and the repairs or work necessary to the safe and sufficient maintenance thereof, shall be at all times determined by the Chief Engineer of the Railroad Company.

Fourth: The Weidman Company hereby assumes all risk of loss, damage or injury to persons or property occasioned by, arising out of, or in any way connected with the construction, operation or maintenance of said subway and the Weidman Company agrees hereby to indemnify and save harmless the said Railroad Company, its successors and assigns from all loss, damage or injury and from all claims for such injury and that if any such loss, damage or injury shall occur to the tracks, property or employes of the Railroad Company, either in the course of construction or by bursting or breaking of said subway, or afterward occur by reason of the existence of said subway, the said Weidman Company will pay the cost upon demand.

Fifth: It is further agreed and understood that in case the Railroad Company shall at any time during the continuance of this agreement, construct any additional tracks or other structures over or near said subway or change the grade of its present or future tracks said Weidman Company shall at its sole cost and expense make all necessary corresponding changes in said subway or tunnel, or if deemed neces-

Exhibit R-61.

sary by said Railroad Company, shall remove same entirely and in event of such change of conditions the provisions of the agreement shall apply in like manner after the construction of such additional tracks, structures or changes as at present and said subway shall be protected and made safe to the Railroad Company as hereinbefore described at the sole cost and expense of said Weidman Company, upon demand of the Railroad Company.

Sixth: It is further understood and agreed that upon or in the event of the removal of said subway, which removal shall be done under the supervision of the Chief Engineer of the Railroad Company at the sole cost and expense of the said Weidman Company, said Weidman Company shall restore the tracks, structures and premises of the said Railroad to such condition as shall be satisfactory to the Chief Engineer of said Railroad Company and if said Weidman Company will not restore the property of the Railroad Company as aforesaid, the Railroad Company may restore the same and charge the cost and expense to the Weidman Company, which the latter agrees hereby to pay on presentation of a bill therefor, and all rights herein granted shall cease and determine upon the removal of said subway.

Seventh: It is further understood and agreed that no vested right in said premises is hereby granted or conveyed and that the privileges hereby given are subject to any and all conditions, restrictions, and reservations upon or under which said Railroad Company holds said premises.

Eighth: The right, privileges, duties and obligations of the parties hereto under this agreement shall carry to and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused the signatures of their presidents and their re-

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spective seals to be hereto affixed duly attested by their respective secretaries the day and year first above written.

ERIE RAILROAD COMPANY

By F. D. UNDERWOOD,
President.

Attest: (SEAL.)

DAVID BOSMAN, *Secretary.*

WEIDMAN SILK DYEING COMPANY

By I. WEIDMANN,
President.

Attest: (SEAL.)

JAMES H. ROGERS, *Secretary.*

EXHIBIT R-62.

THIS AGREEMENT, made in duplicate this twelfth day of July in the year one thousand nine hundred and eleven, by and between the ERIE RAILROAD COMPANY (hereinafter called the Railroad Company) of the first part, and the WEIDMANN SILK DYEING COMPANY, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with office at Paterson, N. J. (hereinafter called the shipper) of the second part.

WITNESSETH:

THAT, WHEREAS, the Railroad Company has constructed and is now operating a side track six hundred twenty nine (629) feet in length for the accommodation of said shipper, at Fifth Avenue, in the City of Paterson, County of Passaic and State of New Jersey, and

WHEREAS, the shipper owns the rail and fastenings off the right of way of the Railroad Company, a distance of four hundred twenty nine (429) feet of said

side track, which said side track is covered by agreement dated May 11th, 1910, and which said agreement shall hereby be annulled and made void; and

WHEREAS, the shipper desires the relocation of said side track placing it entirely on the lands of the Railroad Company, beginning at a point approximately two hundred (200) feet easterly from the southerly street line of Fifth Avenue and extending in a westerly direction along and parallel with the east bound main track of the Railroad Company and thirteen (13) feet therefrom a distance of six hundred (600) feet, as shown in dashed red on the plan attached hereto and made a part hereof, and

WHEREAS: the shipper desires the construction of a coal hopper underneath said side track as relocated, said hopper to be located one hundred forty (140) feet westerly of the northerly street line of Fifth Avenue, in substantially the location and position as shown by solid red on said plan. Railroad Company agrees to relocate said side track and permit construction of said hopper upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The shipper agrees to furnish the necessary consents and permits as may be required for the relocation, construction and operation of said side track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side track as hereinafter provided.

Second: The shipper agrees to pay the cost of all materials and the cost of all labor used in relocating said side track and the westerly end of crossover connecting the east bound main track with said side track, also the cost of all material and the cost of all

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labor used in changing the location of the crossing gates on the northwesterly side of the railroad at Fifth Avenue crossing, together with the usual percentages added for superintendence and use of tools and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Eight Hundred Sixteen Dollars and seventy five cents (\$816.75) which it is estimated will cover the expense to be borne by the shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the shipper the difference; and if such expense exceeds the sum so advanced, the shipper will pay to the Railroad Company the amount of such excess upon receipt of proper bill or voucher therefor.

Third: The shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track.

Fourth: The shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side track, or nearer than nine feet to the center line of said side track, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Fifth: That portion of said side track located upon the lands of the Railroad Company shall be and remain the property of the Railroad Company and under its exclusive control, and upon the termination of this agreement the Railroad Company shall have the right to remove therefrom the materials herein.

Sixth: The Railroad Company agrees upon the terms hereinafter mentioned to allow the shipper to construct and maintain, during the continuance of

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this agreement, said coal hopper upon its right of way under said side track, in substantially the location as shown on said plan.

Seventh: The shipper agrees to furnish the necessary labor and materials and construct said coal hopper in good and workmanlike manner to the satisfaction of the Superintendent or other proper officer of the Railroad Company.

Eighth: The shipper further agrees to cover said hopper with a suitable trap door, and shall, at its own expense, keep said hopper and trap door in good condition and repair, all to the satisfaction and acceptance of the Superintendent, or other proper officer of the Railroad Company, and further assumes as its own the obligation to keep said hopper and the door thereof closed and locked at all times when not in use for the purpose of unloading coal, and assumes all risk of damage or injury sustained by the parties hereto, or any other person, caused by the non-compliance with this provision.

Ninth: The shipper further agrees to pay the cost of such further safety appliances as the Railroad Company may at any time deem necessary to be installed by it in connection with said hopper.

Tenth: It is understood that the movement of cars and engines over said side track and hopper involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the shipper hereby assumes all risk of loss of or damage to its property, occasioned by or arising out of the construction or maintenance of said side track and hopper, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents, or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction,

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maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employes; and said shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eleventh: The shipper hereby assumes all risk of loss, damage, injury or death, by fire or otherwise, to persons or property on or about said coal hopper, and all risk of loss by fire to property of said shipper or in which he may be interested on any neighboring premises owned or occupied by said shipper, to which fire shall be communicated from said hopper, or the operation, maintenance or existence of the Railroad operated by the Railroad Company, and agrees to indemnify and save harmless said Railroad Company from all claims for any and all such loss, damage or injury whether caused by the negligence of the Railroad Company, its agents, servants or employes or otherwise.

Twelfth: The shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employes while on or about said side track and hopper, or the cars standing thereon providing for the giving of notice thereof to the employes of the Railroad Company operating upon said side track.

Thirteenth: This agreement, except for the violation of any of its terms, may be cancelled and terminated by either party giving to the other at least sixty days previous notice in writing of such cancellation and termination, and upon such cancellation and termination, the shipper shall surrender the right of way of the Railroad Company occupied by said coal hopper, and the Railroad Company shall have the right to take up and remove both the said side track and the coal hopper immediately upon the expiration of

such notice, at the expense of said shipper. In case of the violation of any of the provisions of this agreement by said shipper, the Railroad Company may terminate and cancel this agreement by giving not less than three days notice to the shipper; upon such cancellation, in case all covenants herein on the part of said shipper have been performed, said coal hopper may be removed by said shipper, but if not so removed, said Railroad Company may convert the same to its own use or tear down and remove the same, and all right, title and interest of the shipper shall cease and be vested in the Railroad Company. Until cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track and hopper herein provided for shall apply to any additions and extensions of said side track and hopper.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY

By J. C. STUART,
Vice-President.

Witness as to party of the
first part:

A. N. DUGAN.

WEIDMANN SILK DYEING CO.

By F. S. COWPERTHWAIT,
Treasurer.

Witness as to party of the
second part:

WM. MCGILL.

A correct copy.

D B/ Secretary.

EXHIBIT R-63.

THIS AGREEMENT, made in duplicate this 11th day of May in the year one thousand nine hundred and ten, by and between **ERIE RAILROAD COMPANY** (hereinafter called the **Railroad Company**) of the first part and **WEIDMANN SILK DYEING COMPANY**, a corporation organized and existing under the State of New Jersey (hereinafter called the **Shipper**) of the second part.

WITNESSETH:

THAT, WHEREAS, the shipper has the use of and owns the rail and fastenings off the right of way (a distance of 429 feet), of a side track of a total length of about 629 feet, at Fifth Avenue Paterson, in the County of Passaic and State of New Jersey, extending in a northerly direction from the point of connection with the east bound main track of the Railroad Company, said point being distant 225 feet southerly from the south line of Fifth Avenue, in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Now, **THEREFORE**, in consideration of the premises and the mutual covenants hereinafter considered, it is agreed as follows:

First: The shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track.

Second: The shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side track or nearer than six feet to the nearest rail of said side track, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Third: That portion of said side track located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Fourth: It is understood that the movement of cars and engines over said side track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side track, or the operation of the cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its members or officers, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it and from all costs and expenses connected therewith.

Fifth: The shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side track, or the cars standing thereon, provided for the

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giving of notice thereof to the employees of the Railroad Company operating upon said side track.

Sixth: This agreement may be cancelled and terminated by either party giving the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,

Witness as to party of
the first part.

A. N. DUGAN.

WEIDMANN SILK DYEING COMPANY,

By P. S. COWPERTHWAIT,

Treasurer.

Witness as to the party of
the second part.

WM. MCGILL.

EXHIBIT R-64.

THIS AGREEMENT, made in duplicate this 11th day of May in the year one thousand nine hundred and ten by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company) of the first part, and WEIDMAN SILK DYEING COMPANY, a cor-

poration organized and existing under the laws of the State of New Jersey (hereinafter called the Shipper), of the second part,

WITNESSETH:

THAT, WHEREAS, the shipper desires the construction of a side-track, about 420 feet long at Paterson in the County of Passaic and State of New Jersey which side-track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side-track about 420 feet in length, extending from a point of connection with a siding of the Railroad Company, which point is near the south side of Fifth Avenue, in a northerly direction and parallel to the tracks of the Railroad Company and to relocate a crossover track from the position shown in broken white lines to that shown in broken red lines upon the plan hereinafter referred to; said new side track to be constructed in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

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Third: The Shipper agrees to pay the cost of the grading and of all materials, and the cost of all the labor used in the construction of said side-track, and the relocation of said crossover track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of one thousand six hundred and seventy dollars and seventy cents (\$1670.70), which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side-track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than seven feet to the nearest rail of said side-track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side-track located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless fur-

nished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and

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terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART.

Witness as to party of the first part:

A. N. DUGAN.

WEIDMAN SILK DYEING COMPANY,

By F. S. COWPERTHWAIT,

Treasurer.

Witness as to party of the second part:

WM. MCGILL.

A correct copy.

DB

Secretary.

EXHIBIT R-65.

THIS AGREEMENT, made in duplicate this 27th day of August in the year one thousand nine hundred and seven by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company), of the first part, and LAZAR LAPAT, of Paterson, N. J. (hereinafter called the Shipper) of the second part,

WITNESSETH:

THAT, WHEREAS, the shipper desires the construction of a side-track, about 558 feet long, and a pro-

posed wall about 100 feet long, near Paterson, in the County of Passaic, and State of New Jersey, which side-track and wall the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side-track about 558 feet in length, being an extension easterly 201 feet from the end of an existing siding and a spur track extending westerly 357 feet from a point in said proposed extension near the end of said existing siding, all being in substantially the location and position as shown by the parallel red lines upon the plan hereto attached and made a part hereof, and said proposed wall, 100 feet long, in substantially the location, shown by the single solid red line upon said plan.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

Third: The shipper agrees to pay the cost of the grading and of all materials other than rails and fastenings, and the cost of all the labor used in the construction of said side-track and wall together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement shall advance and pay to the Railroad

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Company the sum of Twenty-four hundred thirty nine dollars & 70 cents (2439.70) which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials, other than rails and fastenings used in repairing or maintaining said side-track and wall such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than six feet to the nearest rail of said side-track, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side-track and wall located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-track and, without unnecessary injury to said premises, to remove therefrom the materials furnished and owned

by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side-track involves a risk of injury to persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage or injury so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, successors and assigns, respectively.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
General Manager.

Witness as to party of the first part :

GEO. P. BRYAN.

L. LAPAT.

Witness as to party of the second part :

H. W. McGRATH.

EXHIBIT R-66.

THIS AGREEMENT, made in duplicate this 30th day of December in the year one thousand nine hundred and eleven by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company), of the first part, and SUTHERLAND & EDWARDS COMPANY, a corporation of the State of New Jersey (hereinafter called the Shipper), of the second part,

WITNESSETH:

THAT, WHEREAS the shipper desires the construction of a side track, about 270 feet long, near Paterson in the County of Passaic and State of New Jersey which side track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and construct said side track about 270 feet in length, extending from a point of connection in the present siding, known as "C" stage

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Track No. 2, at Paterson, said point being located approximately 258 feet west of mile post 17, and extending thence, in a westerly direction two hundred and seventy (270) feet, in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side track, as hereinafter provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials, and the cost of all the labor used in the construction of said side track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Nine Hundred Seventy Four and 05/100 dollars, which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track.

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Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side track, or nearer than seven feet to the nearest rail of said side track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side track located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side-track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said

Exhibit R-66.

Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employes while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employes of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,

Vice-President.

Witness as to party of the first part:

A. N. DUGAN.

SUTHERLAND AND EDWARDS COMPANY,

By MALCOLM HAIN,

Treasurer.

Witness as to party of the second part:

JOHN J. WARD.

EXHIBIT R-67.

THIS AGREEMENT, made in duplicate, this 21st day of December, 1904, between the Erie Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the Nicholson File Co., Paterson, N. J., hereinafter called the parties of the second part.

WITNESSETH:

That the Railroad Company, at the request of the parties of the second part, agrees to construct a side track described as follows:

Being a turnout 245 feet in length from the siding on the north side of main tracks between Fifth and Sixth Avenues, Paterson, N. J., all being substantially as shown on blue print hereto attached and made a part of this agreement.

And the parties of the second part hereby covenant and agree in consideration of the advantage to be by them derived from the operation of said side-track.

First: That they will at their own proper cost and expense do all the grading as directed by the Railroad Company, furnish the cross and switch ties, delivered on the site of the said side-track, and pay for all labor required in the construction of said side-track.

Second: The parties of the second part agree to procure all consents and permits from the local authorities and from the property owners and others, which shall be necessary for the construction of said siding, and the operation of trains thereon, free from all claims for the injury to the property or otherwise.

Third: The party of the first part agrees hereby to keep the siding in such repairs as it may deem necessary for the safe transaction of business and

the parties of the second part agree to pay to the party of the first part, on demand the actual market value of the material furnished, based on the cost of the material, the labor in handling and in transportation to the siding. The party of the first part is to determine what repairs are necessary to the siding.

Fourth: The said parties of the second part will not erect or cause to be erected, any platform, shed or other structure along or over the said tracks, or on the said right of way, without leaving sufficient clearance for the cars and engines of the party of the first part and the written approval of the Erie Railroad Company, of the plans and specifications of such structure.

Fifth: That all material, namely:

Rail,	Splices
Frogs	Switch Points
Bolts	Switch stands
Spikes	Guard rails

furnished by the Railroad Company in the construction of said siding, may be removed by said Railroad Company, its successors or assigns, at any time, the parties of the second part having no claim whatever upon such material, either in law or equity, nor will they at any time make any claim thereto, and that the same is the sole and exclusive property of the said Railroad Company, and not a fixture appurtenant to said land, and said Nicholson File Company for themselves, their heirs, successors and assigns do hereby give and grant to said Railroad Company, its successors and assigns, the right of easement to enter upon said premises at any time, to remove, take away and retain to its own use said materials.

Sixth: The said parties of the second part shall assume all risk of, loss of, or damage to their property, by fire, occasioned by, arising out of or con-

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needed with the operation of said Railroad Company, or the said switch or siding, and release the said Railroad Company, its successors and assigns from all claims for any such loss or damage, whether caused by the negligence of said Railroad Company, its agents, servants, employees or otherwise.

Seventh: The said parties of the second part shall assume all risk of injury to the persons of the party of the second part or any employees of the party of the second part, occasioned by, arising out of, or in connection with the construction, maintenance or operation of said switch or siding, whether caused by the negligence of said Railroad Company, its agents, employees, officers or otherwise and hereby releases the said Railroad Company, its successors and assigns, from all claim for such injury sustained by the parties of the second part or by any of the employees of the party of the second part and agrees to indemnify and save harmless the said Railroad Company, its successors and assigns from all claim from such injury whether caused by the negligence of said party of the first part, its agents, servants, officers, employees or otherwise.

Eighth: The parties of the second part further agree to promulgate and enforce proper and suitable rules for the government of their employees who may be working on and around said side track, and the cars standing thereon, to the end that notice may be given to the employees of the said Railroad Company, and the danger of accidents thereby reduced.

Ninth: This agreement shall carry to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

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IN WITNESS WHEREOF: The parties hereto have caused this instrument to be executed the day and year first above written.

ERIE RAILROAD COMPANY,

By **F. D. UNDERWOOD,**

Signed in the presence of

J. E. PACKER,

As to the Railroad Company.

Attest:

DAVID BOBMAN,

Secretary.

NICHOLSON FILE COMPANY,

CHAS. E. WATTS,

Acting Manager.

As to the party of the second part:

W. KENNELLY.

EXHIBIT R-68.

THIS AGREEMENT, made in duplicate this 12th day of November, 1904, between the Erie Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the Hygeia Ice Company, Paterson, N. J., hereinafter called the parties of the second part:

WITNESSETH:

That the Railroad Company, at the request of the parties of the second part, agrees to construct a side track, described as follows:

Being an extension 100 feet in length on the west end of the present switch to McNab & Harlin's Foundry, on the north side of main tracks 250 feet east of Paterson Station and being directly in front of the ice house of the party of the second part and located on Ramapo Avenue, all being substantially

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as shown on blue print hereto attached and made a part of this agreement.

And the parties of the second part hereby covenant and agree in consideration of the advantage to be by them derived from the operation of said side track.

First: That they will, at the own proper cost and expense do all the grading as directed by the Railroad Company, furnish the cross and switch ties, delivered on the site of the said side track, and pay for all labor required in the construction of said side track.

Second: The parties of the second part agree to procure all consents and permits from the local authorities and from the property owners and others, which shall be necessary for the construction of said siding, and the operation of trains thereon, free from all claims for the injury to the property or otherwise.

Third: The party of the first part agrees hereto to keep the siding in such repairs as it may deem necessary for the safe transaction of business and the parties of the second part agrees to pay to the party of the first part, on demand, the actual market value of the material furnished, based on the cost of the material, the labor in handling and in transportation of the siding. The party of the first part is to determine what repairs are necessary to the siding.

Fourth: The said parties of the second part will not erect or cause to be erected, any platform, shed or other structure along or over the said tracks, or on the said right of way, without leaving sufficient clearance for the cars and engines of the party of the first part, and the written approval of the Erie Railroad Company, of the plans and specifications of such structure.

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Fifth: That all material, namely:

Rail	Splices
Frogs	Switch Points
Splices	Switch Stands
Bolts	Guard Rails

furnished by the Railroad Company in the construction of said siding, may be removed by said Railroad Company, its successors or assigns, at any time, the parties of the second part having no claim whatever upon such material, either in law or equity, nor will they at any time make any claim thereto, and that the same is the sole and exclusive property of the said Railroad Company, and not a fixture appurtenant to said land, and said Hygeia Ice Company for themselves, their heirs, successors and assigns do hereby give and grant to said Railroad Company, its successors and assigns, the right or easement to enter upon said premises at any time, to remove, take away and retain to its own use said material.

Sixth: The said parties of the second part shall assume all risk of loss of, or damage to their property, by fire, occasioned by, arising out or connected with the operation of said Railroad Company, or the said switch or siding, and release the said Railroad Company, its successors and assigns from all claims for any such loss or damage, whether caused by the negligence of said Railroad Company, its agents, servants, employees or otherwise.

Seventh: The said parties of the second part shall assume all risk of injury to the persons of the party of the second part or any employees of the party of the second part, occasioned by, arising out of, or in connection with the construction, maintenance or operation of said switch or siding, whether caused by the negligence of said Railroad Company, its agents, employees, officers or otherwise, and hereby releases the said Railroad Company, its successors and assigns,

Exhibit R-68.

from all claims for such injury sustained by the parties of the second part or by any of the employes of the party of the second part, and agrees to indemnify and save harmless the said Railroad Company, its successors and assigns from all claim from such injury, whether caused by the negligence of said party of the first part, its agents, servants, officers, employes or otherwise.

Eighth: The parties of the second part further agree to promulgate and enforce proper and suitable rules for the government of their employes who may be working on and around said side track, and the cars standing thereon, to the end that notice may be given to the employes of the said Railroad Company, and the danger of accidents thereby reduced.

Ninth: This agreement shall carry to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF: The parties hereto have caused this instrument to be executed the day and year first above written.

ERIE RAILROAD COMPANY,

By F. D. UNDERWOOD.

Signed in the presence of

CRAIG GRAVES,

As to the Railroad Company.

PETER H. HOPPER.

As to the party of the second part:

Witness to signature of Peter H. Hopper:

JACOB VON NIMWEGEN.

EXHIBIT R-69.

THIS AGREEMENT, made in duplicate this eighth day of July in the year one thousand nine hundred and eight by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company) of the first part, and PUGLIA & GRAMAFICE, a partnership consisting of Frank Puglia and Beniaurino Gramafice, dealers in the coal business (hereinafter called the Shipper), of the second part,

WITNESSETH :

THAT, WHEREAS, the shipper desires the construction of a side-track, about 868 feet long near Paterson, in the County of Passaic and State of New Jersey, which side-track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary **labor and materials** and construct said side-track about 868 feet in length, extending in an easterly direction from the most northerly yard track near Oregon Avenue, in substantially the location and position as shown by the red lines upon the plan here-to attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side-track over or along any street or highway, and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

Exhibit R-69.

Third: The Shipper agrees to pay the cost of the grading and of all materials, and the cost of all the labor used in the construction of said side-track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of One thousand six hundred and sixty-nine dollars (\$1669.00), which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side-track, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than seven feet to the nearest rail of said side-track, without written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side-track located upon the lands of the Railroad Company shall be its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the ter-

Exhibit R-69.

mination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said Shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the

Exhibit R-70.

respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
General Manager.

Witness as to party of the first part :

H. W. McGRATH.

FRANK PUGLIA,
BENIAMINO GRAMAFICE.

Witness as to party of the second part :

DONATO VITALE.

A correct copy,
D. B., *Sec'y.*

EXHIBIT R-70.

THIS AGREEMENT, made in duplicate, this 14th day of February, in the year 1906, by and between the ERIE RAILROAD COMPANY, hereinafter called the "Railroad Company" party of the first part, and the AUGER AND SIMON SILK DYEING COMPANY, of Paterson, New Jersey, hereinafter called the party of the second part.

WITNESSETH :

THAT WHEREAS, The party of the second part has requested the Railroad Company to construct a certain side track, which shall connect the road and

Exhibit R-70.

tracks of the Railroad Company with the premises of the party of the second part, and—

WHEREAS, The Railroad Company is willing to construct said side track, as hereinafter provided:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein-after stated, it is agreed as follows:

First: The Railroad Company agrees to construct a side track extending from a point of connection with its existing siding which is 2162 feet west of the east end of the station at River Street, Paterson, in substantially the location and position as shown by parallel red lines upon the blue print hereto attached and hereby made a part of this agreement.

SECOND: The party of the second part agrees to procure all consents and permits from the local authorities and from the property owners and others which shall be necessary for the construction of said side track and the operation of cars and engines thereon free from all claim for injury to property or otherwise and hereby gives to the Railroad Company, its successors and assigns the right or easement to enter upon the premises of the said party of the second part for the purpose of constructing that portion of said side track which shall be located outside the lands and right of way of the said Railroad Company.

Third: The party of the second part will at its own proper cost and expense do all the grading as directed by the Railroad Company, furnish the cross and switch ties and all other necessary material delivered on the site of said side track and pay for all labor required in the construction of said side track.

Fourth: The Railroad Company hereby agrees to keep the siding in such repair as it may deem necessary for the safe transaction of business and the party of the second part agrees to pay to the party of the

Exhibit R-79.

first part, on demand, the actual market value of the material furnished for the repairs based on the cost of the material, the labor in handling and in transportation to the siding, the Railroad Company to determine what repairs are necessary to the siding.

Fifth: The said party of the second part will not erect, or cause to be erected any platform, shed or other structure along or over said side track, without leaving sufficient clearance for the cars and engines of the Railroad Company, and without the written approval of the said Railroad Company of the plans and specifications of such structure.

Sixth: The party of the second part assumes all risk of injury to the persons of its officers or of any of its employees, and all loss of or damage to its property by fire, occasioned by, arising out of, or connected with the construction, maintenance or operation of said side track, whether caused by negligence of the said Railroad Company, its servants, agents, employees, or otherwise, and hereby releases the said Railroad Company, its successors and assigns from all claim for such loss or damage to property and for injury to persons of its officers or of any of its employees, and agrees to indemnify and save harmless the said Railroad Company, its successors and assigns from all claims for such loss, damage or injury as aforesaid.

Seventh: The party of the second part further agrees to promulgate and enforce proper and suitable rules for the government of its employees, who may be working on or around said side track and the cars standing thereon, to the end that when so at work notice may be given to the employees of the Railroad Company and the danger of accident thereby reduced.

Eighth: This agreement shall carry to and be binding upon the successors and assigns of the respective parties hereto.

Exhibit R-71.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

ERIE RAILROAD COMPANY,

By F. D. UNDERWOOD.

Signed

CRAIG GRAVES

As to the party of the first part.

AUGER AND SIMON SILK DYEING CO.

By C. L. AUGER, *Pres.*

Signed

E. RUSSELL

As to the party of the second part.

EXHIBIT R-71.

THIS AGREEMENT made in duplicate this 14th day of November in the year one thousand nine hundred and ten by and between Erie Railroad Company (hereinafter called the Railroad Company) of the first part, and Paterson Consolidated Ice Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the shipper) of the second part,

WITNESSETH:

THAT, WHEREAS, the shipper desires the construction of a side track extension about 100 feet long, near Paterson, in the County of Passaic and State of New Jersey, which side track extension the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary

Exhibit R-71.

labor and materials and construct said side track extension about 100 feet in length, extending in a westerly direction from the westerly end of the present switch to McNab and Hartin's Foundry, on the north side of the main tracks 950 feet east of Paterson Station, and being directly in front of the Ice House of the party of the second part and located on Ramapo Avenue, all being in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The shipper agrees to furnish the necessary right of way for that portion of said side track extension which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side track extension over or along any street or highway and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side track extension as hereinafter provided.

Third: The shipper agrees to do the grading and to pay the cost of all materials, and the cost of all the labor used in the construction of said side track extension, together with the usual percentages added for superintendence and use of tools, and upon the execution and delivery of this agreement shall advance and pay to the Railroad Company the sum of One hundred seventy one dollars and fifty nine cents (\$171.59) which it is estimated will cover the expense to be borne by the shipper, in addition to the grading it being understood that if such expense is less than the sum so advanced the Railroad Company shall repay to the shipper the difference; and if such expense exceeds the sum so advanced, the shipper will pay to the Railroad Company the amount of such excess upon receipt of proper bill or voucher therefor.

Exhibit R-71.

Fourth: The shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track extension, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track extension.

Fifth: The shipper shall not erect or allow to be erected any platform, shed or other structure over said side track extension, or nearer than six feet to the nearest rail of said side track extension without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side track extension located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control and all materials used in the construction and maintenance of that portion of said side track extension located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company unless furnished or paid for by the shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side track extension and, without unnecessary injury to said premises to remove therefrom the materials owned by it which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side track extension and siding involves a risk of injury to or death of persons and damage to property and as between the parties hereto, the shipper hereby assumes all risk of loss of or damage to its property, occasioned by or arising

Exhibit R-71.

out of the construction or maintenance of said side track extension and siding or the operation of cars or engines thereon whether caused by the negligence of the Railroad Company its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members or of any of its employees, occasioned by or arising out of such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees, and said shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from all costs and expenses connected therewith.

Eighth: The shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side track extension or siding, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side track extension or siding.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination, but until so cancelled and terminated the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side track.

Exhibit R-72.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
Vice-President.

Witness as to party of the first part:

A. N. DUGAN.

PATERSON CONSOLIDATED
ICE COMPANY,

By WM. W. STALTER, *Pres.*

Witness as to party of the second part:

W. S. BRADY.

EXHIBIT R-72.

THIS AGREEMENT, made in duplicate, this eleventh day of May in the year one thousand nine hundred and eleven, by and between the ERIE RAILROAD COMPANY (hereinafter called the Railroad Company) of the first part, and the VAN WINKLE-BROMLEY LUMBER COMPANY, a corporation of the State of New Jersey (hereinafter called the Shipper), of the second part.

WITNESSETH:

THAT, WHEREAS the Railroad Company owns the total material in a side track three hundred thirty two (332) feet long, said side track being known as the old Fairclough Switch, at Paterson in the County of Passaic and State of New Jersey, and

WHEREAS the shipper desires the said Railroad Company to repair and improve said side track, which the Railroad Company is willing to repair on the following conditions:

Exhibit R-72.

Now, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the necessary labor and materials and improve said side track about three hundred thirty-two (332) feet in length extending in a northeasterly direction from a point of connection in siding of Railroad Company located four hundred sixty-nine (469) feet east from the southeasterly end of South Paterson station, and in substantially the location and position as shown by red lines upon the plan hereto attached and made a part hereof.

Second: The shipper agrees to furnish the necessary right of way for that portion of said side track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side track over or along any street or highway and agrees to secure to the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side track, as hereinafter provided.

Third: The shipper agrees to pay the cost of the grading, ties and ashes, and the cost of all labor used in repairing and in improving said side-track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of Four Hundred Dollars and five cents (\$400.05) which it is estimated will cover the expense to be borne by the shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the shipper the difference; and if such expense exceeds the sum so advanced, the shipper

Exhibit R-72.

will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Railroad Company agrees to furnish all materials necessary to repair and replace said side track, except the necessary ties and ashes.

Fifth: The shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track, other than rails and fastenings, such value being based upon the cost of such materials and the labor in handling and transporting the same to said side track.

Sixth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side track, or nearer than seven feet to the nearest rail of said side track, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Seventh: That portion of said side track located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Eighth: It is understood that the movement of cars and engines over said side track involves a risk

Exhibit R-72.

of injury or death of persons and damage to property, and, as between the parties thereto, the shipper hereby assumes all risk of loss of or damage to its property occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or the death of its officers or members or of any of its employees, occasioned by or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees; and said shipper hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it and from all costs and expenses connected therewith.

Ninth: The shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employees while on or about said side track, or the cars standing thereon, providing for the giving of notice thereof to the employees of the Railroad Company operating upon said side tracks.

Tenth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side track.

Exhibit R-73.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,

Vice-President.

Witness as to the party of the first part:

A. N. DUGAN.

VAN WINKLE BROMLEY LUMBER COMPANY,

By DANIEL VAN WINKLE,

Secretary and Treasurer.

Witness as to party of the second part:

W. S. RIGDON,

Paterson, N. J.

EXHIBIT R-73.

THIS AGREEMENT, made in duplicate this 15th day of February in the year one thousand nine hundred and eleven by and between ERIE RAILROAD COMPANY (hereinafter called the Railroad Company), of the first part, and GULF REFINING COMPANY, a corporation of the State of Texas, with offices at 814 Battery Park Building, New York, N. Y. (hereinafter called the Shipper), of the second part,

WITNESSETH:

THAT, WHEREAS the shipper desires the construction of a side-track, about 97 feet long, near Paterson, in the County of Passaic and State of New Jersey, which side track the Railroad Company is willing to construct upon the following conditions:

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, it is agreed as follows:

First: The Railroad Company agrees upon the terms hereinafter mentioned to furnish the neces-

Exhibit R-73.

sary labor and materials and construct said side-track about 97 feet in length, extending from the end of the present unloading siding in a southerly direction in substantially the location and position as shown by the red lines upon the plan hereto attached and made a part hereof.

Second: The Shipper agrees to furnish the necessary right of way for that portion of said side-track which shall be located outside of the lands of the Railroad Company, including such consents and permits as may be necessary for the construction and operation of said side track over or along any street or highway, and agrees to secure the Railroad Company the lawful right to use the same and to remove therefrom the materials in said side-track, as hereinafter provided.

Third: The Shipper agrees to pay the cost of the grading and of all materials and the cost of all the labor used in the construction of said side track, together with the usual percentages added for superintendence and use of tools, and, upon the execution and delivery of this agreement, shall advance and pay to the Railroad Company the sum of One Hundred Eighty-two and 91/100 (\$182.91) dollars, which it is estimated will cover the expense to be borne by the Shipper, it being understood that if such expense is less than the sum so advanced, the Railroad Company shall repay to the Shipper the difference; and if such expense exceeds the sum so advanced, the Shipper will pay to the Railroad Company the amount of such excess, upon receipt of proper bill or voucher therefor.

Fourth: The Shipper shall repay to the Railroad Company promptly the cost of all labor and the value of all materials used in repairing or maintaining said side track such value being based upon the cost of such materials and the labor in handling and transporting the same to said side-track.

Exhibit R-73.

Fifth: The Shipper shall not erect, or allow to be erected, any platform, shed or other structure over said side-track, or nearer than seven feet to the nearest rail of said side-track, without the written approval of the Railroad Company of the plans and specifications therefor, in order that sufficient clearance may be left for the cars of the Railroad Company.

Sixth: That portion of said side-track located upon the lands of the Railroad Company shall be and remain its property and under its exclusive control, and all materials used in the construction and maintenance of that portion of said side-track located outside the lands of the Railroad Company shall be and remain the property of the Railroad Company, unless furnished or paid for by the Shipper, and upon the termination of this agreement, the Railroad Company shall have the right to enter upon the premises occupied by said side-track and, without unnecessary injury to said premises, to remove therefrom the materials owned by it, which said materials shall not be deemed fixtures appurtenant to the land.

Seventh: It is understood that the movement of cars and engines over said side track involves a risk of injury to or death of persons and damage to property, and, as between the parties hereto, the Shipper hereby assumes all risk of loss of or damage to its property, occasioned by, or arising out of, the construction or maintenance of said side-track, or the operation of cars or engines thereon, whether caused by the negligence of the Railroad Company, its agents or employees, or by any other cause; and all risk of injury to the persons of or of the death of its officers or members, or of any of its employees, occasioned by, or arising out of, such construction, maintenance or operation, unless such injuries or death are shown to have been caused solely by the negligence of the Railroad Company, its agents or employees, and said Ship-

Exhibit R-73.

per hereby agrees to indemnify and save harmless the Railroad Company from all claims for such loss, damage, injury or death so assumed by it, and from costs and expenses connected therewith.

Eighth: The Shipper further agrees to promulgate and enforce proper and adequate rules for the government of its employes while on or about said side-track, or the cars standing thereon, providing for the giving of notice thereof to the employes of the Railroad Company operating upon said side-track.

Ninth: This agreement may be cancelled and terminated by either party giving to the other at least ninety days' previous notice in writing of such cancellation and termination; but, until so cancelled and terminated, the rights, duties and obligations of the respective parties hereto under this agreement shall carry to and be binding upon their heirs, executors, administrators, lessees, successors and assigns, respectively, and the terms of this agreement, except in so far as they relate to the description and cost of the particular track herein provided for, shall apply to any additions to or extensions of said side-track.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART,
Vice-President.

Witness as to the party of the first part:

A. N. DUGAN.

GULF REFINING COMPANY,

By GEO. S. DAVISON,
President.

Witness as to the party of the second part:

W. J. GUTHRIE.

J. K. CROWMOVER.

A correct copy D/B Secretary.

Exhibits R-74 to R-77.

EXHIBIT R-74.

ERIE RAILROAD COMPANY ALL LINES MONTH OF DECEMBER

	1913	1912		
Gross Revenue,	\$5,092,436.46	\$4,951,821.03	Increase	\$140,615.43
Operating Expenses and Taxes,	4,151,455.76	3,889,581.37	Increase	261,874.39
Operating Income,	\$940,980.70	\$1,062,239.66	Decrease	\$121,258.96

Included in the expenses is one-twelfth of the entire taxes of the year; also one-twelfth of the annual depreciation of equipment.

SIX MONTHS TO DECEMBER 31st

	1913	1912		
Gross Revenue,	\$32,544,457.89	\$32,745,969.59	Decrease	\$201,511.70
Operating Expenses and Taxes,	25,558,574.94	23,807,418.40	Increase	1,751,156.54
Operating Income,	\$6,985,882.95	\$8,938,551.19	Decrease	\$1,952,668.24

EXHIBIT R-75.

Blue print of Time Table (Same as R-43).

Printed at page 326.

EXHIBIT R-76.

Photo of Map entitled "Map of Paterson, N. J., from actual survey by J. C. Sidney, Published by M. Dripps, 103 Fulton St., New York, 1850."

EXHIBIT R-77.

Blue print entitled "Map of the City of Paterson, N. J., surveyed by order of Council." Date, October 20, 1852. J. W. Allen, City Surveyor. "Copied from the original map on file in the office of the city surveyor. December, 1880. W. J. Ferguson, C. E."

EXHIBIT R-78.

An Ordinance providing for the taking up, vacating and relaying the streets and highways of the City of Paterson. The President and council of the City of Paterson do ordain as follows:

Sec. 1. That Mill Street, Boudinot Street, Van Houten Street, Prospect Street, Broadway, Main Street, Parke Street, Ellison Street, Colt Street, Hamilton Street, Congress Street, Market Street, Willis Street, Mulberry Street, West Street, River Street, Oliver Street, Grand Street, Slater Street, Cedar Street, Van Winkle Street, Marshall Street, Jersey Street, Pine Street, Spruce Street, Stoney Road, Ash Street, Maple Street, Totowa Avenue, Cross Street, Depot Street, Ward Street, Elm Street, Passaic Street, John Street, Magge's Alley, Lynche's Alley, White's Alley, Clarke Street, Smith Street, Maitland Street, Union Street, Hotel Street, Mansion Street, Church Street, Bridge Street, Fair Street, Division Street, Godwin Street, Washington Street, Bank Street, Ryerson Street, Fulton Street, Lawrence Street, Montgomery Street, Lafayette Street, Second Avenue, Straight Street, York Avenue, Donly Street, Vreeland Avenue, Passaic Avenue, Merselis Street, Carroll Street, Summer Street, York Street, Centre Street, East Carroll Street, Paterson Street, East Van Houten Street, Pearl Street, Mechanic Street, Madison Street, Beech Street, Vine Street, Morton Street, Essex Street, Oak Street, Cedar Street and Bond Street be and they are hereby *scarily* taken up and vacated.

CHAS. DANFORTH, *Pres.* (L. S.)

Attest N. TUTTLE, *Clerk*

Sec. 2. That Mill Street be relaid, and that the location of such relaid street be according to the map survey and return made by J. W. Allen City Sur-

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veyor dated the twentieth day of October Eighteen hundred and fifty two, and that said relaid street shall be twenty five feet wide on each side of the following Centre line. Beginning at an Stone Monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line with the centre line of Boudinot Street running thence on a course south twenty degrees east two hundred and seventy six feet one and a third inches to a monument at the point of intersection of said centre line with the centre line of John Street, thence the same course three hundred and six feet one inch to a monument at the point of intersection of said centre line with the centre line of Passaic Street, thence the same course two hundred and sixty feet to a monument at the point of intersection of said centre line with the centre line of Congress Street: And thence shall be thirty feet wide on each side of the following centre line. Beginning at the last mentioned monument marked "Mill Street" in said centre line of Congress Street said monument being on a course south sixty nine degrees and fifty minutes west fourteen feet from the last mentioned monument, and running thence on a course south twenty degrees east two hundred and eighty five feet ten inches to a monument at the point of intersection of said centre line with the centre line of Elm Street, thence the same course two hundred and fifty three feet ten inches to a monument at the point of intersection of said centre line with the centre line of Ward Street, thence the same course two hundred and fifty five feet one and three quarter inches to a monument at the point of intersection of said centre line with the centre line of Oliver Street, thence the same course five hundred and sixty seven feet six inches to a monument at the point of intersection of said centre line with the centre line of Grand street, thence the same course five hundred and

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sixty seven feet six inches to a monument at the point of intersection of said centre line with the centre line of Slater Street, thence the same course eight hundred and eighty one feet seven inches to a monument in said centre line thence the same course four hundred and seventy one feet ten inches to a monument at the point of intersection of said centre line with the centre line of Cedar street; and thence shall be twenty feet wide on each side of the following centre line: Beginning at the last mentioned monument and running thence on a course south seventy seven degrees and thirty minutes west one hundred and nine feet— inches to a monument in said centre line, thence south four degrees and ten minutes west four hundred and twenty five feet to a monument in said centre line, thence south six degrees and fifty three minutes west to the boundary line between the City of Paterson and the Township of Acquackanonk and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd.* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 3. That Bondino Street shall be relaid and that the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two, and that such relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a point twenty five feet south seventy degrees and forty two minutes west from a stone monument with an iron pin centre and marked "Mill Street" and running thence twenty five feet to said stone monument, on a course north seventy degrees and forty two minutes east being at the point of intersection of said centre line with the centre line of Mill Street, thence the same course two hundred and seventy five feet two inches to a monument at the point of intersection of said

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centre line with the centre line of Magraw Alley, thence the same course three hundred and one foot six inches to a monument at the point of intersection of said centre line with the centre line of Cross Street, thence the same course three hundred and thirty one foot six and one half inches to a monument at the point of intersection of said centre line with the centre line of Prospect Street and the same is hereby relaid accordingly—

CHARLES DANFORTH *Presd.* (L. S.)

Attest. S. TUTTLE *Ck*

Sec. 4. That Van Houten Street be relaid and that the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line. Beginning at a stone monument with an iron pin centre place one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Boudinot Street running thence on a course north seventy degrees and forty two minutes east one hundred and eight feet one inch to a monument in said centre line, thence south eighty degrees and fifteen minutes east three hundred and forty four feet to a monument in said centre line thence one hundred and sixty feet ten inches to a monument at the point of intersection of said centre line with a line thirty three feet easterly from the west side of Main street, and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd.* (L. S.)

Attest. S. TUTTLE, *Clerk*

Sec. 5. That Prospect Street be relaid and the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor.

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or dated the twentieth day of October Eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line with the centre line of Congress Street, running thence on a course north nineteen degrees and twenty eight minutes west two hundred and fifty one feet one inch to a monument at the point of intersection of said centre line with the centre line of White's Alley, thence the same course three hundred and twenty eight feet and one half inch to a monument at the point of intersection of said centre line with the centre line of John Street, thence the same course two hundred and seventy six feet nine and one quarter inches to a monument at the point of intersection of said centre line with the centre line of Bondinot and Van Houten Streets, thence north seventy degrees and forty two minutes east twenty five feet along said centre line of Van Houten Street and thence shall be fifteen feet wide on each side of the following centre line: Beginning at the last mentioned point running thence north seventeen degrees east to the line of Broadway and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presl.* (L. S.)

Attest. S. TUTTLE *Clerk*

Sec. 6. That Broadway be relaid and that the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be thirty feet six inches wide on each side of the following centre line: Beginning at a rock in said centre line one foot below the grade of the street with an iron pin centre and marked "B.Way." and running thence south eighty six degrees and five minutes east one

hundred and ninety eight feet six inches to a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Mulberry Street, thence the same course fifty-two feet to a monument in said centre line thence the same course two hundred and ten feet to a monument in said centre line, thence the same course one hundred and ten feet to monument at the point of intersection of said centre line with the centre line *with the* centre line of West Street, thence the same course twenty-seven feet seven inches, to a monument at the point of intersection of said centre line with the centre line of Main Street, and shall be thirty three feet wide on each side of the following centre line: Beginning at the last mentioned monument and running thence on a course south eighty six degrees and five minutes east six feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Parke Street thence south eight degrees and thirty seven minutes east, four feet eight and one half inches to a monument in said centre line marked "IdWay," thence south eighty two degrees and forty five minutes east two hundred and seventy six feet four inches to a monument at the point of intersection of said centre line with the centre line of Washington Street, thence the same course one hundred and thirty six feet seven inches to a monument in said centre line, thence on the same course two hundred and ninety six feet six inches to a monument at the point of intersection of said centre line with the centre line of Church Street, thence south eighty three degrees east one hundred and sixty four feet four inches to a monument at the point of intersection of said centre line with the centre line of Bridge Street thence the same course four hundred and six feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Paterson Street, thence the same course

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two hundred and eighty six feet eight inches to the Paterson and Ramapo Rail Road thence the same course two hundred and fifty five feet one inch to the centre line of Straight Street north of Broadway, thence the same course one foot eleven inches to a monument at the point of intersection of said centre line with the centre line of Straight Street south of Broadway thence the same course one hundred and seventy five feet to a monument in said centre line thence the same course three hundred and twenty five feet to a monument at the point of intersection of said centre line with the centre line of East Carrol Street, thence the same course two hundred and forty six feet to a monument at the point of intersection of said centre line with the centre line of Centre Street, thence the same course seventy three feet five inches to a monument at the point of intersection of said centre line with the centre line of Summer Street, thence the same course four hundred and twenty five feet to a monument at the point of intersection of said centre line with the centre line of Carrol Street, thence the same course seven hundred and thirty seven feet seven inches to a monument at the point of intersection of said centre line with the centre line *with the centre line* of Yorke Street, thence the same course nine hundred and eighty three feet three inches to a monument at the point of intersection of said centre line with the centre line of York Avenue, thence the same course eight feet and three inches to a monument in said centre line thence on a course north twenty one degrees and forty five minutes east twenty four feet three inches to a monument in said centre line and thence shall be twenty five feet wide on each side of the following centre line. Beginning at the last mentioned monument and running thence on a course south eighty four degrees and fifteen minutes east nine hundred and forty feet to a monument in said centre line thence south eighty three degrees

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east twenty four hundred feet to a monument in said centre line thence south eighty three degrees and thirty minutes east twenty one hundred and ninety eight feet to a monument at the point of intersection of said centre line with the centre line of Passaic Avenue thence south eighty five degrees east twelve hundred and seventy three feet to a monument in said centre line near the Passaic River thence the same course to the Passaic River—

And also beginning at the first mentioned rock and running thence on a course north eighty six degrees and five minutes west to the lower race way and the same is hereby relaid accordingly—

CHAS. DANFORTH *Presl.* (L. S.)

Attest S. TUTTLE, *Clerk.*

Sec. 7. That Main Street be relaid and that the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two and that said relaid street shall begin at a monument with an iron pin centre marked "Main" and placed one foot below the grade of the street and at the point of intersection of the centre line of Broadway and running thence south nine degrees east two hundred and ninety one feet five inches to the intersection of the centre of Van Houten Street, said street being thirty three feet wide on each side of the above described line at Broadway and gradually increases in width on each side to thirty four feet five inches at Van Houten Street thence north eighty degrees and fifteen minutes west one foot five inches to a monument (Number one) which is thirty three feet east of the west side of said street, thence south ten degrees west and parallel with the said side three hundred and nine feet five inches to a monument (number two) at the intersection of said line with the centre line of Ellison Street thence the same line

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and course three hundred and ninety nine feet two inches to a monument (number three) at the intersection of said line with the centre line of Congress Street, thence north sixty nine degrees and fifty minutes east fourteen feet one inch along the centre line of Congress Street to a monument (number four) which is thirty three feet west of the east side of said Main Street, thence by a line parallel with the east side of said street to a monument (number five) at the intersection of said line with the centre line of Ellison Street thence parallel as aforesaid to a monument (number six) at the intersection of said line with the centre line of Van Houten Street, thence along the centre line of Van Houten Street one foot and five inches, also including the space between the monuments which is two feet ten inches wide at Van Houten Street and fourteen feet one inch at Congress Street: and thence shall be thirty three feet wide on each side of the following centre line: Beginning at the monument (number three) and running thence south nine degrees and twenty one minutes west three hundred and sixty seven feet to a monument at the point of intersection of said centre line with the centre line of Smith Street, thence the same course two hundred and fifty eight feet three inches to a monument at the point of intersection of said centre line with the centre line of Ward Street, thence the same course twelve feet and one and a half inches to a monument in said centre line, thence south three degrees and forty one minutes west one hundred and eighty eight feet three inches to a monument in said centre line thence south thirteen degrees and thirty four minutes east seventy six feet six inches to a monument at the point of intersection of said centre line with the centre line of Oliver Street, thence the same course three hundred and eight feet seven inches to a monument at the point of intersection of said centre line with the centre line of Depot Street, thence the same course

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two hundred and fifty four feet six inches to a monument at the point of intersection of said centre line with the centre line of Grand Street, thence the same course five hundred and seventy six feet six inches to a monument at the point of intersection of said centre line with the centre line of Slater Street, thence the same course twelve hundred feet to a monument in said centre line thence the same course three hundred feet to a monument in said centre line thence south twelve degrees and one minutes east six hundred and forty eight feet ten inches to a monument at the point of intersection of said centre line with the centre line of Van Winkle Street, thence north seventy six degrees and thirty three minutes east four feet nine inches to a monument in said centre line thence south thirty degrees and thirty minutes east six hundred and thirty five feet to a monument at the point of intersection of said centre line with the boundary line between the City of Paterson and the Township of Acquackanonk and the same is hereby relaid accordingly—

CHARS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 8. That Parke Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be twenty two feet wide on each side of the following centre line. Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line with the centre line of Broadway running thence on a course north eight degrees and thirty seven minutes west two hundred and fifty four feet two inches to a monument at the point of intersection of said centre line with the centre line *with the centre line*

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of Fair Street, thence the same course two hundred and three feet to a monument at the point of intersection of said centre line with the centre line of Bank Street, and thence north forty seven degrees west three feet ten inches and thence shall be twenty five feet wide on each side of the following centre line: Beginning at the last mentioned monument and running thence north eight degrees and thirty seven minutes west seventy six feet six inches to a monument at the point of intersection of said centre line with the centre line of Division Street, and thence the same course two hundred and sixty feet six inches to a monument at the point of intersection of said centre line with the centre line of Godwin Street, thence the same course eighty seven feet and three inches to a monument at the point of intersection of said centre line with the centre line of River Street and thence the same course twenty six feet to a monument in said centre line thence the same course to the Passaic River and the same is hereby relaid accordingly

CHAS. DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 9. That Ellison Street be relaid and that the location of such relaid street be according to the map, survey and return made by L. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line. Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Prospect Street running thence on a course south eighty degrees and forty minutes east four hundred and fifty two feet ten inches to a monument at the point of intersection of said centre line with a line thirty three feet easterly from the west side of Main Street, thence the same course seven feet

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and one half an inch to a monument in said centre line thence the same course two hundred and six feet five inches to a monument at the point of intersection of said centre line with the centre line of Hamilton Street thence the same course forty two feet four inches to a monument at the point of intersection of said centre line with the centre line of Mansion Street, thence shall be twenty seven and one half feet wide on each side of the following centre line: Beginning at the last mentioned monument and running thence north eight degrees and forty one minutes east six feet eight inches to a monument in said centre line thence south eighty one degrees and forty one minutes east seventy six feet and seven inches to a monument at the point of intersection of said centre line with the centre line of Colt Street, thence the same course thirty three feet nine inches to a monument in said centre line thence the same course three hundred and sixty five feet nine inches to a monument at the point of intersection of said center line with the centre line of Church Street thence the same course to Straight Street and shall be twenty five feet wide on each side of the following centre line: Beginning at a point in said centre line one hundred and thirty feet north eighty two degrees west from a monument in said centre line at a point of intersection of said centre line with the centre line of Summer Street running thence south eighty two degrees east one hundred and thirty feet to said monument thence the same course four hundred and twenty five feet to a monument at the point of intersection of said centre line with the centre line of Carroll Street thence the same course one hundred and thirty feet and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest. S. TUTTLE *Clerk*

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Sec. 10. That Colt Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and the said relaid street shall be twenty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin center placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Ellison street, running thence on a course south four degrees and fifty one minutes west two hundred and thirty nine feet two inches to a monument at the point of intersection of said centre line with the centre line of Market Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Prest* (L. S.)

Attest. S. TUTTLE *Clerk*

Sec. 11. That Hamilton Street be relaid and the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Ellison Street running thence on a course south one degree and eleven minutes west two hundred and sixty one feet five inches to a monument at the point of intersection of said centre line with the centre line of Congress Street and the same is hereby relaid accordingly—

CHAS. DANFORTH *Prest* (L. S.)

Attest. S. TUTTLE *Clerk*

Sec. 12. That Congress Street shall be relaid and that the location of such relaid street shall be accord-

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ing to the map survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Market Street, running thence on a course south sixty nine degrees and fifty minutes west fifty five feet two inches to a monument at the point of intersection of said centre line with the centre line of Union Street, thence the same course twenty five feet five inches to a monument at the point of intersection of said centre line with the centre line of Hamilton Street thence the same course one hundred and thirty five feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Hotel Street thence the same course one hundred and thirty six feet one inch to a monument at the point of intersection of said centre line with a line thirty three feet west of the east side of Main Street, thence the same course fourteen feet one inch to a monument in said centre line thence the same course one hundred and eighty eight feet three inches to a monument at the point of intersection of said centre line with the centre line of Prospect Street, thence the same course three hundred and thirty three feet one inch to a monument at the point of intersection of said centre line with the centre line of Cross Street, thence the same course one hundred and seventy five feet to a monument in said centre line thence the same course four hundred and twenty seven feet one inch to a monument at the point of intersection of said center line with the center line of Mill Street thence south twenty degrees east sixteen feet six inches to a monument in said centre line and thence shall be twenty five feet wide on the south side of the following centre line

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and thirty five feet wide on the north side of the following centre line: Beginning at the last mentioned monument running thence south seventy degrees and fifty nine minutes west two hundred and seventy two feet one inch to a monument at the point of intersection of said centre line with the centre line of Jersey Street, thence south twenty degrees east seven feet, two inches, thence south fifty five degrees and fifteen minutes west two hundred and sixty nine feet four inches to a monument at the point of intersection of said centre line with the centre line of Pine Street, thence the same course, two hundred and sixty nine feet four inches to a monument at the point of intersection of said centre line with the centre line of Spruce Street also a gore formed as follows: Beginning at a point of intersection of the southerly line of Congress Street, with the easterly line of Spruce Street running thence at right angles with Spruce Street to the westerly line of Pine Street thence northerly along said westerly line of Pine Street to the southerly line of Congress Street, thence westerly along the southerly line of Congress Street to the place of beginning. Also the gore formed as follows: Beginning at the point of intersection of the easterly line of Pine Street and the southerly line of Congress Street, running thence easterly at right angles with Pine Street to the westerly line of Jersey Street, thence northerly along said westerly line of Jersey Street to the southerly line of Congress Street, thence westerly along the said southerly line of Congress Street to the place of beginning and the same is hereby relaid accordingly—

CHAS DANFORTH *Presl* (L. 8.)

Attest S. TUTTLE *Clerk*

Sec. 13. That Market Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor

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dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be forty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Congress Street and at a point in said centre line of Congress Street fifty five feet two inches easterly from the centre line of Union Street running thence on a course south sixty four degrees and forty four minutes east thirty seven feet and two and one half inches to a monument at the point of intersection of said Centre line with the centre line of Colt Street thence the same course four hundred and three feet seven inches to a monument at the point of intersection of said centre line with the centre line of Church Street thence the same course one hundred and ten feet seven inches to a monument at the point of intersection of said centre line with the centre line of Clarke Street, thence the same course four hundred and thirty one feet to a monument in said centre line, thence the same course three hundred and fifty three feet to a monument at the point of intersection of said centre line with the centre line of Willis Street and thence to the Paterson and Ramapo Rail Road and thence shall be twenty five feet wide on each side of the following centre line: Beginning at a monument placed fourteen feet and ten inches at right angles southerly from the last mentioned monument, and running thence south sixty four degrees and forty four minutes east sixty eight feet to the Paterson and Ramapo Railroad thence the same course two hundred and ninety two feet six inches to a monument at the point of intersection of said centre line with the centre line of Straight Street thence the same course two hundred and sixty three feet ten inches to a monument at the point of intersection of said centre line with the centre line of Madi-

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son Street, thence the same course two hundred and sixty three feet ten inches to a monument at the point of intersection of said centre line with the centre line of Beech Street thence the same course one hundred and twenty two feet three inches to a monument in said centre line thence the same course one hundred and forty two feet eight inches to a monument at the point of intersection of said centre line with the centre line of Vine Street, thence the same course four hundred and thirteen feet ten inches to a monument at the point of intersection of said centre line with the centre line of Carroll Street thence the same course twenty eight chains and thirty three links to a monument at the point of intersection of said centre line with the centre line of Marselis Street thence the same course twenty two chains to a monument in said centre line thence the same course twelve chains to a monument in said centre line thence the same course eighteen chains to a monument in said centre line thence the same course six chains to a monument in said centre line thence the same course thirteen chains and four links to a monument in said centre line thence south sixty degrees and five minutes east thirty feet and eight inches to a monument at the point of intersection of said centre line with the boundary line between the City of Paterson and the Township of Acquackanonk and the same is hereby relaid accordingly.

CHAS DANFORTH *Presl.* (L. S.)

Attest S. TUTTLE *Cllk*

Sec. 14. That Willis Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an

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iron pin centre three feet below the grade of the street and at the point of intersection of said centre line with the centre line of Market Street, running thence on a course south eighty one degrees and fifteen minutes east sixty eight feet to the Paterson and Ramapo Rail Road thence the same course two hundred and seventy six feet ten inches to a monument at the point of intersection of said centre—with the centre line of Straight Street, thence the same course eleven hundred and fifty six feet six inches to a monument at the point of intersection of said centre line with the centre line *with the centre line of Carroll Street*, thence the same course one hundred and four feet to a monument in said centre line, thence shall be twenty five feet on the north side and forty one feet on the south side of the following centre line: Beginning at the last mentioned monument running thence south eighty one degrees and fifteen minutes east two hundred and ninety six feet to a monument in said centre line thence the same course three hundred and one feet six inches to a monument at the point of intersection of said centre line with the centre line of York Avenue and thence shall be thirty three feet wide on each side of the following centre line: Beginning at the last mentioned monument and running thence south twenty one degrees and thirty minutes west eight feet to a monument in said centre line thence south seventy five degrees and thirty minutes east four hundred and sixty four feet three and one half inches to a monument at the point of intersection of said centre line with the centre line of Merselis Street, thence on the same course eighteen hundred and twenty five feet two and one half inches to a monument in said centre line thence the same course sixteen hundred and twenty eight feet ten inches to a monument at the point of intersection of said centre line with the centre line of Vreeland Avenue, thence the same course, seven hundred and forty seven feet one inch

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to a monument in said centre line, thence the same course six hundred and twelve feet five inches to a monument at the point of intersection of said centre line with the centre line of Passaic Avenue and thence the same course twenty one feet to the east line of the Passaic Avenue and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clk*

Sec. 15. That Mulberry Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen city surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course north thirty degrees west two hundred feet to a monument in said centre line thence the same course two hundred and thirty seven feet seven inches to a monument at the point of intersection of said centre line with the centre line of River Street thence twenty five feet to the north line of River Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clk*

Sec. 16. That West Street be relaid and that the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor, dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty seven feet wide at Broadway and thence running a straight course to thirty feet wide at River Street and thence the same width to the Pas-

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said River on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course north twenty eight degrees and fifty five minutes west three hundred and forty seven feet eight inches to a monument at the point of intersection of said centre line with the centre line of Ryeaston Street, thence the same course three hundred and forty three feet to a monument at the point of intersection of said centre line with the centre line of River Street, thence the same course to the Passaic River and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres.* (L. S.)

Attest. S. TUTTLE *Clerk*

Sec. 17. That River Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor, dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed five feet six inches below the grade of the street and at the point of intersection of said centre line with the centre line of Mulberry Street and running thence on a course north fifty five degrees and nine minutes east two hundred and eighty two feet one inch to a monument at the point of intersection of said centre line with the centre line of West Street, thence north fifty five degrees and nine minutes east two hundred and eight feet four inches to a monument in said centre line thence south forty seven degrees east forty four feet to a monument at the point of intersection of said centre line with the centre line of Bank Street, thence north fifty five degrees and nine minutes east three hundred and

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eighty three feet two inches to a monument at the point of intersection of said centre line with the centre line of Parke Street, thence north eight degrees and thirty seven minutes east twenty six feet to a monument in said centre line thence north sixty nine degrees and fifty four minutes east three hundred and thirty feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Washington Street, thence the same course three hundred and eighty two feet seven inches to a monument in said centre line thence north fifty four degrees and forty one minutes east three hundred and twenty feet two inches to a monument at the point of intersection of said centre line with the centre line of Bridge Street, thence the same course four hundred and forty six feet to a monument at the point of intersection of said centre line with the centre line of Fulton Street thence the same course three hundred and seventy feet two inches to a monument at the point of intersection of said centre line with the centre line of Lawrence Street, thence the same course twenty three feet eight inches to a monument in said centre line thence north forty seven degrees and forty five minutes east three hundred and twelve feet five inches to a monument at the point of intersection of said centre line with the centre line of Montgomery Street, thence the same course three hundred and thirty three feet two inches to a monument at the point of intersection of said centre line with the centre line of Lafayette Street, thence the same course twelve hundred and sixty one feet to the Paterson and Ramapo Rail Road thence the same course fifteen chains and fifty links to a monument in said centre line thence the same course four chains and fifty links to a monument in said centre line *thence the same course four chains and fifty links to a monument in the said centre line* thence the same course fourteen chains to a monument in said centre line, thence the same course six

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chains to a monument in said centre line, thence the same course eight chains to a monument in said centre line, thence the same course sixteen chains and forty eight links to a monument at the point of intersection of said centre line with the centre line of York Avenue, thence the same course three chains and fifty two links to a monument in said centre line, thence twenty two chains and thirty five links to a monument marked "River Street" in said centre line near the Passaic River thence the same course to the Passaic River and the same is hereby relaid accordingly—

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 18. That Oliver Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid Street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Main Street, running thence on a course south sixty nine degrees and thirty eight minutes west one hundred and twenty seven feet six inches to a monument at the point of intersection of said centre line with the centre line of Cross Street thence the same course three hundred and eight feet to a monument at the point of intersection of said centre line with the centre line of Marshall Street, thence the same course two hundred and ninety six feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Mill Street, and thence shall be thirty feet wide on the southerly side and thirty eight feet wide on the northerly side of the following centre line: Beginning at the last mentioned monument and running

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thence along the last mentioned course two hundred and sixty eight feet seven inches to a monument at the point of intersection of said centre line with the centre line of Jersey Street thence the same course two hundred and sixty one feet to a monument at the point of intersection of said centre line with the centre line of Pine Street, thence the same course two hundred and sixty feet to a monument at the point of intersection of said centre line with the centre line of Spruce Street, and the same is hereby relaid accordingly—

CHAS DANFORTH *Prest.* (L. S.)

AUGUST S. TUTTLE *Clerk*

Sec. 19. That Grand Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid Street shall be thirty seven and one half feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the Street and at the point of intersection of said centre line with the centre line of Main Street, running thence on a course south sixty nine degrees and forty six minutes west three hundred and seventy two feet two inches to a monument at the point of intersection of said centre line with the centre line of Marshall Street, thence the same course one hundred and fifty nine feet four inches to a monument at a point in said centre line thence the same course one hundred and thirty eight feet six inches to a monument at the point of intersection of said centre line with the centre line of Mill Street, thence the same course two hundred and sixty five feet three inches to a monument at the point of intersection of said centre line, with the centre line of Jersey Street, thence the same course two hundred and sixty feet

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six inches to a monument at the point of intersection of said centre line with the centre line of Pine Street, thence the same course two hundred and sixty feet to a monument at the point of intersection of said centre line with the centre line of Spruce Street, and the same is hereby relaid accordingly—

CHAS DANFORTH *Prest* (L. S.)

Attest. S. TUTTLE *Clerk*

Sec. 20. That Slater Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two and that the said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Main Street, running thence on a course south seventy degrees and two minutes west three hundred and eight feet to a monument at the point of intersection of said centre line with the centre line of Marshall Street thence on the same course two hundred and ninety eight feet nine inches to a monument at the point of intersection of said centre line with the centre line of Mill Street, thence south sixty nine degrees and forty six minutes west two hundred and sixty two feet to a monument at the point of intersection of said centre line with the centre line of Jersey Street, thence the same course two hundred sixty feet to a monument at the point of intersection of said centre line with the centre line of Pine Street, thence the same course two hundred and sixty feet to a monument at the point of intersection of said centre line with the centre line of Spruce Street and the same is hereby relaid accordingly—

CHAS DANFORTH *Prest*. (L. S.)

Attest—S. TUTTLE *Clerk*

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Sec. 21. That Cedars Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two and that said relaid street shall be twenty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Marshall Street running thence on a course south twenty seven degrees and thirty minutes west two hundred and five feet six inches to a monument at the point of intersection of said centre line with the centre line of Mill Street and the same is hereby relaid accordingly—

C. DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 22. That Van Winkle Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two, and that said relaid street shall be twenty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Main Street running thence on a course south seventy six degrees and thirty three minutes west two hundred and fifty four feet two inches to a monument at the point of intersection of said centre line with the centre line of Marshall Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest. S. TUTTLE *Clerk*

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Sec. 23. That Marshall Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be thirty feet wide on each side of the following centre line; Beginning at a stone monument with an iron pin centre placed one foot below the grade of the Street, and at the point of intersection of said centre line with the centre line of Oliver Street, running thence on a course south nineteen degrees and forty seven minutes east five hundred and sixty three feet one inch to a monument at the point of intersection of said centre line with the centre line of Grand Street, thence the same course five hundred and sixty nine feet two inches to a monument at the point of intersection of said centre line with the centre line of Slater Street, thence the same course five hundred and fifty three feet ten inches to a monument at a point in said centre line thence twenty five feet wide on each side of the following centre line: Beginning at the last mentioned monument and running thence south thirteen degrees and seven minutes east eight hundred and twenty five feet four inches to a monument at the point of intersection of said centre line with the centre line of Cedar Street thence the same course seven hundred and thirty two feet seven inches to a monument at the point of intersection of said centre line with the centre line of VanWinkle Street, thence the same course two hundred and twenty two feet to a monument in said centre line, thence south five degrees and fifteen minutes east two hundred and ninety two feet to a monument at the point of intersection of said centre line with the boundary line between the city of Paterson and Township of Acquackanonk and the same is hereby relaid accordingly.

CHAS DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*—

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Sec. 24. That Jersey Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the Street and at the point of intersection of said centre line with the centre line of Congress Street, running thence on a course south twenty degrees east five hundred and thirty two feet to a monument in said centre line, thence the same course two hundred and thirty six feet to a monument at the point of intersection of said centre line with the centre line of Oliver Street, thence the same course five hundred and seventy feet four inches to a monument at the point of intersection of said centre line with the centre line of Grand Street, thence the same course five hundred and sixty seven feet six inches to a monument at the point of intersection of said centre line with the centre line of Slater Street, thence the same course to the line of the Morris Canal and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres.* (L. S.)

Attest S. TUTTLE *Clk*

Sec. 25. That Pine Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Congress Street, running thence on a course south twenty degrees east six hundred and ninety seven feet six inches to a monument

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at the point of intersection of said centre line with the centre line of Oliver Street, thence the same course five hundred and seventy three feet one inch to a monument at the point of intersection of said centre line with the centre line of Grand Street, thence the same course five hundred and sixty seven feet six inches to a monument at the point of intersection of said centre line with the centre line of Slater Street, thence the same course to the line of the Morris Canal and the same is hereby relaid accordingly.

CHAS DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 26. That Spruce Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen city surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line with the centre line of Congress Street, running thence on a course south twenty degrees east six hundred and twenty eight feet two inches to a monument at the point of intersection of said centre line with the centre line of Oliver Street, thence the same course five hundred and seventy five feet ten inches to a monument at the point of intersection of said centre line with the centre line of Grand Street, thence the same course five hundred and sixty seven feet six inches to a monument at the point of intersection of said centre line with the centre line of Slater Street, thence the same course thirty feet to the south side of Slater Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*

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Sec. 27. That Stony Road be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty-two and that the said relaid street shall be twenty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line with the centre line of Spruce Street, running thence on a course south seventy one degrees west one hundred and fifty-four feet thence south forty five degrees and fifteen minutes west thirty five feet nine inches thence south thirty five degrees and forty five minutes west one hundred and sixty seven feet six inches thence south fifty degrees west fifty feet, thence south forty degrees and forty five minutes west two hundred and forty four feet thence twenty one degrees and forty five minutes west seventy nine feet eight inches thence south twenty eight degrees west one hundred and four feet thence south eighty three degrees and forty five minutes west seventy nine feet six inches thence south forty two degrees and fifteen minutes west two hundred and twenty five feet thence south ten degrees and forty five minutes west one hundred and eighty feet thence south forty eight degrees and thirty minutes west two hundred and thirty feet thence north sixty one degrees and twenty five minutes west one hundred and fifty feet thence north eighty one degrees and fifteen minutes west one hundred feet thence south sixty five degrees and thirty five minutes west two hundred feet thence south fifty eight degrees and forty five minutes west two hundred and thirty feet thence south seventy nine degrees and fifteen minutes west three hundred feet thence south sixty four degrees and twenty minutes west two hundred and fifty feet thence south twenty seven degrees and thirty minutes west four hundred and fifty feet

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to a monument in said centre line thence north sixty two degrees west three hundred and fifty four feet four inches to a monument at the point of intersection of said centre line with the centre line of Ash Street, thence the same course nine hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Maple Street, thence north seventy eight degrees east two hundred and fifty feet to a monument in said centre line thence north sixty two degrees west to Totowa Avenue and the same is hereby relaid accordingly.

CHAS DANFORTH *Pres.* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 28. That Ash Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Stony Road running thence on a course south twenty eight degrees west one hundred and two feet eight inches to a monument at the point of intersection of said centre line with the boundary line between the City of Paterson and the township of Acquackanonk and the same is hereby relaid accordingly.

CHAS DANFORTH *Pres.* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 29. That Maple Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be

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twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Stony road running thence on a course south twenty eight degrees west one hundred and fourteen feet eight inches to a monument at the point of intersection of said centre line with the boundary line between the City of Paterson and the Township of Acquackanonk, and the same is hereby relaid accordingly.

CHAS DANFORTH *Pres't Pres't* (L. S.)

Attest S. TUTTLE *Clk*

Sec. 30. That Totowa Avenue be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two: and that said relaid Street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Congress Street, running thence on a course north twenty three degrees west two hundred and fifty feet thence north twenty eight degrees and forty five minutes west seventy one feet, thence north forty seven degrees and forty minutes west one hundred and forty four feet six inches thence north eighty one degrees and thirty minutes west three hundred and fifty seven feet six inches and thence shall be twenty five feet wide on each side of the following centre line: Beginning at the end of the last course running thence on a course south seventeen degrees and forty five minutes west two hundred and fifty feet, thence south thirty one degrees and forty five minutes west eight hundred and fifty feet

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thence south forty eight degrees and thirty minutes west one hundred and twenty feet thence south sixty six degrees west one hundred feet thence south eighty one degrees and fifteen minutes west one hundred feet, thence south eighty six degrees and thirty minutes west five hundred and fifty feet thence south eighty two degrees and forty five minutes west fourteen hundred and twenty five feet, thence south seventy three degrees west one hundred feet, thence south sixty degrees and fifteen minutes west two hundred and fifty feet, thence south fifty two degrees and forty five minutes west three hundred and fifty feet thence south thirty nine degrees and fifteen minutes west one hundred and ninety one feet, to a monument at the point of intersection of said centre line with the boundary line between the City of Paterson and the township of Acquackanonk and the same is hereby relaid accordingly.

CHAS DANFORTH *Presd.* (L. S.)

AUGUST B. TUTTLE *Chck.*

New York June 8th 1853. This is to certify that I have this day received from B. Marshman thirty dollars in addition to ten dollars received from Mr. M. I. Earl on his account June 6th both being on account of forty acres of land sold by me to B. Marshman in the Township of Acquackanonk New Jersey being part of a farm of about ninety acres purchased by me of Elizabeth VanHouten. The said forty acres lies on the first road from Passaic Bridge leading from the Passaic River to the Canal. The said B. Marshman is to pay one half of the purchase money cash when I give him possession of the said land which shall be on or before the first of September next eighteen hundred and fifty three. The balance to remain on bond and mortgage at the legal interest of New Jersey for the same period as specified in my deed received from

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Elizabeth VanHouten. The said forty acres I sell him at forty dollar per acre.

her

Witness Elizabeth X Degray
mark

J. DAUENHAUER.

Recorded Jun 9th 1853

CANFIELD CLK

New Jersey June 6 1853.

This to certify that I have sold to Benjamin Marshman forty acres of land belonging to me for the sum of forty dollars an acre to be half cash and the rest on bond and mortgage at lawful interest on it. I have received ten dollars to bind the purchase—

JOSEPH DAUENHAUER

Witness MORRIS J. EARL.

Recorded June 9th 1853.

CANFIELD CLK.

Sec. 31. That Cross Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen city surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Boudinot Street, running thence on a course south nineteen degrees and thirty one minutes east two hundred and seventy six feet seven inches to a monument at the point of intersection of said centre line with the centre line of John Street, thence north seventy degrees and thirty eight minutes east ten feet five and three quarter inches to a monument in said centre line of John Street thence south nineteen degrees and eighteen

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minutes east three hundred and twelve feet to a monument at the point of intersection of the centre line of Cross Street, with the centre line of Passaic Street thence south sixty nine degrees and fifty three minutes west six feet eight and one half inches to a monument in the centre line of Passaic Street thence south twenty degrees and five minutes east two hundred and sixty two feet seven inches to a monument at the point of intersection of the said centre line of Cross Street with the centre line of Congress Street, thence the same course two hundred and eighty two feet seven inches to a monument at the point of intersection of said centre line with the centre line of Elm Street thence the same course two hundred and fifty three feet nine inches to a monument at the point of intersection of said centre line of Cross Street with the centre line of Ward Street thence same course two hundred and fifty eight feet three inches to a monument at the point of intersection of said centre line of Cross Street with the centre line of Oliver Street and the same is hereby relaid accordingly—

— CHAS DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 32. That Depot Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Main Street, running thence on a course north seventy six degrees twenty six minutes east three hundred and thirty three feet and the same is hereby relaid accordingly—

CHAS. DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*

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Sec. 33. That Ward Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Mill Street, running thence on a course north sixty nine degrees and fifty one minutes east, one hundred and eighty one feet to a monument in said centre line, thence the same course two hundred and sixty four feet to a monument in said centre line, thence the same course one hundred and fifty eight feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Cross Street, thence the same course two hundred and eighteen feet five inches to a monument at the point of intersection of said centre line with the centre line of Main Street thence south nine degrees and twenty one minutes west, twelve feet one and a half inches to a monument in said centre line of Main Street, thence south eighty seven degrees and fifty four minutes east, three hundred and ninety three feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Maitland Street thence the same course three hundred and four feet six inches to a monument at the point of intersection of said centre line with the centre line of Clark Street, thence the same course two hundred and ninety feet to a monument in said centre line thence the same course to the line of the Paterson and Ramapo Rail Road and the same is hereby relaid accordingly—

CHAS. DANFORTH *Prest.* (L. S.)

Attest S. TUTTLE *Clerk*

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Sec. 34. That Elm Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Cross Street, running thence on a course south sixty nine degrees and fifty two minutes west six hundred and three feet one inch to a monument at the point of intersection of said centre line with the centre line of Mill Street, and the same is hereby relaid accordingly—

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 36. That John Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Mill Street, running thence on a course north seventy degrees and thirty eight minutes east, two hundred and seventy two feet ten inches to a monument at the point of intersection of said centre line of Magees Alley thence the same course one hundred and thirteen feet four inches to a monument at the point of intersection of said centre line with the centre line of Lynch's Alley thence the same course one hundred and ninety three feet two inches to a monument at the point of intersection of said centre line with the centre line of Cross Street,

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thence the same course three hundred and thirty three feet five and three quarter inches to a monument at the point of intersection of said centre line with the centre line of Prospect Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Prest.* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 37. That Magee's Alley be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be seven feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Boudinot street running thence on a course south nineteen degrees and thirty one minutes east two hundred and seventy six feet and three inches to a monument at the point of intersection of said centre line with the centre line of John Street and the same is hereby relaid accordingly—

CHAS. DANFORTH *Prest.* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 38. That Lynches Alley be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two; and that said relaid street shall be nine feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of John Street, running thence on a course south eighteen degrees and fifty five minutes east three hundred and ten feet to a monument

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at the point of intersection of said centre line with the centre line of Passaic Street and the same is hereby relaid accordingly—

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 39. That White's Alley be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two and that said relaid street shall be six feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Prospect Street, running thence on a course south sixty nine degrees and fifty five minutes west three hundred and thirty feet two inches to a monument at the point of intersection of said centre line with the centre line of Cross Street and the same is hereby relaid accordingly—

CHAS. DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 40. That Clark Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Market Street, running thence on a course south twenty five degrees and one minute west fourteen feet ten inches to a monument in said centre line thence the same course three hundred and one feet eight inches to a monument at the

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point of intersection of said centre line with the centre line of Smith Street, thence the same course ninety seven feet six inches to a monument in said centre line thence the same course one hundred and seventy eight feet ten inches to a monument at the point of intersection of said centre line with the centre line of Ward Street and the same is hereby relaid accordingly—

CHAS. DANFORTH *Prest.* (L. S.)

Attest S. TUTTLE *Clerk.*

Sec. 41. That Smith Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Clark Street, running thence on a course north eighty eight degrees and five minutes west three hundred feet ten inches to a monument at the point of intersection of said centre line with the centre line of Main Street thence the same course one hundred and nine feet ten inches to a monument at the point of intersection of said centre line with the centre line of Maitland Street, thence the same course five feet eleven and one half inches to a monument at the point of intersection of said centre line with the centre line of Hotel Street thence the same course three hundred and fifty five feet to a monument at the point of intersection of said centre line with the centre line of Main Street and the same is hereby relaid accordingly--

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

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Sec. 42. That Maitland Street be relaid and that the location of such relaid street be according to the map survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Ward Street, running thence on a course north one degree and fifty five minutes west two hundred and fifty five feet four inches to a monument at the point of intersection of said centre line with the centre line of Smith Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 43. That Union Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be fifteen feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Congress Street running thence on a course south nineteen degrees and fifty eight minutes east three hundred and seventy one feet four inches to a monument in said centre line thence south three degrees and thirty minutes west one hundred and thirty eight feet two inches to a monument at the point of intersection of said centre line with the centre line of Smith Street, and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Exhibit R-78.

Sec. 44. That Hotel Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be eighteen feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Congress Street, running thence on a course south twenty degrees and ten minutes east two hundred and thirty feet four inches to a monument in said centre line thence on the same course two hundred and twenty four feet to a monument at the point of intersection of said centre line with the centre line of Smith Street and the same is hereby relaid accordingly—

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 45. That Mansion Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Ellison Street running thence on a course north eight degrees forty one minutes east one hundred and twenty eight feet two inches to a monument in said centre line thence the same course one hundred feet to a monument in said centre line thence the same course two hundred feet and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Exhibit R-78.

Sec. 46. That Church Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course south eight degrees and seventeen minutes west two hundred and sixty four feet five inches to a monument at the point of intersection of said centre line with the centre line of East Van Houten Street thence the same course three hundred and thirty eight feet three inches to a monument at the point of intersection of said centre line with the centre line of Ellison Street thence the same course one hundred and ninety four feet five and one half inches to a monument in said centre line thence the same course one hundred and sixty feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Market Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 47. That Bridge Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line with the centre line of River Street, running thence on a course south eight degrees and seventeen minutes west

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six hundred and fifty five feet three inches to a monument at the point of intersection of said centre line with the centre line of Godwin Street, thence the same course two hundred and sixty feet five inches to a monument at the point of intersection of said centre line with the centre line of Division Street, thence the same course two hundred and sixty five feet to a monument at the point of intersection of said centre line with the centre line of Fair Street, thence the same course two hundred and sixty seven feet two inches to a monument at the point of intersection of said centre line with the centre line of Broadway and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd.* (L. 8.)

Attest S. TUTTLE *Clerk*—

Sec. 48. That Fair Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the Street and at the point of intersection of said centre line with the centre line of Parke Street running thence on a course south eighty one degrees and three minutes east one hundred and fifty three feet three inches to a monument in said centre line thence the same course one hundred and twenty four feet to a monument at the point of intersection of said centre line with the centre line of Washington Street thence the same course one hundred and ninety eight feet eleven inches to a monument in said centre line thence the same course three hundred and eighty six feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Bridge

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Street, thence the same course one hundred and thirty feet, and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest.* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 49. That Division Street be relaid and that the location of such relaid Street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin center placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Parke Street running thence on a course south eighty two degrees and five minutes east two hundred and eighty two feet five inches to a monument at the point of intersection of said centre line with the centre line of Washington Street, thence on the same course three hundred and fifty four feet three inches to a monument in the said centre line, thence the same course two hundred and twenty five feet six inches to a monument at the point of intersection of said centre line with the centre line of Bridge Street thence on the same course one hundred and thirty feet and the same is hereby relaid accordingly.

CHAS. DANFORTH *Prest.* (L. S.)

Attest S. TUTTLE *Clerk*—

Sec. 50. That Godwin Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the

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Street and at the point of intersection of said centre line with the centre line of Bridge Street, running thence on a course north eighty two degrees and five minutes west five hundred and seventy two feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Washington thence on the same course two hundred and eighty six feet two inches to a monument at the point of intersection of said centre line with the centre line of Parke Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*—

Sec. 51. That Washington Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid Street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street at the point of intersection of said centre line with the centre line of River Street running thence on a course south nine degrees and thirty two minutes west fifty five feet and three and one half inches to a monument in said centre line thence the same course one hundred and ninety feet and eleven inches to a monument at the point of intersection of said centre line with the centre line of Godwin Street, thence the same course two hundred and sixty feet six inches to a monument at the point of intersection of said centre line with the centre line of Division Street thence the same course, two hundred and seventy six feet five inches to a monument at the point of intersection of said centre line with the centre line of Fair Street, thence the same course two hundred and sixty one feet five inches to a monument at the point of inter-

Exhibit R-78.

section of said centre line with the centre line of Broadway and the same is hereby relaid accordingly.

CHAS DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 52. That Bank—be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two, and that said relaid street shall be twenty two and one half feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of River Street, running thence on a course south forty seven degrees east two hundred and fifty one feet eleven inches to a monument at the point of intersection of said centre line with the centre line of Ryerson Street, thence the same course eighty seven—seven inches to a monument at the point of intersection of said centre line with the centre line of Parke Street, and the same is hereby relaid accordingly.

C DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 53. That Ryerson Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be ten feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Bank Street running thence on a course south sixty four degrees and three minutes west three hundred feet to a monument at the point

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of intersection of said centre line with the centre line of West Street, and the same is hereby relaid accordingly.

CHAS DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 54. That Fulton Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen city surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of River Street running thence on a course south eighty one degrees and fifteen minutes east seven hundred and forty two feet nine inches to a monument at the point of intersection of the centre line with the centre line of Second Avenue thence the same course to the Paterson and Ramapo Rail Road and the same is hereby relaid accordingly.

CHAS DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 55. That Lawrence Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen city surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed two feet below the grade of the street and at the point of intersection of said centre line with the centre line of River Street, running thence on a course south eighty one degrees and twenty nine minutes east four hundred and eighty one feet to a monument at the point of intersection of said centre

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line with the centre line of Second Avenue thence the same course to the Paterson and Ramapo Rail Road and the same is hereby relaid accordingly.

CHAS DANFORTH *Pres't* (L. S.)

AUGUST S. TUTTLE *Clerk*

Sec. 56. That Montgomery Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen city surveyor dated the twentieth day of October Eighteen Hundred and fifty two; and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of River Street running thence on a course south eighty one degrees and twenty minutes east two hundred and seventy feet four inches to a monument at the point of intersection of said centre line with the centre line of Second Avenue thence the same course to the Paterson and Ramapo Rail Road and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

AUGUST S. TUTTLE *Clerk*.

Sec. 57. That Lafayette Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen city surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be thirty feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of River Street running thence on a course south eighty one degrees and forty minutes east sixty five feet to a monument at the point of inter-

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5
5

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section of said centre line with the centre line of Second Avenue thence the same course three hundred and twenty three feet to the Paterson and Ramapo Rail Road thence the same course three hundred feet to a monument in said centre line thence the same course eight hundred and fifty feet to a monument in said centre line thence the same course eight hundred feet to a monument in said centre line thence the same course five hundred and thirty five feet three inches to a monument at the point of intersection of said centre line with the centre line of York Avenue and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 58. That Second Avenue be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be forty feet wide on each side of the following centre line: Beginning at the point of intersection of said centre line with the centre line of River Street running thence on a course south nine degrees and twenty three minutes east to a monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Lafayette Street running thence on the same course two hundred and sixty feet to a monument at the point of intersection of said centre line with the centre line of Lawrence Street thence the same course three hundred and seven feet eight inches to a monument at the point of intersection of said centre line with the centre line of Fulton Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Exhibit R-78.

Sec. 59. That Straight Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October Eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Fulton Street, running thence on a course south nine degrees and twenty three minutes east forty six feet one inch to the Pater-son and Ramapo Rail Road thence south thirty three degrees west one hundred and eighteen feet six inches to a monument in said centre line thence *the* south nine degrees west two hundred and ninety eight feet one inch to a monument in said centre line thence the same course four hundred and thirty three feet four inches to a monument in said centre line thence the same course eight hundred and sixteen feet eight inches to a monument at the point of intersection of said centre line with the centre line of Broadway thence south eighty three degrees east one foot and eleven inches to a monument thence south four de-grees west two hundred and fifty eight feet ten inches to a monument at the point of intersection of said centre line with the centre line of East VanHouten Street, thence the same course seven hundred and six feet to a monument at the point of intersection of said centre line with the centre line of Mechanic Street, thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Willis Street, thence south five degrees west one hundred and twenty six feet two and one half inches to a monument at the point of intersection of said centre line with the centre line of Market Street thence south five degrees and forty six minutes west two hundred feet to a monu-

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ment in said centre line thence the same course two hundred and nine feet ten inches to a monument at the point of intersection of said centre line with the centre line of Morton Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Essex Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Oak Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Cedar Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Bond Street thence the same course six hundred and forty two feet eight inches to the Paterson and Ramapo Rail Road thence the same course eleven hundred and forty eight feet ten inches to a monument in said centre line thence south forty two degrees west twenty three feet ten inches to the boundary line between the City of Paterson and the Township of Acquackanonk and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 60. That York Avenue be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of River Street running thence on a course south thirteen degrees and forty five minutes east fourteen chains and seventy seven

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links to a monument in said centre line thence on the same course south twenty degrees west fourteen chains and seventy seven links to a monument in said centre line (or large Oak tree) thence south eighteen degrees and thirty minutes west twenty six chains and seventy six links to a monument in said centre line thence north seventy nine degrees and five minutes west eight chains and seventy four links to a monument in said centre line thence south twenty one degrees west five chains and ten links to a monument in said centre line thence south eight degrees west nine chains and twenty two links to a monument at the point of intersection of said centre line with the centre line *with the centre line* of Lafayette Street, thence south seven degrees and thirty minutes west six hundred and forty six feet ten inches to a monument in said centre line thence south two degrees and forty minutes west nine hundred and fifty feet to a monument in said centre line thence south forty four degrees and forty five minutes east one hundred and sixteen feet ten inches to a monument in said centre line thence south thirty one degrees forty five minutes west eight hundred and seventy seven feet to a monument at the point of intersection of said centre line with the centre line of Broadway thence north eighty three degrees west eight feet and three inches to a monument in said centre line thence south twenty one degrees and thirty minutes west twelve hundred and forty one feet to a monument at the point of intersection of said centre line with the centre line of Willis Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 61. That Donley Street be relaid and that the location of said relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred

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and fifty two and that said relaid street shall be sixteen feet and six inches wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line with the centre line of York Avenue extended width about sixteen feet six inches running thence on a course south seventy six degrees east two thousand four hundred and thirty five feet and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L.S.)

Attest S. TUTTLE *Clerk*

Sec. 62. That Vreeland Avenue be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Willis Street running thence on a course south ten degrees and forty five minutes east three hundred and fifty feet to a monument in said centre line thence south nine degrees and twenty minutes east thirteen hundred and eight feet to a monument in said centre line, thence south thirty two degrees east four hundred and three feet six inches to a monument in said centre line thence south thirteen degrees and twenty minutes west four hundred and sixty three feet to a monument in said centre line thence south eleven degrees and fifty minutes east six hundred and eighty nine feet six inches to a monument in said centre line thence south five degrees and fifteen minutes east three hundred and twenty seven feet eight inches to a monument in said centre line thence south twenty nine de-

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degrees and forty five minutes east six hundred and forty eight feet to a monument at the point of intersection of said centre line with the boundary line between the city of Paterson and the township of Acquackanonk and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 63. That Passaic Avenue be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid— shall be twenty one feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Willis Street running thence on a course north twenty five degrees and fifteen minutes east seven hundred and seventy feet and two and one half inches to a monument in said centre line thence north twenty two degrees and thirty minutes east three hundred and fifty five feet nine inches to a monument in said centre line thence north twenty degrees and five minutes east three hundred and seventy four feet three inches to a monument in said centre line thence north twenty four degrees and forty five minutes east five hundred and forty six feet to a monument at the point of intersection of said centre line with the centre line of Broadway and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 64. That Merselis Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen

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hundred and fifty two; and that said relaid street shall be ten feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Willis Street running thence on a course south thirteen degrees forty two minutes west ten hundred and seventeen feet to a monument at the point of intersection of said centre line with the centre line of Market Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 65. That *Carroll Street* be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course south seven degrees and forty minutes west two hundred and fifty nine feet seven inches to a monument at the point of intersection of said centre line with the centre line of East Van Houten Street thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Ellison Street, thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Pearl Street, thence the same course two hundred and ten feet ten inches to a monument at the point of intersection of said centre line with the centre line of Mechanic Street thence the same course two hundred and

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forty eight feet ten inches to a monument at the point of intersection of said centre line with the centre line of Willis Street thence the same course four hundred and fifty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Market Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Prest* (L. S.)

Attest. S. TUTTLE *Clerk.*

Sec. 66. That Summer Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course south seven degrees and forty minutes west two hundred and sixty feet to a monument at the point of intersection of said centre line with the centre line of east Van Houten street thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Ellison Street thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Pearl Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk.*

Sec. 67. That York Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred

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and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course north nine degrees east four hundred and sixty feet to a monument in said centre line and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 68. That Centre Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course north nine degrees east four hundred and sixty four feet four inches to a monument in said centre line and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 69. That East Carrol Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty-five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway run-

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ning thence on a course north nine degrees east four hundred and sixty six feet and five inches to a monument in said centre line and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 70. That Paterson Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Broadway running thence on a course south eight degrees and twenty five minutes west two hundred and sixty one feet four inches to a monument at the point of intersection of said centre line with the centre line of East Van Houten Street, thence on the same course to Market Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 71. That East Van Houten Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street; and at the point of intersection of said centre line with the centre line of Straight Street running thence on a course north eighty one degrees and fifty minutes west two hundred and sixty

one foot five inches to the Paterson and Ramapo Rail Road thence on the same course two hundred and ninety eight feet five inches to a monument at the point of intersection of said centre line with the centre line of Paterson Street, thence the same course four hundred and eleven feet to a monument in said centre line thence on the same course one hundred and sixty feet to a monument at the point of intersection of said centre line with the centre line of Church Street thence on the same course three hundred and twenty one feet and five inches to a monument in said centre line and from thence shall be twenty five feet wide on each side of the following centre line: Beginning at a point one hundred and thirty feet north eighty two degrees west from a monument in said centre line at the point of intersection of said centre line with the centre line of Summer street running thence south eighty two degrees east one hundred and thirty feet to said monument thence the same course four hundred and twenty five feet to a monument at the point of intersection of said centre line with the centre line of Carrol Street and thence the same course one hundred and thirty feet and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk.*

Sec. 72. That Pearl Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Summer Street running thence on a course south eighty two degrees east four

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hundred and twenty five feet to a monument at the point of intersection of said centre line with the centre line of Carrol Street thence the same course one hundred and thirty feet also twenty five feet wide on each side of the following centre line: Beginning at the first mentioned monument and running thence north eighty two degrees west one hundred and thirty feet and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*

Sec. 73. That Mechanic Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Straight Street running thence on a course south eighty two degrees east eleven hundred and seventy six feet eight inches to a monument at the point of intersection of said centre line with the centre line of Carroll Street thence the same course seven hundred and seventy five feet to a monument in said centre line and the same is hereby relaid accordingly.

CHAS. DANFORTH *Pres't* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 74. That Madison Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty three feet eight inches wide on each side of the following centre line: Beginning at a

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stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Market Street running thence on a course south five degrees and forty six minutes west three hundred and twenty one feet three inches to a monument at the point of intersection of said centre line with the centre line of Morton Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Essex Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Oak Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Cedar Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Bond Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk.*

Sec. 75. That Beech Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two and that said relaid street shall be twenty five feet wide on each side of the centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Market Street running thence on a course south five degrees and forty six minutes west two hundred and thirty three feet and four inches to a monument at the point of intersection of said centre line with the centre line of Morton street thence the

Exhibit R-78.

same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Essex Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Oak Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Cedar Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Bond Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 76. That Vine Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line beginning at a stone monument with an iron pin centre placed one foot and ninety six hundredths of a foot below the grade of the street and at the point of intersection of said centre line with the centre line *with the centre line* of Market Street running thence on a course south five degrees and forty six minutes west one hundred and forty four feet nine inches to a monument at the point of intersection of said centre line with the centre line of Morton Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Essex Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Oak Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the

Exhibit R-78.

centre line of Cedar Street thence the same course four hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line *with the centre line* of Bond Street thence the same course twenty five feet to the south line of Bond Street and the same is hereby relaid accordingly.

CHAS DANFORTH (L. S.)

Attest S. TUTTLE *Clerk.*

Sec. 77. That Morton Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Straight Street running thence on a course south eighty four degrees and fourteen minutes east two hundred and forty eight feet and eight inches to a monument at the point of intersection of said centre line with the centre line of Madison Street thence the same course two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Beech Street thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Vine Street and same is hereby relaid accordingly.

CHAS DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk.*

Sec. 78. That Essex Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be

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twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Straight Street running thence on a course south eighty four degrees and fourteen minutes east two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Madison Street thence the same course two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Beech Street thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Vine Street and the same is hereby relaid accordingly.

CHAS DANFORTH *Pres* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 79. That Oak Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two: and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the street and at the point of intersection of said centre line with the centre line of Straight Street running thence on a course south eighty four degrees and fourteen minutes east two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Madison Street, thence the same course two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Beech Street thence the same course two hundred and fifty feet to a monument at the point of intersec-

Exhibit R-78.

tion of said centre line with the centre line of Vine Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 80. That Cedar Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed three *foot* and forty three hundredths of a foot above the grade of the street and at the point of intersection of said centre line with the centre line of Straight Street running thence on a course south eighty four degrees and fourteen minutes east two hundred and forty eight feet and eight inches to a monument at the point of intersection of said centre line with the centre line of Madison Street thence the same course two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Beech Street thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Vine Street and the same is hereby relaid accordingly.

CHAS. DANFORTH *Presd* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 81. That Bond Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the twentieth day of October eighteen hundred and fifty two; and that said relaid street shall be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with an iron pin centre placed one foot below the grade of the

Exhibit R-78.

street and at the point of intersection of said centre line with the centre line of Straight Street running thence on a course south eighty four degrees and fourteen minutes east two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Madison Street thence the same course two hundred and forty eight feet eight inches to a monument at the point of intersection of said centre line with the centre line of Beech Street thence the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Vine Street.

CHAS. DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 82. That said relaid streets and each of them be opened to the full width and extent so as aforesaid ascertained and defined and that the superintendent of streets cause all encroachments upon the same except dwelling houses and other permanent dwellings to be removed on or before the fourth day of July next.

CHAS. DANFORTH *Prest* (L. S.)

Attest S. TUTTLE *Clerk*.

Sec. 35. That Passaic Street be relaid and that the location of such relaid street be according to the map, survey and return made by J. W. Allen City Surveyor dated the 20 day of October 1852 and that said relaid street shall be 20 ft wide on each side of the following centre line: beginning at a stone monument with an iron pin centre placed 1 foot below the grade of the street and at the point of intersection of said centre line with the centre line of Mill Street running thence on a course north sixty nine degrees fifty three minutes east 387 ft 6 inches to a monument at the point of intersection of said centre line with the centre line

Exhibit R-79.

of Lynches Alley thence the same course 200 feet to a monument at the point of intersection of said centre line with the centre line of Cross Street & the same is hereby relaid accordingly.

CHAS. DANFORTH *Prest.* (L. S.)

Attest S. TUTTLE *Clerk.*

STATE OF NEW JERSEY, } ss.
PASSAIC COUNTY. }

I, JOHN R. MORRIS, Register of Deeds and Mortgages in and for said County and State, do hereby certify that the foregoing is a true copy of an ordinance providing for the taking up, vacating and relaying the streets and highways of the City of Paterson, as the same is taken from and compared with the original entry thereof recorded in Book A of Miscellaneous on pages 361, etc., and now remaining of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said County, at Paterson this Twenty fourth day of December, A. D., 1913.

(SEAL)

JOHN R. MORRIS, *Register.*

15684

By.....Deputy

Fees Twenty Eight Dollars and eighty cents.

EXHIBIT R-79.

An Ordinance providing for the taking up vacating and relaying Clay Street in the City of Paterson. The Mayor and Aldermen of the City of Paterson do ordain as follows. Sec. 1. That Clay Street in said city be and it is hereby taken up and vacated. Sec. That Clay Street be relaid and that the location of such relaid street be according to the survey and map

Exhibit R-79.

thereof and the return made by John H. Goetschius City Surveyor dated the fourteenth day of July Eighteen hundred and fifty six and that the said relaid street be twenty five feet wide on each side of the following centre line: Beginning at a stone monument with a brass pin centre placed one foot below the grade of the Street and at a point in the centre line of Main Street (as the same has heretofore been relaid by J. W. Allen City Surveyor Oct 20th 1852) distant fourteen hundred and forty feet and nine and quarter inches on a course of south thirteen degrees and thirty five minutes west from the monument placed at the intersection of said centre line of Main Street with the centre line of Slater Street and running thence on a course of north seventy six degrees and fifty nine minutes east two hundred and fifty seven feet seven and a half inches to a point of intersection of said centre line with the centre line of Jackson Street thence (2) along the centre line of Jackson Street on a course of north thirteen degrees and six minutes west one foot eight inches to a monument in the centre line of Jackson Street and thence (3) on a course of North seventy six degrees and forty four minutes east two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Apple Street and the same is hereby relaid accordingly. Sec. 3. That the grade of said street as laid down and designated on the aforesaid map be & it hereby is established as the new grade of the said street

Passed July 24 1886

SAMUEL SMITH *Mayor*

Attest JOS NIGHTENGALE *Clerk.*

(Register's certificate attached to original)

EXHIBIT R-80.**PATERSON GRADE CROSSING CASE.**

List of crossings mentioned in the petition of the City of Paterson, given in the same order, with a statement showing when each was laid out or opened as a public highway, with reference, in each case, to the book and page and the place where the record thereof may be found.

"A" MADISON AVENUE.

Prior to the year 1869, the territory in which this Avenue is located, was in the Township of Acquackanonk, and was, in that year, annexed to the City of Paterson. (N. J. P. L. 1869, page 482, Approved March 17th, 1869.)

The first recorded evidence of any intention to lay out or open Madison Avenue was the filing of "Return of courses and distances of Madison Avenue in the City of Paterson between Main street and the Erie Railroad according to the survey and map thereof made by John H. Goetschius, "City Surveyor" dated March 27, 1871, and recorded in the Road Records in the office of the Clerk of Passaic County in Book B, page 502.

The first property map showing the location of this part of Madison Avenue, is entitled "Map of property of John H. Terhune in the City of Paterson, Passaic County, New Jersey, dated 1869. This map, however, shows Madison Avenue as extending only from Main Street to West Railway Avenue, which was laid out on the Map parallel with and adjoining westerly with the right of way of the Paterson and Hudson River Railroad Company.

"B" STRAIGHT AND CLAY STREETS.

The first recorded evidence of any intention to lay out and open Clay Street was the filing of a "Return of courses and distances of Clay Street, Paterson, New Jersey, according to survey and map thereof,

Exhibit R-80.

made by John H. Goetschius, C. S." dated January 14, 1856, and recorded July 25, 1856, in the Clerk's office of Passaic County, in Book "B" of Road Records, page 101. This covers Clay Street from Main Street across Jackson Street to Apple (now Spring Street) and not across the Paterson and Hudson River Railroad or the Paterson and Ramapo Railroad.

The first property map showing Clay Street crossing the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad is entitled "Map of property of the estate of Rachel Van Houten, deceased, Paterson, New Jersey, J. H. Goetschius, C. E., Scale 60'-1". November, 1873."

Straight Street appears upon the 1850 map, but the first evidence of the intention on the part of the public authorities of Paterson, to lay out and open Straight Street across the Railroad, appears in Book B of Road Records, p. 72, of Passaic County, as a return of courses and distances according to survey and map made by J. W. Allen, City Surveyor, dated October 20, 1852, and recorded April 18, 1853.

"C" CEDAR STREET.

This street did not exist across the right of way of the Paterson and Hudson River, or the Paterson and Ramapo Railroads at the time the 1850 map was made, but appears to have been laid out subsequently thereto. By Section 1 of the City Ordinance, dated March 30, 1853, and recorded in the Passaic County Register's Office in Book A of Miscellaneous Records, page 361 (Certified copy offered in evidence), Cedar Street as then existing, was vacated. By Section 21 of the same Ordinance, this street was then opened between Marshall Street and Mill Street in accordance with Map, survey and return made by J. W. Allen, City Surveyor, dated October 20, 1852, and recorded in Passaic County Clerk's Office, in Book B of Road Records, page 34.

Exhibit R-80.

This street was also opened by Section 80 of the same ordinance, from Straight Street east to the centre line of Vine Street in accordance with the map, survey and return made by J. W. Allen, City Surveyor, dated October 20, 1852, and recorded in the Passaic County Clerk's Office in Book B of Road Records, page 96.

"D" MARKET STREET AND PARK AVENUE.

Market Street appears to have existed at the time the 1850 map was made, but was vacated by section 1 of the Paterson City Ordinance above referred to. By section 13 of the same ordinance, Market Street was laid out to its present width across the Paterson and Ramapo Railroad, in accordance with map, survey and return made by J. W. Allen, City Surveyor, dated October 20, 1852, and recorded April 18, 1853, in Passaic County Clerk's Office in Book B of Road Records, page 20.

Park Avenue, formerly Willis Street, appears also to have existed at the time of making the 1850 map, but was also vacated by Section 1, of said ordinance. By Section 14 of the same ordinance this street was laid out across the Paterson and Ramapo Railroad in accordance with map, survey and return made by J. W. Allen, City Surveyor, dated Oct. 20, 1853, and recorded in Passaic County Clerk's Office, Book B of Road Records, page 23.

"E" ELIJAH STREET.

This street did not exist across the property occupied by the Paterson and Ramapo Railroad right of way, at the time the 1850 map was made but extended only from Prospect Street east to what was known as Dark Brook, or Ferguson Brook, which was located west of the Paterson and Ramapo Railroad. This street was also laid out east of Straight Street but did not cross the property formerly of the Society of Useful Manufactures, which extended between Church Street and Straight Street. Section 1, of the ordi-

Exhibit R-89.

nance above mentioned, vacated Ellison Street, as then existing, but by Section 9 of the same ordinance, the City laid out Ellison Street across the Paterson and Ramapo Railroad in accordance with the map, survey and return made by J. W. Allen, City Surveyor, dated October 20, 1852, and recorded April 18, 1853, in the Passaic County Clerk's Office, Book B, of Road Records, page 14.

"4" VAN HOUTEN STREET

This street was originally known as Williamson Street, and later changed to East Van Houten Street. It appears on the 1850 map, but was vacated by Section 1 of the ordinance above mentioned. By Section 4 of the same ordinance Van Houten Street was laid out across the Paterson and Ramapo Railroad in accordance with the map, survey and return made by J. W. Allen, City Surveyor, dated October 20, 1852, and recorded in the Passaic County Clerk's Office, in Book B of Road Records, page 86.

"41" BROADWAY.

This street appears to have existed at the time the 1850 map was made, but was vacated by Section 1 of the ordinance above referred to. By Section 6 of the same ordinance, this street was opened across the Paterson and Ramapo Railroad in accordance with the map, survey and return made by J. W. Allen, City Surveyor, dated October 20, 1852, and filed in the Passaic County Clerk's Office, Book B of Road Records, page 7.

"11" FAIR STREET.

This street did not exist across the property of the Paterson and Ramapo Railroad at the time the 1850 map was made. Prior to the building of the Paterson and Ramapo Railroad, Fair Street, on the west side of the railroad, was opened from Main Street (Parke), east to the brook about 130 feet east of Bridge Street, east of the railroad, it extended from

Exhibit R-80.

the lands of Edward Van Winkle east to Yorke Street, in accordance with the return dated July 2, 1839, and recorded in the Passaic County Clerk's Office Book "A" of Road Records, page 16. This street is shown east of Bridge Street on the 1850 map (J. C. Sydney Map) as a *proposed* street. On the map of the City of Paterson by J. W. Allen, City Surveyor, dated October 20, 1852, this street is shown only as extending from Parke Street to a point 130 feet east of Bridge Street. In this location, it was opened by Section 48 of the City Ordinance above mentioned.

The first recorded evidence of any intention to lay out or open this street across the railroad appears in the Passaic County Clerk's Office in Book B of Road Records, page 134, entitled, return of map courses and distances of Fair Street from Bridge Street south-east across Paterson Street and Erie Railway to centre line of Straight Street, dated March 7, 1864, recorded March 18, 1864.

"I" HAMILTON AVENUE.

This street was formerly known as Division Street and is shown on the J. C. Sydney Map of 1850, and also on the map prepared by J. W. Allen, City Surveyor, in 1852, as existing from Parke Street east to a point 130 feet east of Bridge Street. In this location, it was opened by Section 49 of the City Ordinance above mentioned.

The first recorded evidence of any intention to lay out and open this street across the railroad, is found in Passaic County Clerk's Office, Book B of Road Records, page 116, entitled "Return of the map, courses and distances of Division Street from Bridge Street east across Erie Railway to Straight Street," dated December 19, 1859.

"J" LAFAYETTE STREET.

This street appears to have been in existence across the railroad when the 1850 map was made, but was

Exhibit R-80.

vacated by section one of the ordinance above mentioned. By Section 56 of the same ordinance, Lafayette Street was laid out and opened across the Paterson and Ramapo Railroad in accordance with map, survey and return made by J. W. Allen, City Surveyor, dated October 20, 1852.

“K” FRANKLIN STREET.

Franklin Street appears on the J. C. Sydney Map of 1850, across the railroad only as a *proposed* street. On the J. W. Allen map of October 20, 1852, prepared by the order of the City Council, Franklin Street does not appear at all.

The only recorded evidence of any intention on the part of the public authorities to open Franklin Street, is found in the Passaic County Clerk's Office in Book B of Road Records, page 438, in which a map of the courses and distances of Franklin Street from Summer Street to East Eighteenth Street, are given. This return is dated February 11, 1870.

“L” KEEN STREET.

The first recorded evidence of any intention on the part of the Public Authorities to lay out or to open Keen Street, is found in the Passaic County Clerk's Office, in Book B of Road Records, page 437, which contains a map and return of courses and distances of Keen Street from Summer Street east to East Eighteenth Street. This is entirely east of the Paterson and Ramapo Railroad.

This street is not shown on the map of the City of Paterson, made by J. W. Allen, City Surveyor, by direction of the City Council on October 20, 1852.

“M” WARREN STREET.

The first recorded evidence of any intentions on the part of public authorities to lay out or open this street is found in Passaic County Clerk's Office, Book B, of Road Records, page 436. It consists of a map, courses and distances of Warren Street from Graham

Exhibit R-81.

Avenue east to East 18th Street. This is entirely east of the right of way of the Paterson and Ramapo Railroad. Warren Street is not shown on the map of the City of Paterson prepared by J. W. Allen, City Surveyor, under order of the Common Council, October 20th, 1852.

"N" RIVER AND PUTNAM STREETS.

River Street appears on the 1850 map but was vacated by Section 1 of the City Ordinance dated March 30th, 1853. By Section 17 of this Ordinance this street was opened across the Paterson and Ramapo Railroad in approximately its present location.

PUTNAM STREET. The first recorded evidence of any intention to lay out or open this street is found in Passaic County Clerk's Office, Book B of Road Records, page 435. The return of map, courses and distances of Putnam street in the City of Paterson according to survey and map made thereof by John H. Goetschius, City Surveyor, February 11, 1870. This street is laid out in two sections; first section extends from the center line of Graham avenue to the center line of East 18th street, and in the second section from the center line of Wait street westerly to center line of East 5th street. Wait street lies westerly of and parallel to the right of way of the Paterson & Ramapo Railroad.

EXHIBIT R-81.

RETURN of the courses and distances of Madison Avenue in the City of Paterson between Main Street and the Erie Railway according to the survey and map thereof made by J. H. Goetschius, C. E., and dated March twenty-seventh, eighteen hundred and seventy-one. Said Street is forty feet wide on each side of the following centre line, to wit: A centre line beginning at a stone monument with an iron pin centre placed one foot below the grade of the street, and at the point of intersection of said centre line

Exhibit R-82.

with the easterly line of Main Street and running from thence on a course of north sixty one degrees and forty five minutes east one hundred and twenty five feet to a monument in said centre line thence on the same course five hundred and fifteen feet to a monument at the point of intersection of said centre line with the centre line of Getty Avenue, thence on the same course six hundred and seventy eight feet, to a monument at the point of intersection of said centre line with the northerly line of the Erie Railway. The grade to be as shown by the red figures on said map.

J. H. GOETSCHIUS,
C. E.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-82.

RETURN of the Courses and Distances of Straight Street, in the City of Paterson, according to a Survey and Map made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty two.

Said Street is twenty five feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center placed one foot below the Grade of the Street, and at the point of intersection of said center line with the center line of Fulton Street, running thence on a course South nine degrees and twenty three minutes East forty six feet one inch to the center line of the Paterson and Ramapo Railroad, thence South thirty three degrees West, one hundred and eighteen feet six inches to a monument in said center line, thence South nine degrees West two hundred and ninety eight feet one inch to a monument in said center line, thence the same course four hundred and thirty three feet four inches to a monument in said center line thence the same course eight

Exhibit R-82.

hundred and sixteen feet eight inches to the point of intersection of said center line with the center line of Broadway, thence South eighty three degrees East one foot and eleven inches to a monument, thence South four degrees West, two hundred and fifty eight feet ten inches to a monument at the point of intersection of said center line with the center line of East Van Houten Street, thence the same course seven hundred and six feet to a monument at the point of intersection of said center line with the center line of Mechanic Street, thence the same course two hundred and fifty feet to a monument at the point of intersection of said center line with the center line of Willis Street thence South five degrees West, one hundred and twenty six feet two and one half inches to a monument at the point of intersection of said center line with the center line of Market Street, thence South five degrees and forty six minutes West, two hundred feet to a monument in said center line, thence the same course two hundred and nine feet ten inches to a monument at the point of intersection of said center line with the center line of Morton Street, thence the same course four hundred and fifty feet to a monument at the point of intersection of said center line with the center line of Essex Street, thence the same course four hundred and fifty feet to a monument at the point of intersection of said center line with the center line of Oak Street, thence the same course four hundred and fifty feet to a monument at the point of intersection of said center line with the center line of Cedar Street, thence the same course four hundred and fifty feet to a monument at the point of intersection of said center line with the center line of Bond Street, thence the same course Six hundred and forty two feet eight inches to the Paterson and Ramapo Railroad, thence the same course eleven hundred and forty eight feet ten inches to a monument in the said center line, thence South forty two degrees West,

Exhibits R-83—R-84.

twenty three feet ten inches to the Boundary line between the City of Paterson and the Township of Acquackanonk.

I. W. ALLEN,
City Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-83.

RETURN of the courses and distances of Clay Street in the City of Paterson according to the survey and map thereof made by John H. Goetschius, Surveyor, and dated February Eleventh, Eighteen hundred and seventy.

Said Street is thirty feet wide on each side of the following centre line to wit. A centre line beginning at a point in the centre line of Straight Street at the point of intersection of the centre line of Christie Avenue with the centre line of Straight Street Running thence on a course of south seventy nine degrees and forty five minutes east and at right angles with Martin Street to the centre line of Lewis Street thence on a course of south seventy degrees and three minutes east and at right angles with Madison Avenue to the centre line of Madison Avenue Being a continuation of the line of Christie Avenue.

JOHN H. GOETSCHIOUS,
Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-84.

RETURN of the Courses and Distances of Clay Street, in the City of Paterson, according to the survey and Map thereof made by Mr. John H. Goetschius, City Surveyor, and dated July fourteenth, Eighteen Hundred and fifty six.

Exhibit R-85.

Said Street is twenty five feet wide on each side of the following centre line, to wit, a centre line beginning at a stone monument with a brass pin centre placed one foot below the grade of the Street, and at a point in the centre line of Main Street as the same has heretofore been relaid by I. W. Allen, City Surveyor, October Twentieth, Eighteen hundred and fifty-two, distant Fourteen Hundred and forty feet and nine and one quarter inches on a course of South thirteen degrees and thirty four minutes west from the monument placed at the intersection of the centre line of Main Street with the centre line of Slater Street, and running from thence (1) on a course of North seventy six degrees and fifty nine minutes East two hundred and fifty seven feet and seven and one half inches to a monument at the point of intersection of said centre line with the centre line of Jackson Street, thence (2) along the centre line of Jackson Street on a course of North thirteen degrees and six minutes west one foot and eight inches to a monument in the centre line of Jackson Street and thence (3) on a course of North seventy six degrees and fifty four minutes East two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Apple Street.

Paterson, July 14, 1886.

JOHN H. GOETSCHUS,

City Surveyor.

Recorded July 28, 1886.

Canfield, Clk.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-85.

RETURN of the Courses and Distances of Cedar Street in the City of Paterson, according to a Survey and Map made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty two.

Exhibit R-86.

Said Street is Twenty five feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center, placed three feet and forty three one hundredths of a foot above the Grade of the Street, and at the point of intersection of said center line with the center line of Straight Street, running thence on a course South eighty four degrees and fourteen minutes East, two hundred and forty eight feet and eight inches to a monument at the point of intersection of said center line with the center line of Madison Street, thence the same course two hundred and forty eight feet eight inches to a monument at the point of intersection of said center line with the center line of Beach Street, thence the same course two hundred and fifty feet to a monument at the point of intersection of said center line with the center line of Vine Street.

I. W. ALLEN,

City Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-86.

RETURN of the Courses and Distances of Market Street, in the City of Paterson, according to a Survey and Map made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty two.

Said Street is forty five feet wide on each side of the following center line. Beginning at a stone monument with an iron center pin, placed one foot below the Grade of the Street, and at the point of intersection of said center line with the center line of Congress Street and at a point in said center line of Congress Street fifty five feet two inches easterly from the center line of Union Street, running thence on a course South sixty four degrees and *fourty* four min-

Exhibit R-86.

utes East thirty seven feet and two and one half inches to a monument at the point of intersection of said center line and with the center line of Colt Street, thence the same course four hundred and three feet seven inches to a monument at the point of intersection of said center line with the centre line of Church Street, thence the same course one hundred and ten feet seven inches to a monument at the point of intersection of said center line with the center line of Clark Street, thence the same course four hundred and thirty one feet to a monument in said center line, thence the same course three hundred fifty three feet to a monument at the point of intersection of said center line with the center line of Willis Street, and thence to the Paterson & Ramapo Railroad, and thence shall be twenty five feet wide on each side of the following center line. Beginning at a monument placed fourteen feet ten inches at right angles Southerly from the last mentioned monument, and running thence South sixty four degrees and forty four minutes East sixty eight feet to the Paterson & Ramapo Railroad, thence the same course two hundred and ninety two feet six inches to a monument at the point of intersection of said center line with the center line of Straight Street, thence the same course two hundred and sixty three feet ten inches to a monument at the point of intersection of said center line with the center line of Madison Street, thence two hundred and sixty three feet ten inches the same course to a monument at the point of intersection of said center line with the center line of Beach Street, thence the same course one hundred and twenty two feet three inches to a monument in said center line, thence the same course one hundred and forty-two feet eight inches to a monument at the point of intersection of said center line with the center line of Vine street, thence the same course four hundred and thirteen feet ten inches

Exhibit R-87.

to a monument at the point of intersection of said center line with the center line of Carroll street, thence the same course twenty-eight chains and thirty three links to a monument at the point of intersection of said center line with the center line of Merselis street, thence the same course twenty-two chains to a monument in said center line, thence the same course twelve chains to a monument in said center line, thence the same course eighteen chains to a monument in said center line, thence the same course six chains to a monument in said center line, thence the same course thirteen chains and four links to a monument in the said center line, thence south sixty degrees and five minutes east thirty feet and eight inches to a monument at the point of intersection of said center line with the Boundary Line between the City of Paterson and the Township of Acquackanonk.

I. W. ALLEN,
City Surveyor.

Recorded April 18th, 1853.

CANFIELD, *Clerk.*

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-87.

RETURN of the Courses and Distances of Willis Street, in the City of Paterson, according to a Survey and Map, made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Said street is twenty-five feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center, placed three feet below the Grade of the Street and at the point of intersection of said center line with the center line of Market Street, running thence on a course South eighty-one

Exhibit R-87.

degrees and fifteen minutes East sixty-eight feet to the Paterson and Ramapo Rail Road, thence the same course two hundred and seventy-six feet ten inches to a monument at the point of intersection of said center line with the center line of Straight Street, thence the same course eleven hundred and fifty-six feet six inches to a monument at the point of intersection of said center line with the center line of Carroll street, thence the same course nine hundred and four feet to a monument in said center line, and there shall be twenty-five feet on the North side of the following center line, and forty-one feet on the South side of the following center line. Beginning at the last mentioned monument and running thence South eighty-one degrees and fifteen minutes East, two hundred and ninety-six feet to a monument in said center line, thence the same course three hundred and one foot six inches to a monument at the point of intersection of said center line with the center line of York Avenue; and then shall be thirty-three feet wide on each side of the following center line. Beginning at the last mentioned monument and running South twenty-one degrees, thirty minutes, West eight feet to a monument in said center line, thence South seventy-five degrees and thirty minutes East, four hundred and sixty-four feet three and one-half inches to a monument at the point of intersection of said center line with the center line of Merselis Street, thence on the same course eighteen hundred and twenty-five feet two and one-half inches to a monument in said center line thence the same course sixteen hundred and twenty-eight feet ten inches to a monument at the point of intersection of said center line with the center line of Vreeland Avenue thence the same course seven hundred and forty-seven feet one inch to a monument in said center line, thence the same course six hundred and twelve feet five inches to a monument at the point of intersection of said center line with the center line

Exhibit R-88.

of Passaic Avenue and thence the same course twenty-one feet to the East line of Passaic Avenue.

I. W. ALLEN,
City Surveyor.

Recorded April 18th, 1853.

CANFIELD, *Clk.*

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-88.

Return of the Courses and Distances of Ellison Street in the City of Paterson, according to a survey and Map made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Said street is Twenty-five feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center placed one foot below the grade of the street, and at the point of intersection of said center line with the center line of Prospect Street running thence on a course South eighty degrees and forty minutes East four hundred and fifty-two feet ten inches to a monument at the point of intersection of said center line with a line thirty-three feet easterly from the West side of Main Street, thence the same course seven feet and one-half an inch to a monument in said center line, thence the same course two hundred and six feet five inches to a monument at the point of intersection of said center line with the center line of Hamilton Street, thence the same course forty-two feet four inches to a monument at the point of intersection of said center line with the center line of Mansion Street, thence shall be twenty-seven and one-half feet wide on each side of the following center line. Beginning at the last mentioned monument and running thence North

Exhibit R-89.

eight degrees and forty-one minutes East, six feet eight inches to a monument in said center line, thence South eighty-one degrees and forty-one minutes East, seventy-six feet and seven inches to a monument at the point of intersection of said center line with the center line of Colt Street, thence the same course thirty-three feet nine inches to a monument in said center line, thence the same course three hundred and sixty-five feet nine inches to a monument at the point of intersection of said center line with the center line of Church Street, thence the same course to Straight Street, and shall be twenty-five feet wide on each side of the following center line. Beginning at a point in said center line one hundred and thirty feet North eighty-two degrees West from a monument in said center line at a point of intersection of said center line with the center line of Summer Street running thence South eighty-two degrees East, one hundred and thirty feet to said monument, thence the same course four hundred and twenty-five feet to a monument at the point of intersection of said center line with the center line of Carroll Street, thence the same course one hundred and thirty feet.

L. W. ALLEN,

City Surveyor.

Recorded April 18th, 1853.

CANFIELD, *Clerk.*

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-89.

RETURN of the Courses and Distances of East Van Houten Street, in the City of Paterson, according to a survey and Map, made by L. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Exhibit R-89.

Said street is twenty-five feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center placed one foot below the grade of the street, and at the point of intersection of said center line with the center line of Straight Street, running thence on a course North eighty-one degrees and fifty minutes West, two hundred and sixty-one feet and five inches to the Paterson and Ramapo Rail Road, thence the same course two hundred and ninety-eight feet five inches to a monument at the point of intersection of said center line with the center line of Paterson Street, thence the same course four hundred and eleven feet to a monument in said center line, thence on the same course one hundred and sixty feet to a monument at the point of intersection of said center line with the center line of Church Street, thence the same course three hundred and twenty-one feet and five inches to a monument in said center line. Also shall be twenty-five feet wide on each side of the following center line. Beginning at a point one hundred and thirty feet North, eighty-two degrees West, from a monument in said center line at the point of intersection of said center line with the center line of Summer Street, running thence South eighty-two degrees East, one hundred and thirty feet to said monument at the point of intersection of said center line with the center line of Carroll Street, and thence on the same course one hundred and thirty feet.

I. W. ALLEN,
City Surveyor.

Recorded April 18th, 1853.

CANFIELD, *Clerk.*

(Sketch and County Clerk's Certificate attached to Original.)

Exhibit R-90.

EXHIBIT R-90.

Return of the courses and distances of Broadway in the City of Paterson according to a survey and map made by L. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Said street is Thirty feet six inches wide on each side of the following center line—Beginning at a Rock in said center line one foot below the grade of the street, with an iron pin center and marked B Way, and running then South eighty-six degrees and five minutes East, one hundred and ninety-eight feet six inches to a stone monument with an iron pin center placed one foot below the Grade of the street, and at the point of intersection of said center line with the center line of Mulberry Street, thence the same course fifty-two feet to a monument in said center line, thence the same course two hundred and ten feet to a monument in said center line, thence the same course one hundred and ten feet to a monument at the point of intersection of said center line with the center line of West Street, thence the same course twenty-seven feet seven inches to a monument at the point of intersection of said center line with the center line of Main Street, and shall be thirty-three feet wide on each side of the following line. Beginning at the last mentioned monument, and running thence on a course South eighty-six degrees and five minutes East, six feet eleven inches to a monument at the point of intersection of said center line with the center line of Parke Street, thence South eight degrees and thirty-seven minutes East, four feet eight and one-half inches to a monument on said center line marked BdWay, thence South eighty-two degrees and forty-five minutes East two hundred and seventy-six feet four inches to a monument at the point of intersection of said center line with the center line.....

Exhibit R-99.

of Washington Street, thence the same course one hundred and thirty-six feet seven inches to a monument in said center line, thence on the same course two hundred and ninety feet six inches to a monument at the point of intersection of said center line with the center line of Church Street, thence South eighty-three degrees East one hundred and sixty-four feet four inches to a monument at the point of intersection of said center line with the center line of Bridge Street, thence the same course four hundred and six feet eleven inches to a monument at the point of intersection of said center line with the center line of Paterson Street, thence the same course two hundred and eighty-six feet eight inches to the Paterson and Ramapo Rail Road, thence the same course two hundred and fifty-five feet one inch to the center line of Straight Street, North of Broadway, thence the same course one foot eleven inches to a monument at the point of intersection of said center line with the center line of Straight Street South of Broadway, thence the same course one hundred and seventy-five feet to a monument in said center line, thence the same course three hundred and twenty-five feet to a monument at the point of intersection of said center line with the center line of East Carroll Street, thence the same course two hundred and forty-six feet to a monument at the point of intersection of said center line with the center line of Center Street, thence the same course seventy-three feet five inches to a monument at the point of intersection of said center line with the center line of Summer Street, thence the same course four hundred and twenty-five feet to a monument at the point of intersection of said center line with the center line of Carroll Street, thence the same course seven hundred and thirty-seven inches to a monument at the point of intersection of said center line with the center line of York Street, thence the same course nine hundred and eighty-three feet three inches to a monu-

Exhibit R-91.

ment at the point of intersection of said center line with the center line of York Avenue, thence the same course eight feet and three inches to a monument in said center line, thence on a course North twenty-one degrees forty-five minutes East, twenty-four feet three inches to a monument in said center line.

And there shall be twenty-five feet wide on each side of the following center line. Beginning at the last mentioned monument and running thence on a course South eighty-four degrees and fifteen minutes East nine hundred and forty feet to a monument in said center line, thence South eighty-three degrees East, twenty-four hundred feet to a monument in said center line, thence South eighty-three degrees and thirty minutes East twenty-one hundred and ninety-eight feet to a monument at the point of intersection of said center line with the center line of Passaic Avenue, thence South eighty-five degrees East twelve hundred and seventy-three feet to a monument in said center line near the Passaic River, thence the same course to the Passaic River.

And also, beginning at the first mentioned Rock and running thence on a course North Eighty-six degrees and five minutes West to the lower Race Way.

I. W. ALLEN,
City Surveyor.

Recorded April 18th, 1853.

CANFIELD, *Clk.*

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-91.

RETURN of the Courses and Distances of Fair Street, in the City of Paterson, according to a Survey and Map, made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Exhibit R-92.

Said Street is twenty-five feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center, placed one foot below the Grade of the Street and at the point of intersection of said center line with the center line of Parke Street, running thence on a course South eighty-one degrees and three minutes East, one hundred and fifty-three feet three inches to a monument in said center line, thence the same course one hundred and twenty-four feet to a monument at the point of intersection of said center line with the center line of Washington Street, thence the same course one hundred and ninety-eight feet eleven inches to a monument in said center line, thence the same course three hundred and eighty-six feet eleven inches to a monument at the point of intersection of said center line with the center line of Bridge Street, thence the same course one hundred and fifty-three feet.

I. W. ALLEN,
City Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-92.

RETURN of the Courses and Distances of Fair Street, in the east ward of the City of Paterson between Bridge Street and Straight Street, according to the map and survey made by John H. Goetschius, Surveyor, and dated March Seventh, Eighteen hundred and sixty-four.

Said Street to be twenty-five feet wide on each side of the following centre line to wit:

A center line beginning at a stone monument with an iron pin centre placed one foot below the grade of the Street and at the point of intersection of said centre line with the centre line of Bridge Street and running thence on a course of South eighty-two de-

Exhibit R-93.

grees East one hundred and thirty feet to a monument in said centre line thence on the same course forty-seven feet and three inches to a monument in said centre line thence on a course of South eighty-one degrees East two hundred and thirty-one feet and six inches to a monument at the point of intersection of said centre line with the centre line of Paterson Street thence on the same course two hundred and sixty-nine feet and six inches to a point in the centre of the New York and Erie Railway thence on the same course two hundred and eighty-two feet and ten inches to a monument at the point of intersection of said centre line with the centre line of Straight Street.

The grade thereof to be according to the red figures on said map.

J. H. GOETSCHUS, *C. E.*

Recorded Aug. 18th, 1864.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-93.

RETURN of the Courses and Distances of Division Street (east of Bridge Street) in the east Ward of the City of Paterson, according to the map and survey thereof made by me, John H. Goetschius, Surveyor, and dated the nineteenth day of December, Eighteen hundred and fifty-nine.

Said street is thirty feet wide on each side of the following centre line to wit, a centre line beginning at a stone monument with an iron pin centre placed one foot below the grade of the Street and at the point of intersection of said centre line with the center line of Bridge Street and running thence on a course of South eighty degrees and thirty-five minutes east one hundred and fifty feet to a monument in said centre line, thence on the same course two hundred and fifty-five feet to a monument at the point of intersection of said centre line with the centre line of Paterson Street

Exhibit R-94.

thence on the same course two hundred and fifty feet to a monument at the point of intersection of said centre line with the centre line of Ann Street thence on the same course thirty feet and eleven inches to the easterly Rail of the Rail road thence on the same course two hundred and eighty-six feet and two inches to a monument at the point of intersection of said centre line with the centre line of Straight Street and there to end.

JOHN H. GOETSCHIUS.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-94.

RETURN of the Courses and Distances of Division Street in the City of Paterson, according to a Survey and Map, made by I. W. Allen, City Surveyor, on the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Said Street is twenty-five feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center, placed one foot below the Grade of the Street, and at the point of intersection of said center line with the center line of Parke Street, running thence on a course South eighty-two degrees and five minutes East, two hundred and eighty-two feet five inches to a monument at the point of intersection of said center line with the center line of Washington Street, thence on the same course three hundred and fifty-four feet three inches to a monument in the said center line, thence the same course two hundred and twenty-five feet six inches to a monument at the point of intersection of said center line with the center line of Bridge Street, thence on the same course one hundred and thirty feet.

I. W. ALLEN,
City Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-95.

RETURN of the Courses and Distances of Lafayette Street, in the City of Paterson, according to a Survey and Map, made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Said Street is thirty feet wide on each side of the following center line. Beginning at a stone monument with an iron pin center, placed one foot below the Grade of the Street, and at the point of intersection of said center line with the center line of River Street, running thence on a course South eighty-one degrees and forty minutes East, sixty-five feet to a monument at the point of intersection of said center line with the second line of Second Avenue, thence the same course three hundred and twenty-three feet to the Paterson and Ramapo Railroad, thence the same course three hundred feet to a monument in said centre line thence the same course eight hundred and fifty feet to a monument in said center line, thence the same course eight hundred feet to a monument in said center line thence the same course five hundred and thirty-five feet three inches to a monument at the point of intersection of said center line with the center line of York Avenue.

I. W. ALLEN,
City Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-96.

197

RETURN of the courses and distances of Franklin Street in the City of Paterson according to the survey and map thereof, made by John H. Goetschius, Surveyor, and dated February Eleventh, Eighteen hundred and seventy. Said Street is thirty feet wide on

Exhibit R-97.

each side of the following centre line, to wit, a centre line beginning at a point in the centre line of Summer Street two hundred and sixty feet northerly from—measured along a line at right angles with the centre line of Lafayette Street. Running from thence on a course of south eighty-one degrees and forty minutes east parallel with Lafayette—to the centre line of East Eighteenth Street.

JOHN H. GOETSCHIUS,

Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-97.

196

RETURN of the courses and distances of Keene Street in the City of Paterson according to the survey and map thereof made by John H. Goetschius, Surveyor, and dated February Eleventh, Eighteen hundred and seventy. Said Street is thirty feet wide on each side of the following centre line, to wit, a centre line beginning at a point in the centre line—Summer Street—two hundred and sixty feet northerly from—measured along a line at right angles with—the centre line of Franklin Street. Running from thence on a course of south eighty-one degrees and forty minutes east—parallel with Lafayette Street to the centre line of East eighteenth Street.

JOHN H. GOETSCHIUS,

Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-98.

195

RETURN of the courses and distances of Warren Street in the City of Paterson, according to the survey and map thereof made by John H. Goetschius, Surveyor, and dated February Eleventh, Eighteen hundred and seventy. Said Street is twenty-five feet wide on each side of the following centre line to wit, a centre line beginning at a point in the centre line of Graham Avenue two hundred and fifty feet southerly from—measured along a line at right angles with the centre line of Putnam Street. Running from thence on a course of south seventy-nine degrees and ten minutes east—parallel with Lyon Street—to the centre line of East eighteenth Street.

JOHN H. GOETSCHIUS,

Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-99.

RETURN of the Courses and Distances of River Street, in the City of Paterson according to a Survey and Map, made by I. W. Allen, City Surveyor, dated the Twentieth day of October, A. D. Eighteen hundred and fifty-two.

Said street is twenty-five feet wide on each side of the following center line. Beginning at a monument with an iron pin center, placed five feet six inches below the Grade of the Street, and at the point of intersection of said center line with the center line of Mulberry Street, and running thence on a course North fifty-five degrees and nine minutes East, two hundred and eighty-two feet one inch to a monument at the point of intersection of said center line with the center line of West Street, thence North fifty-five degrees and nine minutes East, two hundred and eight

Exhibit R-39.

feet four inches to a monument in said center line, thence South forty-seven degrees East, forty-four feet to a monument at the point of intersection of said center line with the center line of Bank Street, thence North fifty-five degrees and nine minutes East three hundred and eighty-three feet two inches to a monument at the point of intersection of said center line with the center line of Parke Street, thence North eight degrees and thirty-seven minutes East, twenty-six feet to a monument in said center line, thence North sixty-nine degrees and fifty-four minutes East, three hundred and thirty feet eleven inches to a monument at the point of intersection of said center line with the center line of Washington Street, thence the same course three hundred and eighty-two feet seven inches to a monument in said center line, thence North fifty-four degrees and forty-one minutes East, three hundred and twenty feet two inches to a monument at the point of intersection of said center line with the center line of Bridge Street, thence the same course four hundred and forty-six feet to a monument at the point of intersection of said center line with the center line of Fulton Street, thence the same course three hundred and seventy feet two inches to a monument at the point of intersection of said center line with the center line of Lawrence Street, thence the same course twenty-three feet eight inches to a monument in said center line, thence North forty-seven degrees and forty-five minutes East, three hundred and twelve feet five inches to a monument at the point of intersection of said center line with the center line of Montgomery Street, thence the same course three hundred and thirty-three feet two inches to a monument at the point of intersection of said center line with the center line of Lafayette Street thence the same course twelve hundred and sixty-one feet to the Paterson and Ramapo Rail Road, thence the same course fifteen chains and

Exhibit R-100.

fifty links to a monument in said center line, thence the same course four chains and fifty links to a monument in said center line, thence the same course four chains and fifty links to a monument in the said center line thence the same course fourteen chains to a monument in said center line, thence the same course six chains to a monument in said center line, thence the same course eight chains to a monument in said center line, thence the same course sixteen chains and forty-eight links to a monument at the point of intersection of said center line with the center line of York Avenue, thence the same course three chains and fifty-two links to a monument in said center line, thence twenty-two chains and thirty-five links to a monument (Marked River Street) on the said center line near the Passaic River, thence the same course to the Passaic River.

I. W. ALLEN,
City Surveyor.

Recorded April 18th, 1853.

CANFIELD, *Clerk.*

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-100.

194

RETURN of the courses and distances of Putnam Street in the City of Paterson according to the survey and map thereof made by John H. Goetschius, Surveyor, and dated February Eleventh, Eighteen hundred and seventy.

Said Street is twenty-five feet wide on each side of the following centre line to wit. A centre line beginning at a point in the centre line of Graham Avenue two hundred and fifty feet southerly from—measured along a line at right angles with—the centre line of Lyon Street.

Exhibit R-101.

Running from thence on a course of south seventy-nine degrees and ten minutes east—parallel with Lyon Street—to the centre line of East eighteenth Street. Then beginning at a point in the centre line of Walt Street—two hundred and fifty-five feet north-erly from—measured along a line at right angles with—the center line of Warren Street. Running from thence on a course of north eighty-one degrees and forty minutes west—parallel with Lafayette—to the centre line of East Fifth Street.

JOHN H. GOETSCHUS,

Surveyor.

(Sketch and County Clerk's Certificate attached to Original.)

EXHIBIT R-101.

July 8th, 1914.

SUMMARY.

COST OF ELEVATION.

Erie Railroad—Paterson, N. J.

Railroad Company's estimate of City Plan dated 1914.

Estimate covering the same items as City Estimate.

Section Includes Bridge at North end of Section	R. R.	Street	Total
Cut to Madison	\$149,154.07	\$32,241.92	\$201,395.99
Madison to Grade	74,212.68		74,212.68
	<hr/> 223,366.75	<hr/> 32,241.92	<hr/> 275,608.67
Grade to Straight	94,040.75	31,390.40	125,431.15
Straight to Clay	39,793.44	22,340.29	62,133.73
Clay to Taylor	72,888.92	21,357.80	94,246.72
Taylor to Market	467,844.04	41,120.55	508,964.59
Market to Ellison	94,172.43	3,707.60	97,880.03
Ellison to Van Houten	56,157.98	19,809.90	75,967.88
Van Houten to Broadway	45,159.21	26,744.63	71,903.84
Broadway to Fair	33,119.07	2,561.28	35,680.35
Fair to Hamilton	53,859.77	3,588.00	57,447.77
Hamilton to Governor	191,184.52		191,184.52
Governor to Fulton	151,323.92		151,323.92
Fulton to Montgomery	162,864.02	4,489.60	167,353.62

Exhibit R-101.

Section	R. R.	Street	Total
Montgomery to Lafayette.	\$85,942.61	\$6,893.10	\$92,835.71
Lafayette to Keen	93,523.20	3,544.30	97,067.50
Keen to Warren	50,511.36	2,869.25	53,380.61
Warren to River	63,886.23	37,837.88	101,724.11
	<u>\$1756,371.67</u>	<u>\$239,254.54</u>	<u>\$1,994,525.65</u>
Plan No. 1. Section			
River St. to Sixth Ave	\$187,647.79	\$262,223.45	\$213,871.24
Sixth Ave. to Fifth Ave	82,958.13	37,400.30	120,358.43
Fifth Ave to River	61,808.29		61,808.29
River to Grade	15,773.50		15,773.50
	<u>\$348,279.81</u>	<u>\$61,623.75</u>	<u>\$411,903.56</u>
Plan No. 2.			
River St. to Grade	\$145,134.10		\$145,134.10
Engineering	\$60,000.00	12,000.00	92,000.00
Depots	165,000.00		165,000.00
Signals and Wire	30,000.00		30,000.00
Temporary Freight Tracks	30,000.00		30,000.00
	<u>\$265,000.00</u>	<u>\$12,000.00</u>	<u>\$277,000.00</u>
1. Complete Plan	\$2,412,917.63	\$356,120.25	\$2,969,037.88
City Estimate	(2,302,850.72)	(294,174.23)	(2,597,024.95)
2. Plan leaving 5th Av.			
at Present Grade.	2,409,771.92	293,496.50	2,703,268.42
City Estimate	(2,120,956.92)	(230,320.42)	(2,351,277.34)
2. Plan leaving both 5th			
Ave. and Madison			
Ave at Grade	2,186,405.17	240,254.38	2,426,659.55
City Estimate	(1,843,998.90)	(194,025.93)	(2,038,024.83)
4. Plan leaving Madi.			
son Ave. at Grade			
but Raising 5th			
Ave.	2,389,550.88	262,878.32	2,652,429.21
City Estimate	(2,025,892.72)	(247,879.73)	(2,273,772.45)

N. B. Figures do not include Property damages nor Operating Costs due to interference with regular schedules, nor rearranging industries off the Railroad Right of Way.

EXHIBIT R-102.

July 8th, 1914.

SUMMARY.

COST OF ELEVATION.

Eric Railroad—Paterson, N. J.

Railroad Company's Estimate of City Plan dated 1914.

Estimate of Total Cost.

Section	R. R.	Street	Total
Cut to Madison	\$149,154.07	\$12,241.00	\$201,205.00
Madison to Grade	74,212.00		74,212.00
Street Damages	21,000.00		21,000.00
	<hr/>	<hr/>	<hr/>
Grade to Straight	244,366.75	52,241.00	296,607.75
Straight to Clay	94,040.75	31,300.40	125,341.15
Clay to Taylor	39,793.44	22,340.29	62,133.73
Taylor to Market	72,888.92	21,357.80	94,246.72
Market to Ellison	467,844.04	41,120.55	508,964.59
Ellison to Van Houten	94,172.43	3,707.00	97,879.43
Van Houten to Broadway	36,157.98	19,800.00	55,957.98
Broadway to Fair	45,159.21	26,744.63	71,903.84
Fair to Hamilton	33,119.07	2,561.24	35,680.31
Hamilton to Governor	53,850.77	3,588.00	57,438.77
Governor to Fulton	191,194.52		191,194.52
Fulton to Montgomery	131,223.92		131,223.92
Montgomery to Lafayette	162,864.02	4,400.00	167,264.02
Lafayette to Keen	85,942.01	6,993.10	92,935.11
Keen to Warren	93,523.20	3,544.30	97,067.50
Warren to River	30,511.56	2,000.25	32,511.81
Street Damages	63,896.23	37,837.88	101,734.11
	<hr/>	<hr/>	<hr/>
Plan No. 1. Section.	\$1,672,771.07	\$224,254.50	\$1,897,025.57
River St. to Sixth Ave	\$187,647.79	\$26,223.45	\$213,871.24
Sixth Ave. to Fifth Ave	82,558.13	37,000.30	119,558.43
Fifth Ave. to River	61,808.20		61,808.20
River to Grade	15,775.50		15,775.50
Street Damages	20,000.00		20,000.00
	<hr/>	<hr/>	<hr/>
Plan No. 2.	\$179,270.91	\$83,623.75	\$262,894.66
River St. to Grade	\$145,134.10		\$145,134.10
Engineering	80,000.00	\$12,000.00	92,000.00
Depots	165,000.00		165,000.00
Signals and Wires	20,000.00		20,000.00
Temporary Freight Tracks	20,000.00		20,000.00
Handling Traffic	100,000.00		100,000.00
	<hr/>	<hr/>	<hr/>
	\$385,000.00	\$12,000.00	\$397,000.00
Rearranging Industries off Right of Way		Plan No. 1	\$131,922.00
		Plan No. 2	14,625.60
			<hr/>
			146,547.60

Exhibit R-192.

	R. R.	Street	Industries	Total
1. Complete Plan	2,401,417.03	236,130.35	146,547.00	2,784,094.38
2. Plan leaving 5th Ave. at Present Grade	2,548,371.90	290,496.90	231,922.00	3,070,890.80
3. Plan leaving both 5th & Madison Aves at Grade	2,403,905.17	240,234.30	131,922.00	2,776,061.47
4. Plan leaving Madison Ave. at Grade but Raising 5th Ave.	2,437,020.00	203,870.33	146,547.00	2,887,437.33

GOULD TO MADISON.

2100 Cu. Yds. Grading for temporary track	@ \$.50	\$1050.00
4000 Lin Ft. Temporary track	2.00	8000.00
4 Turnouts taken up and relaid	40.00	160.00
4600 Lin Ft. track taken up	.05	230.00
4 Turnouts taken up and relaid	40.00	160.00
3510 Cu Yds. Foundation Excavation	2.00	7020.00
7300 " " Concrete	7.50	54750.00
8700 " " Excavation Earth	.50	4350.00
17538 " " Rock Excavation	2.00	35076.00
5000 Lin Ft. Track taken up	.05	250.00
800 " " " relaid and surfaced	.35	280.00
2100 " " double track	5.50	11550.00
300 Cu Yds. Sidetrack ballast	.50	150.00
1000 Lin Ft. new track Leslie Elliot Co.	2.00	2000.00
1500 " " Railing on walls	1.25	1875.00
1380 Cu Yds. Stone Backfilling behind walls	2.00	2760.00
3700 Lin Ft. Drain behind walls	.20	740.00

+ 15%

121400.30

19793.57

Less 2100 Lin Ft Double track credit

@ \$1.20

2520.00

\$149134.67

STREET WORK, MADISON AVE.

7415 Cu Yds. Filling	@ \$.15	\$1112.25
19285 " " " "	.50	9642.50
2600 Lin Ft. Curb and Gutter	1.00	2600.00
35400 Sq Ft. Sidewalk	.12	4248.00
6910 Sq Yds. Macadam	.80	5528.00
700 Lin Ft. Electric Railroad Track	5.00	3500.00
New Sewers		
200 Lin Ft. 18" Sewer California Ave.	1.50	450.00
350 " " 18" " Madison Ave. (E)	1.50	525.00
200 " " 18" " Madison Ave. (W)	1.50	450.00
200 " " 16" Water Pipe	2.00	740.00
200 " " 6" Gas Pipe	.90	200.00
300 " " 16" " "	2.00	740.00
390 Cu Yds. Concrete wall Locomotive Co. Works	7.50	2925.00
270 " " Foundation Excavation	.75	202.50
1440 Sq Ft. Bridge (Roadway)	2.50	5040.00
900 " " (Sidewalk)	1.00	900.00
2000 Lin Ft. Railing	2.50	6500.00

+ 15%

45427.75

6914.17

\$52341.92

Exhibit R-192.

MADISON TO FILL.

500 Cu Yds. Grading for Temporary Track	@ \$.50	\$450.00
4700 Lin Ft. Temporary Track	2.00	9400.00
2 Turnouts taken up and relaid	40.00	80.00
Rental of land for temporary tracks		1000.00
4700 Lin Ft. Temporary track taken up	.05	235.00
2 Turnouts taken up and relaid	40.00	80.00
560 Cu Yds. Foundation Excavation	2.00	1120.00
2191 " " Concrete	7.50	16432.50
5070 " " Excavation Earth	.50	2535.00
10141 " " " Rock	2.00	20282.00
4750 Lin Ft. Track taken up	.05	242.50
1 Turnouts taken up and relaid	400.00	120.00
1750 Lin Ft. Track laid and surfaced	.35	612.50
1650 " " double track	5.50	9075.00
600 " " Siding surfaced	.50	300.00
600 " " Stone Backfilling behind walls	2.00	1200.00
1700 " " 4" Drain Tile	.30	510.00
		60254.50
+ 10%		9936.15
		70192.64
Less 1650 Lin Ft. double track credit	@ \$1.20	1980.00
		\$74212.64

CUT TO STRAIGHT ST.

2650 Lin Ft. Track Taken up	@ \$.05	\$132.50
5 Turnouts taken up	10.00	50.00
1 Turnout Laid	30.00	30.00
4950 Lin Ft. Track laid and surfaced	.35	1417.50
Raising Newark Branch Interlocking		2000.00
10010 Cu Yds. Filling	.50	5005.00
1250 Cu Yds. Foundation Excavation	.75	937.50
2700 " " Concrete	7.50	20217.50
400 " " Stone Backfilling behind walls	2.00	800.00
1200 Lin Ft. 4" Tile Drain behind walls	.30	360.00
1050 " " Handrail on Walls	1.25	1312.50
1325 " " Double Track	5.50	7287.50
3000 Cu Yds. Sidetrack Ballast	.50	1500.00
16 Kegs Spikes	3.20	115.20
10 " Bolts	5.00	50.00
2 Boxed Nut Locks	5.00	10.00
1300 Lin Ft. Trestle	10.00	12000.00
2 Track Falsework across street	1000.00	5400.00
500000 Lbs Bridge Metal	.04	22400.00
4254 Sq. Ft. Waterproofing.	.30	1285.20
		83157.15
+ 10%		12473.00
		95630.75
Less 1303 Lin Ft. Double track credit	@ 1.20	1560.00
		\$84040.75

Exhibit R-102.

STREET WORK, STRAIGHT ST.

7200 Cu Yds. Grading	@ \$.50	\$3600.00
310 " " Foundation Excavation	.75	232.50
463 " " Concrete	7.50	3472.50
1980 Lin Ft. Curb	.70	1386.00
3445 Sq Yds. Granite Block Pavement	3.20	11024.00
19800 Sq Ft. Sidewalk	.12	2376.00
380 Lin Ft Hand Rail on Wall	1.25	475.00
800 Lin Ft 6" Gas Pipe	.80	640.00
800 " " 6" " "	.80	640.00
18" Sewer Pipe 300 Lin Ft	1.50	150.00
600 Lin Ft. Electric R. R. Track	5.00	3000.00
		<hr/>
		27296.60
		4094.40
		<hr/>
		\$31390.40

+ 15%

STRAIGHT ST. TO CLAY ST.

1700 Cu Yds. Borrow	@ \$.50	850.00
2 Turnouts taken up	10.00	20.00
640 Lin Ft Track taken up	.05	32.00
130 Lin Ft. Trestle	10.00	1300.00
180 " " Track laid, lined & surfaced	.35	63.00
130 Lin Ft. Double Track	5.50	715.00
100 Cu Yds. Sidetrack Ballast	.50	50.00
2 Kegs Spikes	3.20	6.40
1/2 Keg Bolts	5.00	2.50
417 Cu Yds. Foundation Excavation	.75	312.75
1088 Cu Yds. Concrete	7.50	8160.00
152 Cu Yds. Stone Backfilling behind wall	2.00	304.00
310 Lin Ft Drain Tile behind wall	.30	93.00
180 Lin Ft Handrail on walls	1.25	225.00
3 Track falsework across street	1800.00	5400.00
406500 lbs. Bridge metal	.04	16260.00
3150 Sq Ft. Waterproofing	.30	945.00
		<hr/>
		34738.65
		5210.79
		<hr/>
		39949.44

+ 15%

Less 130 lin ft double track credit

@ 1.20	156.00
	<hr/>
	\$39793.44

STREET WORK, CLAY ST.

4800 Cu Yds. Grading	@ \$.50	2400.00
183 " " Foundation Excavation	.75	137.25
205 " " Concrete	7.50	1537.50
205 Lin Ft. Railing on walls	1.25	256.25
865 Lin Ft. Curb	.70	605.50
2340 Sq. Yds. Stone Block Pavement	3.20	7488.00
10380 Sq Ft. Sidewalk	.12	1245.60
400 Lin Ft. 40" Brick Sewer	12.00	4800.00
425 " " 15" sewer	1.25	531.25
425 " " 12" Water Pipe	1.00	425.00
		<hr/>
		19426.35
		2913.94
		<hr/>
		\$22340.29

+ 15%

Exhibit R-102.

CLAY ST. TO TAYLOR ST.

5 Turnouts taken up	@ \$10.00	\$50.00
3200 Lin Ft. Track Taken up	.05	160.00
760 " " Trestle	10.00	7600.00
2213 Cu Yds. Concrete	7.50	16597.50
1100 " " Foundation excavation	.75	825.00
590 Lin Ft. Handrail on Wall	1.25	737.50
430 " " Double track	5.50	2365.00
9300 Cu Yds. Filling	.50	4650.00
3 Turnouts laid	30.00	90.00
1390 Lin Ft. Track laid and surfaced	.35	486.50
12 Kegs spikes	3.20	38.40
4 Kegs Bolts	5.00	20.00
1 Box Nut Locks	5.00	5.00
840 Cu Yds. Sidetrack ballast	.50	420.00
340 " " Stone backfilling behind walls	2.00	680.00
780 Lin Ft. Tile Drain behind walls	.30	234.00
3 Falsework Across Street	1800.00	5400.00
543400 Lbs. Bridge Metal	.04	21736.00
4360 Sq Ft. Waterproofing	.30	1308.00
190 Cu Yds Ballast on Bridge	1.00	190.00
190 Ties	1.25	237.50

+ 15%

63830.40

9574.52

Less 430 Lin Ft Double Track credit

@ 1.20

73404.92

516.00

\$72888.92

STREET WORK, TAYLOR ST.

5033 Cu Yds. Grading	@ \$.50	\$2516.50
30 " " Foundation excavation	.75	22.50
50 " " Concrete	7.50	375.00
Underpinning Buildings		3000.00
60 Lin Ft. Handrail on wall	1.25	75.00
1570 " " Curb	.70	1099.00
3000 Sq Yds. Granite Block Pavement	3.20	9600.00
15700 Sq Ft. Sidewalk	.12	1884.00

+ 15%

18572.00

2785.80

\$21357.80

TAYLOR ST. TO MARKET ST.

25 Turnouts taken up	@ \$10.00	\$250.00
18480 Lin Ft. Track taken up	.05	924.00
1 Crossing Frog taken up	25.00	25.00
4820 Lin Ft. Trestle	10.00	48200.00
10084 Cu Yds. Foundation Excavation	.75	7563.00
20988 " " Concrete	7.50	157410.00
3618 " " Old Masonry Removed	6.00	21708.00
6525 Lin Ft. Handrail on wall	1.25	8156.25
2400 " " Double Track	5.50	13200.00
51000 " " Filling	.50	25500.00
28 Turnouts laid	30.00	840.00
13600 Lin Ft Track laid and surfaced	.35	4760.00
10300 Cu Yds. Sidetrack ballast	.50	5150.00
90 Kegs Spikes	3.20	288.00
24 " Bolts	5.00	120.00
3 Boxes Nut Locks	5.00	15.00

Exhibit R-102.

TAYLOR ST. TO MARKET ST. (Continued).

3 Crossing Frogs	@ \$300.00	\$900.00
8400 Sq Yds. Paving Team driveways	3.20	26880.00
Essex St. Bridge		
942100 lbs Steel	.04	37696.00
6500 Sq Ft Waterproofing	.30	1950.00
2 Track Falsework	1800.00	3600.00
Dismantling old Bridge		2000.00
2' Driveway Bridge 2280 Sq Ft	3.00	6840.00
Market St. Bridge.		
2 Track Falsework	2000.00	4000.00
400000 lbs Bridge Metal	.04	160000.00
2800 Sq Ft Waterproofing	.30	840.00
Platform across street 2400 Sq Ft.	1.00	2400.00
5800 Lin Ft Curb	.70	4060.00
3200 Cu Yds. Stone backfilling behind wall	2.00	6400.00
5500 Lin Ft Drain behind Wall	.30	1650.00

+ 15%

409325.25

61398.79

470724.04

Less 2400 lin Ft Double Track credit @ 1.20

2880.00

\$467844.04

STREET WORK, ESSEX ST. and MARKET ST.

Essex Street		
380 Lin Ft Curb	@ \$.70	\$266.00
3800 Sq Ft Sidewalk	.12	456.00
730 Sq Yds Granite Block Pavement	3.20	2336.00
400 Cu Yds. Excavation	1.00	400.00
Changing Drainage		300.00
Market Street		
5000 Cu Yds. Grading	1.00	5000.00
Underpinning Building and rearranging entrances		3000.00
1700 Lin Ft Curbing	.70	1190.00
16200 Sq Ft Sidewalk	.12	1944.00
3640 Sq Yds. Asphalt Pavement	2.00	7280.00
1240 Lin Ft. Trolley Track	5.00	6200.00
350 Lin Ft. 12" gas Pipe	1.00	350.00
350 " " 18" Sewer Pipe	1.50	525.00
350 " " 2-2" Tube	.80	280.00
350 " " 1-2" Tube	.40	140.00
350 " " 6" Gas Pipe	.80	280.00
350 " " 9 Telephone conduits	3.60	1260.00
350 " " 12 Electric Conduits	4.80	1680.00
350 " " 30" Brick Sewer	6.00	2100.00
350 " " 12" Water Pipe	1.40	490.00
350 " " 6" Gas Pipe	.80	280.00

+ 15%

35757.00

5363.55

\$41120.55

Exhibit R-102.

MARKET ST. TO ELLISON.

3555 Lin Ft. Track taken up	@ \$.05	\$177.75
7 Turnouts taken up	10.00	70.00
1100 Lin Ft Trestle	10.00	11000.00
5355 Cu Yds. Concrete	7.50	40162.50
12440 " " Filling	.50	6220.00
890 Lin Ft Railing on wall	1.25	1112.50
600 Lin Ft Double Track	5.50	3300.00
750 Cu Yds. Stone Backfilling behind wall	2.00	1500.00
1200 Lin Ft Drain Tile behind wall	.30	360.00
3 Track Falsework across Street	1800.00	5400.00
312040 Lbs Bridge Steel	.04	12481.60
2436 Sq Ft Waterproofing	.30	730.80

+ 15%

82515.15
12377.28

Less 600 Lin Ft Double track

@ 1.20 94892.43
720.00

\$94172.43

STREET WORK, ELLISON ST.

408 Cu Yds. Grading	@ 1.00	\$408.00
400 Lin Ft Curb	.70	280.00
4800 Sq Ft Sidewalk	.12	576.00
700 Sq Yds. Pavement	2.80	1960.00

+ 15%

3224.00
483.60

3707.60

ELLISON ST. TO VAN HOUTEN ST.

3 Turnouts taken up	@ \$10.00	\$30.00
1300 Lin Ft Track Taken up	.05	65.00
600 Lin Ft Trestle	10.00	6000.00
1325 Cu Yds. Foundation excavation	.75	993.75
3130 " " Concrete	7.50	23475.00
600 Lin Ft Hand Rail on wall	1.25	750.00
4975 Cu Yds. Filling	.50	2487.50
2 Turnouts laid	30.00	60.00
350 Lin Ft Double Track	5.50	1925.00
2 Track Falsework across street	1800.00	3600.00
209000 lbs Bridge Metal	.04	8360.00
1540 Sq Ft. Waterproofing	.30	462.00
405 Cu Yds. Stone Backfilling behind walls	2.00	810.00
600 Lin Ft Drain Behind walls	.30	180.00

+ 15%

49198.25
7379.73

Less Credit 350 Lin. Ft. Double Track

@ 1.20 56577.98
420.00

\$56157.98

STREET WORK, VAN HOUTEN ST.

1700 Cu Yds. Excavation	@ \$1.00	\$1700.00
Entrance to Building		1200.00
940 Lin Ft Curb	.70	658.00
9400 Sq. Ft. Sidewalk	.12	1128.00
1570 Sq Yds. Pavement	2.00	3140.00
200 Cu Yds. Concrete	12.00	2400.00

Exhibit R-102.

STREET WORK VAN HOUTEN ST. (Continued).

400 Lin Ft 24" Water Pipe	@ \$4.50	\$1800.00
400 Lin Ft Telephone conduits (6)	2.40	960.00
400 Lin Ft. 6" Water Main	.80	320.00
800 Lin Ft. 3" Gas Pipe	.50	400.00
400 " " Electric Conduits (20)	8.00	3200.00
400 " " " Tubes	.80	320.00
		<hr/>
		17226.00
+ 15%		2583.90
		<hr/>
		\$19809.90

VAN HOUTEN TO BROADWAY.

530 Lin Ft. Track Taken up	@ \$.05	\$26.50
400 " " Trestle	10.00	4000.00
960 Cu Yds. Foundation excavation	.75	720.00
2082 " " Concrete	7.50	15615.00
400 Lin Ft. Handrail on wall	1.25	500.00
3040 Cu Yds. Filling	.50	1520.00
265 Lin Ft Double Track	5.50	1457.50
275 Cu Yds. Stone Backfilling behind walls	2.00	550.00
560 Lin Ft Drain behind walls	.30	168.00
2 Track Falsework across street	1800.00	3600.00
269800 Lbs Bridge Steel	.04	10792.00
1988 Sq Ft Waterproofing	.30	596.40
		<hr/>
		39545.40
+ 15%		5931.81
		<hr/>
		\$45477.21
Less 265 Lin Ft Double track credit	@ \$1.20	318.00
		<hr/>
		\$45159.21

STREET WORK, BROADWAY.

2125 Cu Yds. Grading	@ \$1.00	\$2125.00
Entrance to building		2000.00
1080 Lin Ft Curb	.70	756.00
12960 Sq Ft Sidewalk	.12	1555.20
2900 Sq Yds. Brick Pavement	2.80	8120.00
1100 Lin Ft. Trolley Track	5.00	5500.00
400 Lin Ft. Tube	.30	120.00
400 " " Electric conduit 6	2.40	960.00
400 " " 16" Water Main	2.60	1040.00
400 " " 3" Gas Main	.40	160.00
400 " " Telephone conduit 4	1.00	400.00
400 Lin Ft. 4" Gas Pipe	.50	200.00
400 Lin Ft. 2-2" Electric Tube	.80	320.00
		<hr/>
		23256.20
+ 15%		3488.43
		<hr/>
		\$26744.63

BROADWAY TO FAIR ST.

520 Lin Ft. Track Taken up	@ \$.05	\$26.00
400 " " Trestle	10.00	4,000.00
600 Cu Yds. Foundation excavation	.75	450.00
955 " " Concrete	7.50	7162.50
5300 " " Filling	.50	2650.00
200 Lin Ft Handrail on wall	1.25	250.00

Exhibit R-102.

BROADWAY TO FAIR ST. (Continued).

260 Lin Ft. Double Track	@ \$5.50	\$1430.00
400 " " Drain behind walls	.30	120.00
280 Cu Yds. Stone Backfilling behind walls	2.00	560.00
209000 Lbs. Bridge Metal	.04	8360.00
1540 Sq Ft. Waterproofing	.30	462.00
2 Track Falsework across street	1800.00	3600.00

+ 15%

29070.50
4360.57

Less 260 Lin Ft Double track credit

@ 1.20 312.00

\$33119.07

STREET WORK, FAIR STREET.

400 Cu Yds. Excavation	@ \$1.00	\$400.00
400 Lin Ft Curb	.70	280.00
4000 Sq Ft Sidewalk	.12	480.00
667 Sq Yds. Bituminous Macadam Pavement	1.60	1067.20

+ 15%

2227.20
334.08

\$2561.28

FAIR ST. TO HAMILTON AVE.

720 Lin Ft. Track Taken up	@ \$.05	\$36.50
1 Turnout taken up	10.00	10.00
400 Lin Ft Trestle	10.00	4000.00
812 Cu Yds. Foundation Excavation	.75	609.00
1855 Cu Yds. Concrete	7.50	13912.50
300 Lin Ft Handrail on walls	1.25	375.00
6000 Cu Yds. Filling	.50	3000.00
1 Turnout laid	30.00	30.00
200 Lin Ft Track laid and surfaced	.35	70.00
70 Cu Yds. Sidetrack Ballast	.50	35.00
265 Lin Ft Double Track	5.50	1457.50
2 Track Falsework across street	1800.00	3600.00
460200 lbs Bridge Metal	.04	18408.00
2772 Sq Ft Waterproofing	.30	831.60
40 Ties on bridge for siding	1.25	50.00
40 Cu Yds. Stone Ballast on bridge for siding	1.00	40.00
260 Cu Yds. Stone backfilling behind walls	2.00	520.00
420 Lin Ft Drain behind walls	.30	126.00

+ 15%

47111.10
7066.67

54177.77

Less 265 Lin. Ft. Double Track credit

@ 1.20 318.00

\$53859.77

STREET WORK, HAMILTON AVE.

450 Cu Yds. Excavation	@ \$1.00	\$450.00
500 Lin Ft Curb	.70	350.00
6000 Sq Ft Sidewalk	.12	720.00
1000 Cu Yds. Bituminous Macadam Pavement	1.60	1600.00

+ 15%

3120.00
468.00

\$3588.00

Exhibit R-102.

HAMILTON AVE. TO GOVERNOR ST.

3 Turnouts taken up	@ \$10.00	\$30.00
1900 Lin Ft. Track taken up	.05	95.00
1450 " " Trestle	10.00	14500.00
1530 Cu Yds. Old Masonry Removed	6.00	9180.00
5100 " " Foundation Excavation	.75	3825.00
12600 " " Concrete	7.50	94500.00
2010 Lin Ft Handrail on wall	1.25	2512.50
16200 Cu Yds. Filling	.50	8100.00
600 Lin Ft New Sidetrack	2.00	1200.00
1 Turnout laid	30.00	30.00
350 Lin Ft Track laid and surfaced	.35	122.50
260 Cu Yds. Sidetrack ballast	.50	130.00
3 Kegs Spikes	3.20	9.60
775 Lin Ft Double Track	5.50	4262.50
1643 Cu Yds. Stone Backfilling behind walls	.80	3286.00
2150 Lin Ft Drains behind walls	0	645.00
Governor St. Bridge		
Falsework for 2 Tracks	1800.00	3600.00
400 Cu Yds. Old Masonry removed	6.00	2400.00
200 Cu Yds. Foundation Excavation	.75	150.00
1300 Cu Yds. Concrete	7.50	9750.00
Raising Present Bridge		2500.00
136800 lbs Bridge Metal New Track	.04	5472.00
2520 Sq Ft Waterproofing	.30	756.00

+ 15%

167056.10

25058.42

192114.52

Less 775 Lin Ft Double Track credit

@ 1.20

930.00

\$191184.52

GOVERNOR ST. TO FULTON ST.

3 Turnouts taken up	@ \$10.00	\$30.00
1790 Lin Ft Track Taken up	.05	89.50
900 Lin Ft Trestle	10.00	9000.00
1330 Cu Yds. Old Masonry Removed	6.00	7980.00
9914 " " Concrete	7.50	74355.00
6450 " " Foundation excavation	.75	4837.50
9000 " " Filling	.50	4500.00
3 Turnouts laid	30.00	90.00
820 Lin Ft. Track laid and surfaced	.35	287.00
475 " " new sidetrack	2.00	950.00
485 " " Double track	5.50	2667.50
8 Kegs Spikes	3.20	25.60
2 " Bolts	5.00	10.00
1 Box Nut Locks	5.00	5.00
700 Cu Yds. Sidetrack ballast	.50	350.00
1200 " " Stone Backfilling behind walls	2.00	2400.00
1365 Lin Ft. Drain behind walls	.30	409.50
1250 " " Handrail on walls	1.25	1562.50
Fulton St.		
2 Track Falsework	1800.00	3600.00
400 Cu Yds. Old Masonry removed	6.00	2400.00
600 " " Foundation Excavation	.75	450.00
1100 " " Concrete	7.50	8250.00
Raising old bridge		2500.00
114000 Lbs Bridge Metal 1 track new bridge	.04	4560.00

Exhibit R-102.

GOVERNOR ST. TO FULTON ST. (Continued).

2310 Sq Ft Waterproofing	@ \$.30	\$693.00
40 Cu Yds. Ballast on Bridge	1.00	40.00
40 Ties on Bridge	1.25	50.00

+ 15%

132092.10

19813.82

Less 485 Lin Ft Double Track credit

@ \$1.20

151905.92

582.00

\$151323.92

FULTON ST. TO MONTGOMERY ST.

1610 Lin Ft. Track taken up	@ \$.05	\$80.50
2 Turnouts taken up	10.00	20.00
1000 Lin Ft. Trestle	10.00	10000.00
4320 Cu Yds. Foundation Excavation	.75	3240.00
12080 " " Concrete	7.50	90600.00
12180 " " Filling	.50	6090.00
3 Turnouts laid	30.00	90.00
565 Lin Ft. Double Track	5.50	3107.50
565 " " New side Track	2.00	1130.00
1300 Cu Yds. Stone Backfilling behind walls	2.00	2600.00
1540 Lin Ft. Drain behind walls	.50	462.00
1400 " " Handrail on walls	1.25	1750.00
Montgomery St. Bridge		
2 Track Falsework	1800.00	3600.00
456000 lbs. Bridge Metal	.04	18240.00
3360 Sq Ft Waterproofing	.30	1008.00
90 Cu Yds. Ballast on Bridge	1.00	90.00
75 Ties on Bridge	1.25	93.75

+ 15%

142201.75

21330.27

Less 365 Lin Ft Double track credit

@ 1.20

163532.02

678.00

\$162864.02

STREET WORK, MONTGOMERY ST.

2000 Cu Yds. Grading	@ \$.50	\$1000.00
400 Lin Ft Curb	.70	280.00
4000 Sq Ft Sidewalk	.12	480.00
670 Sq Yds. Stone block pavement	3.20	2144.00

+ 15%

3904.00

585.60

\$4489.60

MONTGOMERY TO LAFAYETTE ST.

845 Lin Ft. Track taken up	@ \$.05	42.25
430 Lin Ft. Trestle	10.00	4300.00
1925 Cu Yds. Foundation excavation	.75	1443.75
5520 " " Concrete	7.50	41400.00
645 Lin Ft. Handrail on wall	1.25	806.25
4400 Cu Yds. Filling	.50	2200.00
280 Lin Ft. Track laid and surfaced	.35	98.00
280 " " Double track	5.50	1540.00
160 " " Sidetrack ballast	.50	80.00
3 Kegs Spikes	3.20	9.60
1 " Bolts	5.00	5.00

Exhibit R-102.

MONTGOMERY TO LAFAYETTE ST. (Continued).

625 Cu Yds. Stone Backfilling behind walls	@ \$2.00	\$1250.00
770 Lin Ft Drain behind walls Lafayette St.	.30	231.00
2 Track Falsework	1800.00	3600.00
425600 lbs Bridge Metal	.04	17024.00
2940 Sq Ft Waterproofing	.30	882.00
50 Cu Yds. Ballast on Bridge	1.00	50.00
50 Ties on Bridge	1.25	62.50

+ 15%

75024.35

11253.66

Less 280 Lin Ft Double Track credit

@ 1.20

86278.01

336.00

\$85942.01

STREET WORK, LAFAYETTE ST.

1340 Cu Yds. Excavation	@ \$1.00	\$1340.00
500 Lin Ft. Curb	.70	350.00
6000 Sq Ft. Sidewalk	.12	720.00
1000 Sq. Yds. Block Pavement	3.20	3200.00
240 Lin Ft. 6" Gas Main	.80	192.00
240 " " 6" Water Main	.80	192.00

+ 15%

5994.00

899.10

\$6893.10

LAFAYETTE ST. TO KEEN ST.

2 Turnouts taken up	@ \$10.00	\$20.00
2460 Lin Ft. Track Taken up	.05	123.00
1000 " " Trestle	10.00	10000.00
2200 Cu Yds. Foundation Excavation	.75	1650.00
4900 " " Concrete	7.50	36750.00
13540 " " Filling	.50	6770.00
1000 Lin Ft. Handrail on walls	1.25	1250.00
4 Turnouts laid	30.00	120.00
1365 Lin Ft. Track laid and surfaced	.35	477.75
555 Lin Ft. Double Track	5.50	3052.50
800 " " Sidetrack ballast	.50	445.00
12 Kegs Spikes	3.20	38.40
5 Kegs Bolts	5.00	25.00
1 Box Nut Locks	5.00	5.00
676 Cu Yds. Stone Backfilling behind walls	2.00	1352.00
1115 Lin Ft. Drain behind walls	.30	334.50
2 Track Falsework across street	1800.00	3600.00
372400 lbs Bridge Metal	.04	14896.00
2940 Sq Ft Waterproofing	.30	882.00
50 Cu Yds. Stone Ballast on Bridge	1.00	50.00
50 Ties on Bridge	1.25	62.50

+ 15%

81903.85

12285.55

94189.20

Less 555 Lin Ft. Double Track credit

@ 1.20

666.00

93523.20

Exhibit R-102.

STREET WORK, KEEN STREET.

400 Cu Yds. Excavation	@ \$.50	\$200.00
300 Lin Ft. Curb	.70	210.00
2600 Sq Ft.	.12	432.00
700 Sq Yds. Block Pavement	3.20	2240.00
		<hr/>
		3082.00
+ 15%		462.30
		<hr/>
		\$3544.30

KEEN ST. TO WARREN ST.

4 Turnouts taken up	@ \$10.00	\$40.00
810 Lin Ft. Track taken up	.05	40.50
400 Lin Ft. Trestle	10.00	4000.00
1150 Cu Yds. Foundation Excavation	.75	862.50
2576 " " Concrete	7.50	19320.00
7550 " " Filling	.50	3775.00
400 Lin Ft. Handrail on wall	1.25	500.00
200 " " Track laid and surfaced	.35	70.00
260 " " double track	5.50	1430.00
150 Cu Yds. Sidetrack ballast	.50	75.00
2 Kegs Spikes	3.20	6.40
346 Cu Yds. Stone Backfilling behind walls	2.00	692.00
530 Lin Ft. Drain behind walls	.30	159.00
2 Track Falsework across street	1800.00	3600.00
228000 Lbs Bridge Metal	.04	9120.00
1680 Sq Ft. Waterproofing	.30	504.00
		<hr/>
		44194.40
+ 15%		6629.16
		<hr/>
		50823.56
Less 260 Lin Ft. Double Track credit	@ 1.20	312.00
		<hr/>
		\$50511.56

STREET WORK, WARREN ST.

200 Cu Yds. Excavation	@ \$.50	\$100.00
250 Lin Ft. Curb	.70	175.00
2500 Sq Ft Sidewalk	.12	300.00
600 Sq Yds Block Pavement	3.20	1920.00
		<hr/>
		2495.00
+ 15%		374.25
		<hr/>
		\$2869.25

WARREN ST. TO RIVER ST.

610 Lin Ft. Track taken up	@ \$.05	\$30.50
430 " " Trestle	10.00	4300.00
2186 Cu Yds. Concrete	7.50	16395.00
1100 " " Foundation Excavation	.75	825.00
430 Lin Ft. Handrail on wall	1.25	537.50
5100 Cu Yds. Filling	.50	2550.00
305 Lin Ft. Double Track	5.50	1677.50
440 Cu Yds. Stone Backfilling behind walls	2.00	880.00
520 Lin Ft. Drain behind walls	.30	156.00
2 Track Falsework across street	1800.00	3600.00

Exhibit B-102.

WARREN ST. TO RIVER ST. (Continued).

60500 Lbs Bridge Metal	@ \$.04	\$2420.00
2000 Sq Ft Waterproofing	.20	600.00
		55871.50
+ 15%		9246.72
		64252.22
Less 305 Lin Ft. Double Track credit	@ 1.20	366.00
		\$63886.22

STREET WORK, RIVER ST.

6500 Cu Yds. Excavation	@ \$.75	\$4875.00
2025 Lin Ft. Curb	.70	1417.50
21000 Sq Ft. Sidewalk	.12	2520.00
4000 Sq Ft. Block Pavement	3.20	12800.00
800 Lin Ft. Trolley Tracks	5.00	4000.00
Entrance to building & Underpinning		1500.00
700 Lin Ft. 12" Gas Main	1.90	1330.00
700 " " 8" Gas Main	1.00	700.00
120 " " 18" Sewer	1.50	180.00
600 " " 6" Gas Main	.90	540.00
550 Lin Ft. 34" Sewer	3.90	2145.00
600 Lin Ft. 4" Gas Main	.60	360.00
400 Lin Ft. 6" Water Main	.90	360.00
		32902.50
+ 15%		4935.38
		\$37837.88

RIVER STREET TO SIXTH AVE.

14 Turnouts taken up	@ \$10.00	\$140.00
10500 Lin Ft. Track Taken up	.05	525.00
4200 " " Trestle	10.00	42000.00
3550 Cu Yds. Foundation Excavation	.75	2662.50
7235 " " Concrete	7.50	54262.50
34450 " " Filling	.50	17225.00
3000 Lin Ft. Handrail on wall	1.25	3750.00
18 Turnouts laid	30.00	540.00
6920 Lin Ft. Track laid and surfaced	.35	2422.00
2100 " " double Track	5.50	11550.00
5500 " " Sidetrack ballast		2900.00
63 Kegs Spikes	3.20	201.60
17 Kegs Bolts	5.00	85.00
3 Boxes Nut Locks	5.00	15.00
1200 Cu Yds. Stone Backfilling behind walls	2.00	2400.00
3000 Lin Ft. Drain behind walls	.50	900.00
2 Track Falsework	1000.00	2000.00
465120 Lbs Bridge Metal	.04	18604.80
2640 Sq Ft. Waterproofing	.30	792.00
100 Cu Yds. Ballast on Bridge	1.00	100.00
90 Ties on Bridge	1.25	112.50
		165425.80
+ 15%		24813.87
		190239.67
Less 2160 Lin Ft Double Track credit	@ 1.20	2592.00
		\$187647.67

Exhibit R-102.

STREET WORK, SIXTH AVENUE.

6200 Cu Yds. Excavation	@ \$.50	\$4100.00
Underpinning buildings		3000.00
1150 Lin Ft. Curb	.70	1015.00
17000 Sq Ft. Sidewalk	.12	2040.00
2000 Sq Yds. Block Pavement	3.50	9500.00
Drainage		2000.00

22805.00

+ 15%

26226.45

\$26226.45

SIXTH AVE. TO FIFTH AVE.

6 Turnouts taken up	@ \$10.00	\$60.00
2500 Lin Ft. Track Taken up	.05	125.00
17500 " " Trestle	10.00	17500.00
1500 Cu Yds. Foundation Excavation	.75	1125.00
2500 " " Concrete	7.50	21000.00
11000 " " Filling	.10	1100.00
1100 Lin Ft. Handrail on Wall	1.25	1375.00
6 Turnouts laid	30.00	180.00
2000 Lin Ft. Track laid & surfaced	.55	1100.00
675 Lin Ft. Double Track	5.50	3712.50
20000 Cu Yds. Sidetrack ballast	.50	10000.00
20 Kega Spikes	3.50	64.00
5 " Bolts	5.00	25.00
1 Box Nut Locks	5.00	5.00
411 Cu Yds. Stone Backfilling behind wall	2.00	822.00
1220 Lin Ft. Drain behind wall	.30	366.00
2 Track Falsework	1500.00	3000.00
655120 Lbs. Bridge Metal	.04	18004.80
2855 Sq Ft. Waterproofing	.30	856.50
100 Cu Yds. Ballast on Bridge	1.00	100.00
500 Ties on Bridge	1.25	112.50

72941.85

+ 15%

10926.24

83768.12

Less 675 Lin Ft. double Track credit

@ 1.20

810.00

\$82958.12

STREET WORK, FIFTH AVE.

1200 Lin Ft. 24" Drain	@ 3.50	\$4200.00
9000 Cu Yds. Excavation	.50	4500.00
1800 Lin Ft. Curb	.50	1302.00
23000 Sq Ft. Sidewalk	.12	2760.00
4500 Sq Yds. Block Pavement	3.50	15750.00
Underpinning building, walls and entrances		5000.00

32522.00

+ 15%

4878.30

\$37600.30

FIFTH AVE. TO PASSAIC RIVER.

4 Turnouts taken up	@ \$30.00	\$120.00
2500 Lin Ft. Track Taken up	.05	125.00
500 " " Trestle	10.00	5000.00
500 Cu Yds. Foundation Excavation	.75	375.00
1570 " " Concrete	7.50	14025.00
5000 " " Filling	.50	2500.00

Exhibit B-102.

FIFTH AVE. TO PASSAIC RIVER (Continued).

4 Turnouts laid	@ \$30.00	\$120.00
780 Lin Ft. Double Track	5.50	4290.00
8 Kegs Spikes	3.20	25.60
2 " Bolts	5.00	10.00
500 Cu Yds. Stone Backfilling behind walls	2.00	1000.00
1100 Lin Ft Drain behind walls	.30	330.00
Raising River Bridge		
640 Cu Yds. Concrete	7.50	4800.00
500 " " Foundation Excavation	.75	375.00
Raising Bridge.		15000.00
Raising Water Tank and Crane		1500.00
800 Lin Ft Track laid and Surfaced	.35	280.00
500 Cu Yds. Sidetrack Ballast	.50	250.00

+ 15%

Less 780 Lin Ft Double Track credit

@ 1.20

62834.20

936.00

\$61898.20

PASSAIC RIVER TO GRADE.

16500 Cu Yds. Filling	@ .50	\$8250.00
1200 Lin Ft Double Track	5.50	6600.00
2400 Lin Ft Track taken up	.05	120.00

+ 15%

Less 1200 Lin Ft Double Track credit

@ 1.20

17215.00

1440.00

\$15775.00

RIVER ST. TO FIFTH AVE. No. 2....

9100 Lin Ft. Track Taken up	@ \$.05	\$455.00
10 Turnouts taken up	10.00	100.00
4000 Lin Ft Trestle	10.00	40000.00
2000 Cu Yds. Foundation Excavation	.75	1500.00
5100 " " Concrete	7.50	38250.00
33400 " " Filling	.50	16700.00
2500 Lin Ft. Handrail on Wall	1.25	3125.00
1650 " " New side track	2.00	3300.00
5100 " " Track laid	.25	1275.00
9100 " " Track surfaced	.10	910.00
10 Turnouts laid	30.00	300.00
3000 Lin Ft Double Track	5.50	16500.00
7000 Cu Yds. sidetrack ballast	.50	3500.00
45 Kegs Spikes	3.20	144.00
12 " Bolts	5.00	60.00
3 Boxes Nut Locks	5.00	15.00
1000 Cu Yds. Stone backfilling behind walls	2.00	2000.00
2500 Lin Ft. Drain behind walls	.30	750.00

+ 15%

Less 3000 Lin Ft Double Track credit

@ 1.20

148734.00

3600.00

\$145134.00

Exhibit R-102.

Damages due to Lowering and Raising Streets.

Madison Ave.	\$21000.00	\$21000.00
Straight Street	14500.00	
Clay Street	12000.00	
Taylor Street	8000.00	
Market Street	25000.00	
Ellison Street	1500.00	
Van Houten Street.....	10000.00	
Broadway	10000.00	
Fair Street	1000.00	
Hamilton Ave.	2000.00	
Lafayette Street	2000.00	
Franklin Street	10000.00	
Keen Street	1000.00	
Warren Street	500.00	
River Street	20000.00	117500.00
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Sixth Avenue	15000.00	
Fifth Avenue	15000.00	30000.00
Total Damages		\$168500.00

Estimated Cost of Revision Buildings and Sidings off
the Railroad Right of Way.

Plan No. 7

No.	5	G. A. Zabriskie.....	250.00
"	6	Commercial Lumber Co.	350.00
"	7	C. Kelley	350.00
"	8	M. Goble	250.00
"	10	Standard Oil	50.00
	11	John Agnew	31000.00
	18	Morris & Co.....	40000.00
	22	The Herman Co....	6500.00
	23	Sulzberger Sons Co.,	6500.00
	26	Hinchliffe Brewery .	3200.00
	28	P. S. Van Kirk.....	750.00
	30	Meger & De Vogel..	600.00
	31	Armstrong Sons Co.	2500.00

Exhibit R-103.

Plan No. 7 (Continued).

33	D. F. Fullerton Co. .	\$8622.00	
34	Atherton Grain Co. .	800.00	
35	J. A. Lydecker.	7000.00	
36	Public Service	2500.00	
53	Diamond Coal Co. . .	1500.00	
60	Fullers Express Co.	12000.00	\$131922.00

Plan No. 2

No. 42	Grasselli Chemical Co.	2300.00	
43	Weidman Silk Dye- ing Co.	11675.00	
46	Nicholson File Works	50.00	
56 & 57	Center Paper Box Co. & Waldo Silk Ribbon Co. . .	600.00	14625.00
			<hr/>
			\$146547.00

EXHIBIT R-103.

July 8, 1914.

PATERSON, N. J. GRADE CROSSING ELIMINATION
ELEVATION CITY PLAN.

Section "A" Erie Division of work—Eliminating Market St. to Lafayette St. inclusive, 1% grade from Essex St. to Market St. and 1% grade down from Hamilton Ave. to Keen St. This plan closes Franklin and Keen Sts. temporarily until River St. is eliminated.

	R. R.	Street	Total
Grade to Market St	\$198,171.24	\$36,798.85	\$234,970.09
Market St. to Ellison	94,172.43	3,707.60	97,880.03
Ellison to Van Houten	56,157.98	19,809.90	75,967.88
Van Houten to Broadway	45,159.21	26,744.63	71,903.84
Broadway to Fair	33,119.07	2,561.28	35,680.35
Fair to Hamilton	53,859.77	3,588.00	57,447.77
Hamilton to Governor	188,622.89		188,622.89
Governor to Fulton	147,327.67		147,327.67
Fulton to Montgomery	155,751.27	4,489.60	160,240.87
Montgomery to Lafayette	81,957.26	9,106.62	91,063.88
Lafayette to Keen	53,111.62		53,111.62
Keen to Warren	20,664.89	2,961.25	23,626.14
Warren to River St.	1,644.00		1,644.00
	<hr/>	<hr/>	<hr/>
	\$1,129,719.30	\$109,767.73	\$1,239,487.03
Street Damages	63,000.00		63,000.00
	<hr/>	<hr/>	<hr/>
	\$1,192,719.30	\$109,767.73	\$1,302,487.03

Exhibit R-103.

	R. R.	Street	Total
Engineering	\$40,000.00	\$4,000.00	\$44,000.00
Depots	140,000.00		140,000.00
Signals and Wires	10,000.00		10,000.00
Temporary Freight Tracks	10,000.00		10,000.00
Handling Traffic	50,000.00		50,000.00
	<u>\$1,442,719.30</u>	<u>\$113,767.73</u>	<u>\$1,556,487.03</u>
Industries off R. of Way			109,550.00
			<u>\$1,666,037.03</u>

SECTION (B)

ELIMINATING KEEN, WARREN AND RIVER STREETS.

	R. R.	Street	Total
Hamilton to Governor	\$7,003.55		\$7,033.55
Governor to Fulton	7,963.75		7,963.75
Fulton to Montgomery	12,546.50		12,546.50
Montgomery to Lafayette	7,782.63		7,782.63
Lafayette to Keen	56,343.10	3,975.55	60,318.65
Keen to Warren	36,100.92	3,570.75	39,671.67
Warren to River	63,886.23	37,837.88	101,724.11
River to Fifth Ave.	145,134.10		145,134.10
	<u>\$336,760.78</u>	<u>\$45,384.18</u>	<u>\$382,144.96</u>
Street Damages	21,500.00		21,500.00
	<u>\$358,260.78</u>	<u>\$45,384.18</u>	<u>\$403,644.96</u>
Engineering	12,000.00	1,600.00	13,600.00
Depot	25,000.00		25,000.00
Signal and Wires	5,000.00		5,000.00
Temporary Freight Tracks	3,000.00		3,000.00
Handling Traffic	15,000.00		15,000.00
	<u>\$418,260.78</u>	<u>\$46,984.18</u>	<u>\$465,244.96</u>
Industries off R. of Way			26,122.00
			<u>\$491,366.96</u>

SECTION (C)

STRAIGHT ST. TO MARKET ST.

	R. R.	Street	Total
Grade to Straight St.	\$94,040.75	\$31,390.40	\$125,431.15
Straight to Clay St.	39,793.44	22,340.29	62,133.73
Clay to Taylor	72,888.92	21,357.80	94,246.72
Taylor to Market St.	280,096.40	4,321.70	284,418.10
	<u>\$486,819.51</u>	<u>\$79,410.19</u>	<u>\$566,229.70</u>
Street Damages	34,500.00		34,500.00
	<u>\$521,319.51</u>		<u>\$600,729.70</u>
Engineering	17,000.00		17,000.00
Signals and Wires	3,000.00		3,000.00
Temporary Freight Tracks	6,000.00		6,000.00
Handling Traffic	25,000.00		25,000.00
	<u>\$572,319.51</u>	<u>\$79,410.19</u>	<u>\$651,729.70</u>
Industries off R. of W.			1,250.00
			<u>\$652,979.70</u>

Exhibit R-103.

SECTION (D)
ELIMINATING MADISON AVE.

	R. R.	Street	Total
Cut to Madison	\$149,154.07	\$52,241.92	\$201,395.99
Madison to Grade	74,212.68		74,212.68
	\$223,366.75	\$52,241.92	\$275,608.67
Street Damages	21,000.00		21,000.00
	\$244,366.75	\$52,241.92	\$296,608.67
Engineering	8,000.00	2,000.00	10,000.00
Signals and Wires	2,000.00		2,000.00
Temporary Freight Track	1,000.00		1,000.00
Handling Traffic	10,000.00		10,000.00
	\$265,366.75	\$54,241.92	\$319,608.67

SECTION "E"
ELIMINATING FIFTH AVE. AFTER RIVER ST. IS ELIMINATED.

	R. R.	Street	Total
River St. to Grade	\$253,301.71	\$63,623.75	\$316,925.46
Street Damages	30,000.00		30,000.00
	\$283,301.71	\$63,623.75	\$346,925.46
Engineering	10,000.00	2,300.00	12,300.00
Signals and Wires	2,000.00		2,000.00
Temporary Freight Track	2,000.00		2,000.00
Handling Traffic	5,000.00		5,000.00
	\$302,301.71	\$65,923.75	\$368,225.46
Industries off Right of Way			14,625.00
			\$382,850.46

SUMMARY.

The work being divided into five (5) sections.				
	R. R.	Street	Industries	Total
Section "A"				
Market St.—Lafayette	\$1,442,719.30	\$113,767.73	\$109,550.00	\$1,666,037.03
Section "B"				
Keen to River Sts.	418,260.78	46,984.18	26,122.00	491,366.96
Section "C"				
Straight—Taylor St.	572,319.51	79,410.19	1,250.00	652,979.70
Section "D"				
Madison Ave.	265,366.75	54,241.92		319,608.67
Section "E"				
Sixth Ave.—Fifth Ave.	302,301.71	65,923.75	14,625.00	382,850.46
	\$3,000,968.05	\$360,327.77	\$151,547.00	\$3,512,842.82

EXHIBIT R-104.

July 11th, 1914.

MADISON AVE.

Estimated Cost of Madison Ave. Grade Crossing Elimination. Railroad Track at Present grade. Street raised over railroad 22 ft. clearance, 3 Ft. Floor depth, 5% grades on approaches. Approaches 80' wide divided into 2 15 ft sidewalks and 1 50 ft roadway. Bridge 32' roadway and 2 10 ft. sidewalks.

Street Relocated west of and adjacent to present street.

2400 Cu Yds. Foundation Excavation	@ \$.75	\$1800.00
4600 " " Concrete	7.00	32200.00
38200 " " Filling	.60	22920.00
2656 Sq Ft. Bridge (Roadway)	4.00	10624.00
1660 " " Sidewalk on bridge	1.00	1660.00
2150 Lin Ft Curb	.70	1505.00
25030 Sq Ft. Sidewalk	.12	3006.00
5000 Sq Yds. Brick Pavement	2.80	14000.00
1540 Lin Ft. Railing on Approaches	2.50	3850.00
1 Stairway		500.00
		<hr/>
		92065.00
		13809.75
		<hr/>
		\$105874.75
Engineering	\$3600.00	
Land	15000.00	
Damages	3000.00	
	<hr/>	
		21600.00
		<hr/>
		\$127474.75
City Plan (R. R. Co.'s Estimate) Total Cost		\$319,608.67
R. R. Co's. Plan Total Cost		127,474.75
		<hr/>
Difference in cost in favor of R. R. Co.'s Plan		192,133.92

EXHIBIT R-105.

Blue print entitled "Scheme for elimination of grade crossing Madison Avenue, Paterson, New Jersey, July 10, 1914."

*Exhibit R-106.***EXHIBIT R-106.**

July 11th, 1914.

SUMMARY

Elimination of Keen, Warren and River Sts. after Section "A" is built.

Undergrade Crossing at Keen St.

Pedestrian Subway at Warren St.

Diversion and overhead crossing at River St.

20 Ft. driveway between Keen St. and River St. for vehicular travel from Warren St.

	Total Cost.	
Keen St.	\$63,695.38	
Warren St.	16,110.35	
River St.	251,995.23	
	<hr/>	
	\$331,800.96	
Engineering	8,000.00	
	<hr/>	
Total Cost	\$339,800.96	
City Plan (R. R. Co's Estimate)	Total Cost	491,368.96
R. R. Co's Plan	Total Cost	• 339,800.96
		<hr/>
Difference in favor of R. R. Co's Plan		151,566.00

July 11th, 1914.

Keen St. Elimination, Paterson, N. J.

Estimated cost of undergrade crossing at Keen St. after Section "A" is built and if River St. is eliminated by overhead crossing.

RAILROAD WORK.

2 Track Falsework	@ \$1800.00	\$3600.00
480 Cu Yds. Foundation Excavation	.75	360.00
770 Cu Yds. Concrete	7.50	5775.00
372400 lbs Bridge Steel	.04	14896.00
2940 Sq Ft. Waterproofing	.30	882.00
50 Cu Yds. Ballast on Bridge	1.00	50.00
50 Ties on Bridge	1.25	62.50
		<hr/>
		\$25625.50
+ 15%		3843.83
		<hr/>
		\$29469.33
Damages		12000.00
		<hr/>
		\$41469.33

STREET WORK.

7000 C Y. Excavation	@ \$.50	\$35.00
450 C Y. Concrete underpinning Bldgs	12.00	54.00
1090 Lin Ft Curb	.70	763.00
7700 Sq Ft. Sidewalk	.12	924.00
2400 Sq Yds. Brick Pavement	2.80	6720.00
400 Lin Ft 24" Drain	3.80	1520.00

Exhibit R-196.

STREET WORK (Continued).

4 Manholes	@ \$50.00	\$200.00	
4 Catchbasins	75.00	300.00	
			19327.00
+ 15%			2899.05
			<hr/> 22226.05
			\$22226.05
	Total		<hr/> \$63695.38

July 11th, 1914.

Warren St. Elimination Paterson, N. J.

Estimated cost of elimination of Warren St. grade Crossing by Pedestrian Subway, after section "A" is built and if River St. is eliminated by overhead crossing.

Pedestrian Subway	\$12,000.00
500 Sq. Yds. Brick Paving 20' Driveway	
Warren St. to River St. @ 2.80	1,680.00
470 Lin. Ft. Curb @ .70	329.00
	<hr/>
	\$14,009.00
Plus 15%	2,101.35
	<hr/>
	\$16,110.35

July 11th, 1914.

River St. Elimination, Paterson, N. J.

Diversion of Street and elimination by carrying street over Railroad.

1400 Cu Yds. Foundation Excavation @ \$.75	\$1050.00	
3200 " " Concrete	7.50	24000.00
5500 " " Filling	1.00	5500.00
1485 Lin Ft Railing on Approach & Bridge	2.50	3712.50
9120 Sq Ft. Bridge Roadway	4.00	36480.00
5400 " " Sidewalk on Bridge	1.00	5400.00
2200 Lin Ft. Curb	.70	1540.00
17200 Sq Ft. Sidewalk	.12	2064.00
6200 Sq Yds. Brick Pavement	2.80	17360.00
1200 Lin Ft. Trolley Track		6000.00
3 Stairways	500.00	1500.00
		<hr/>
	104606.50	\$104606.50
Railroad Change		
1600 Lin Ft Track Taken up @ \$.05	\$80.00	
4 Turnouts taken up	10.00	40.00
3 New Turnouts	300.00	900.00
150 Lin Ft Trestle	12.00	1800.00
1300 Lin Ft New Track on Street	3.00	3900.00
Change in Freight House		2000.00
700 Sq Yds. Block Pavement in track	4.00	2800.00
		<hr/>
	11520.00	11520.00
Station Facility Change		
Shelter Shed	\$3500.00	
Pedestrian Subway	12000.00	

Exhibits R-107—R-108.

River St. Elimination, Paterson, N. J. (Continued).

1100 Ft Curb	@ \$.70	\$770.00	
14100 Sq Ft. Platform	.20	2820.00	
1600 Ft Fence	1.00	1600.00	
2 Set Steps	150.00	300.00	
100 C Y. Foundation Excavation	.75	75.00	
200 " " Concrete	7.50	1500.00	
		<hr/> 22765.00	\$22765.00
	+ 15%		138691.50
			<hr/> 20803.73
Land			159495.23
			<hr/> 32500.00
Damages			191995.23
			<hr/> 60000.00
			<hr/> 251995.23

Plan Entitled:
 Scheme For
 Elimination of Grade Crossings,
 Keen St. Undergrade
 Warren St. Pedestrian Subway
 River St. Overhead Crossing,
 Paterson, N. J.
 Scale 1" = 50'
 July 11th, 1914.

EXHIBIT R-107.

Blue print entitled "Scheme for elimination of grade crossings Keen Street, Warren Street, River Street, Paterson, N. J., July 11, 1914."

EXHIBIT R-108.

	July 11th, 1914
Sixth Ave. and Fifth Ave. Elimination	
Sixth Ave., Total Cost	\$138,804.01
Fifth Ave. " "	211,443.96
Total Cost	<hr/> \$350,247.97
City Plan (R. R. Co.'s Estimate) Total Cost	\$382,850.00
R. R. Co.'s Plan	<hr/> 350,247.97
Difference in Favor of R. R. Co.'s Plan	<hr/> \$32,602.49

July 11th, 1914.

Fifth Ave. Elimination.

Fifth Ave. to be eliminated according to City's Plan as far as the Street is affected, but Railroad grades are changed to conform to elimination of River St. by overhead Crossing.

Fifth Ave. to be eliminated before Sixth Ave. using Sixth Ave. as a grade crossing while working at Fifth Ave.

	R. R.	Street	Total
Grade to Fifth Ave.	\$60,594.77	\$37,400.30	\$97,995.07
Fifth Ave. to River	51,548.39		51,548.39

Exhibit R-108.

	R. R.	Street	Total
River to Grade	\$15,775.50		\$15,775.50
Street Damages	15,000.00		15,000.00
	<hr/>	<hr/>	<hr/>
Engineering	\$142,918.66	\$37,400.30	\$180,318.96
Temporary Freight Tracks	4,500.00	1,300.00	5,800.00
Signals and Wires	1,000.00		1,000.00
	<hr/>	<hr/>	<hr/>
Industries	\$149,418.66	\$38,700.30	\$188,118.96
			23,325.00
			<hr/>
			\$211,443.96

July 11th, 1914.

Fifth Ave. Elimination, Paterson, N. J.

Fifth Ave. to be eliminated according to City Plan as far as the street is affected but the Railroad grades are changed to conform to elimination of River St. by overhead crossing.

GRADE TO FIFTH AVE.

8 Turnouts taken up and relaid	@ \$40.00	\$320.00
5160 Lin Ft Track taken up and relaid	.40	2064.00
2476 Cu Yds. Concrete	7.50	18570.00
1500 " " Foundation Excavation	.75	1125.00
3823 " " Temporary Ballast	.50	1911.50
45 Kegs Spikes	3.20	144.00
12 " Bolts	5.00	60.00
2 Box Nut Locks	5.00	10.00
10640 Cu Yds. Filling	.50	5300.00
2 Track Falsework across street	1800.00	3600.00
465120 lbs Bridge metal	.04	18604.80
2556 Sq Ft. Waterproofing	.30	856.80
200 C Y Ballast on Bridge	1.00	200.00
180 Ties on Bridge	1.25	225.00
		<hr/>
		52691.10
+ 15%		7903.67
		<hr/>
		\$60594.77

Street work same as R. R. Co.'s Estimate of City Plan \$37,400.30

Damages \$15,000.00

Fifth Ave. to River and River to Grade same as R. R. Co.'s estimate of City Plan \$51,548.39 and \$15,775.50 respectively.

July 11th, 1914.

SUMMARY

Sixth Ave. Elimination, Paterson, N. J.

Sixth Ave. to be eliminated according to City Plan as far as the street work is affected, but Railroad grades are changed to conform to Elimination of River St. by overhead Crossing. Sixth Ave. to be eliminated after Fifth Ave. work is completed.

	R. R.	Street	Total
Grade to 6th Ave.	\$77,096.15	\$26,223.45	\$103,319.60
6th Ave. to 3th Ave.	12,184.41		12,184.41
	<hr/>	<hr/>	<hr/>
Street Damages	\$89,280.56	\$26,223.45	\$115,504.01
	15,000.00		15,000.00
	<hr/>	<hr/>	<hr/>
	\$104,280.56	\$26,223.45	\$130,504.01

Exhibit R-108.

	R. R.	Street	Total
Engineering	\$1,000.00	\$1,000.00	\$1,000.00
Signals and Wires	1,000.00		1,000.00
Temporary Freight Tracks	1,000.00		1,000.00
	<u>\$100,240.96</u>	<u>\$27,223.45</u>	<u>\$128,504.01</u>
Industries off R. of Way			2,300.00
			<u>\$128,804.01</u>

July 11th, 1914.

Sixth Ave. Elimination, Paterson, N. J.

Sixth Ave. to be eliminated according to City Plan as far as the street is affected but railroad grades are changed to conform to elimination of River St. by Overhead Crossing. Sixth Ave. to be eliminated after Fifth Ave. work has been completed.

GRADE TO SIXTH AVE.

10 Turnouts taken up and relaid	@ \$40.00	\$400.00
4400 Lin Ft Track taken up and relaid	.40	1760.00
2400 Lin Ft Track Taken up	.05	120.00
3 New Turnouts	300.00	900.00
700 Lin Ft New Sidetrack	3.00	1400.00
2172 Cu Yds. Concrete	7.50	23790.00
1900 " " Foundation Excavation	.75	1425.00
10700 Cu Yds. Filling	.50	5350.00
1200 Lin Ft Double Track	5.50	6600.00
1760 Lin Ft Handrail on Wall	1.25	2200.00
3300 Cu Yds. Sidetrack ballast	.50	1650.00
40 Kegs spikes	3.20	128.00
10 " Bolts	5.00	50.00
2 Boxes Nut Locks	5.00	10.00
2 Track Falsework	1800.00	2000.00
465120 lbs Bridge metal	.04	18604.80
3640 Sq Ft. Waterproofing	.30	1092.00
100 C Y Ballast on Bridge	1.00	100.00
90 Ties on Bridge	1.25	112.50
		<u>68292.30</u>
+ 15%		<u>10243.85</u>
		<u>78536.15</u>
Less 1200 Lin Ft Double Track Credit	1.20	1440.00
		<u>\$77096.15</u>
Damages		\$15,000.00
Street work same as Railroad Company's estimate of City Plan		<u>\$26,223.45</u>

July 11th, 1914.

SIXTH AVE. TO FIFTH AVE.

1200 Lin Ft. Track taken up and relaid	@ \$.40	\$480.00
1200 " " Main Track taken up	.05	60.00
650 Lin Ft. double Track	5.50	3575.00
3 Turnouts taken up and relaid	40.00	120.00
475 Cu Yds. Concrete	7.50	3562.50
1050 Lin Ft Railing on walls	1.25	1312.50
3300 Cu Yds. Filling	.50	1650.00
900 Cu Yds. Sidetrack Ballast	.50	450.00

Exhibits R-109—R-110.**SIXTH AVE. TO FIFTH AVE. (Continued).**

12 Kegs Spikes	6c	\$3.20	\$38.40
4 Kegs Bolts		5.00	30.00
1 Box Nut Locks		5.00	5.00
			<hr/>
			11273.40
			1691.01
			<hr/>
			\$12964.41
Less 650 Lin Ft Double Track credit	@	1.20	780.00
			<hr/>
			\$12184.41

EXHIBIT R-109.

July 11th, 1914.

SUMMARY.

Elimination of Grade Crossing, Paterson, N. J., Erie R. R.

Madison Ave. to be eliminated by Overhead Crossing leaving Railroad track at present grade.

Straight, Clay and Cedar St. to be eliminated according to City plan.

Market St. to Lafayette St. inclusive, crossings to be eliminated according to City Plan with railroad grades modified as per Section "A" suggested by Railroad Co.

Keen, Warren and River Sts. to be eliminated by Undergrade crossing at Keen St. Pedestrian Subway at Warren St. with 20' connecting driveway to Keen and River Sts. and River St. to be diverted and eliminated by Overhead Crossing.

5th and 6th Aves. to be eliminated according to City Plan as far as streets are affected but Railroad grades are changed to conform to River St. Crossing overhead.

	R. R. Plan	City Plan
Madison Ave.	\$127,474.75	\$319,608.67
Straight St. to Taylor	652,979.70	652,979.70
Market St. to Lafayette St.	1,666,037.03	1,666,037.03
Keen to River Sts.	339,800.96	491,366.96
Sixth to Fifth Aves.	350,247.97	382,850.46
	<hr/>	<hr/>
	\$3,136,540.41	\$3,512,842.82
Difference in favor of R. R. Co.'s Plan		\$376,302.41

EXHIBIT R-110.**ERIE RAILROAD COMPANY.**

Office of Assistant Engineer.

Comparative statement of estimate of cost of Street Railway work, taken from Estimate submitted to Public Utilities Commission of New Jersey by Public Service Railway Company and Estimate submitted to Public Utilities Commission of New Jersey by Erie Railroad Company, in connection with Elimination of Grade Crossings, Erie Railroad, Paterson, N. J.

	P. S. Ry. Estimate	Erie R. R. Estimate
Madison Ave.		
Track Work 1,028 Lin. Ft.	\$ 5,426.25	700 Lin. Ft. @ \$5.00 \$ 3,500.00
Paving 874 Sq. Yds.	3,048.60	874 Sq. Yds. @ .80 699.20
Grading 4,830 Cu. Yds.	4,830.00	4,830 Cu. Yds. @ .50 2,415.00
	<hr/>	<hr/>
	\$13,334.85	\$ 6,614.20
Engr. and Contingencies	1,286.48	15% 992.11
	<hr/>	<hr/>
	\$14,621.33	\$7,606.31

Exhibits R-111—R-112.

P. S. Ry. Estimate.		Erie R. R. Estimate	
Straight and Clay Sts.			
Track Work 614 Lin. Ft.	\$ 1,500.00	600 Lin. Ft. @ \$5.00	\$ 3,000.00
Paving 510 Sq. Yds.	1,700.00	510 Sq. Yds. @ 3.00	1,530.00
Grading 1,512 Cu. Yds.	1,512.00	1,512 Cu. Yds. @ .50	756.00
	<hr/>		<hr/>
Engr. and Contingencies	\$ 4,878.00	15%	\$ 5,278.00
	478.52		608.18
	<hr/>		<hr/>
	\$ 5,356.52		\$ 6,196.18
Market St. & Park Ave.			
Track Work 1,095 Lin. Ft.	\$10,126.15	1,240 Lin. Ft. @ \$5.00	\$ 6,200.00
Paving 1,611 Sq. Yds.	6,003.15	1,611 Sq. Yds. @ 3.00	4,833.00
Grading 974 Cu. Yds.	974.00	974 Cu. Yds. @ 1.00	974.00
	<hr/>		<hr/>
Engr. and Contingencies	\$17,103.30	15%	\$19,305.00
	1,632.02		1,510.00
	<hr/>		<hr/>
	\$18,735.32		\$21,815.00
Broadway			
Track Work 1,379 Lin. Ft.	\$ 8,804.50	1,100 Lin. Ft. @ \$5.00	\$ 5,500.00
Paving 1,209 Sq. Yds.	4,309.00	1,209 Sq. Yds. @ 3.00	3,627.00
Grading 260 Cu. Yds.	260.00	260 Cu. Yds. @ 1.00	260.00
	<hr/>		<hr/>
Engr. and Contingencies	\$13,373.50	15%	\$15,115.00
	1,296.70		1,011.00
	<hr/>		<hr/>
	\$14,670.20		\$16,126.00
River Street.			
Track Work 960 Lin. Ft.	\$ 4,754.20	800 Lin. Ft. @ \$5.00	\$ 4,000.00
Paving 732 Sq. Yds.	2,670.80	732 Sq. Yds. @ 3.20	2,416.00
Grading 545 Cu. Yds.	545.00	545 Cu. Yds. @ .75	418.75
	<hr/>		<hr/>
Engr. and Contingencies	\$ 7,970.00	15%	\$ 9,165.00
	700.00		1,005.27
	<hr/>		<hr/>
	\$ 8,670.00		\$ 9,200.27
SUMMARY.			
	P. S. Ry. Estimate.		Erie R. R. Estimate.
Madison Ave.	\$14,821.32		\$ 7,086.31
Straight and Clay Sts.	5,531.00		6,126.00
Market St.	18,916.32		11,955.00
Broadway	14,830.00		16,825.00
River Street.	6,770.00		8,200.00
	<hr/>		<hr/>
	\$60,874.77		\$40,192.31

An increase over Erie Railroad Company's Estimate of \$17,375.26.
 Erie Railroad Company,
 Office of Assistant Engineer,
 October 28, 1914.

EXHIBIT R-111.

Map of the Erie System.

EXHIBIT R-112.

Proof of Mailing Notice of Hearing (Not printed).

Exhibit R-113 (Continued).

RAILWAY OPERATING INCOME (Continued).

	1914	1915	Increase	Decrease
2 Rail Operations—Expenses				
Maintenance of Way and Structures	6,998,740.25	6,999,639.49	729,664.97	
Maintenance of Equipment	11,214,881.41	10,799,069.79	515,811.62	
Traffic Expenses	1,516,896.79	1,433,969.28	82,927.49	
Transportation Expenses	21,523,448.44	20,918,673.77	604,774.67	
General Expenses	1,481,275.06	1,264,463.46	216,811.60	
Total Operating Expenses	42,835,347.95	40,795,175.79	2,130,172.16	
Net Revenue, Rail Operations	14,969,463.48	18,760,000.20	3,790,536.72	
OUTSIDE OPERATIONS				
3 Revenues	3,178,761.56	3,182,174.08	3,412.52	
4 Expenses	3,322,932.27	3,506,466.08	183,533.81	
Net Revenue Outside Operations				
Net Loss Outside Operations	314,171.61	324,292.00	19,879.61	
Net Railway Operating Revenue	14,655,291.67	18,435,717.20	3,810,425.59	
5 Railway Tax Accruals	1,663,726.74	1,933,118.11	269,391.37	
Railway Operating Income	12,791,564.93	16,568,599.15	3,777,034.22	
OTHER INCOME				
6 Income from Lease of Road	21,613.87	15,000.00	6,613.87	
7 Hire of Equipment—Credit Balance	683,521.58	707,542.22	24,020.64	
8 Joint Facility Rent Income	133,436.62	133,669.56	232.94	
9 Miscellaneous Rent Income	213,131.01	143,319.41	69,811.60	
10 Separately Operated Properties—Profit	500,220.50	2,641,800.50	2,141,580.00	
11 Dividend Income	372,733.44	279,500.00	93,233.44	
12 Income from Funded Securities				

Exhibit R-113.

Exhibit R-113 (continued).

14	Income from Unfunded Securities and Accounts	424,433.14	2,006,119.45	1,541,666.31
16	Release of Premiums on Funded Debt	4,022.18	3,208.24	1,196.06
18	Miscellaneous Income		41.79	41.79
	Total Other Income	2,532,654.26	6,133,812.06	3,291,137.60
	Gross Income	13,612,292.19	22,634,411.21	7,602,199.02
DEDUCTIONS FROM GROSS INCOME				
19	Deductions for Lease of Other Roads	2,226,792.18	2,252,221.01	25,320.66
20	Hire of Equipment—Debit Balance	48,134.49	745,968.23	696,833.74
21	Joint Facility Rent Deductions	777,228.69	713,988.10	43,240.59
22	Miscellaneous Rent Deductions	761,322.97	291,037.33	13,714.35
26	Interest Deductions on Funded Debt	10,038,132.62	9,902,492.32	135,640.63
27	Interest Deductions on Unfunded Debt	211,939.00	112,968.71	98,972.29
28	Amortization of Discount on Funded Debt			
30	Miscellaneous Deductions	124,767.13		124,767.13
	Total Deductions	14,189,246.99	14,328,233.98	339,428.99
	Net Income	1,422,973.20	8,103,673.23	6,062,760.03
	Net Loss			
DISPOSITION OF NET INCOME				
31	Appropriations of Income to Sinking and Other Reserve Funds	780,700.33	763,318.99	0.000.00
33	Appropriations of Income for Additions and Betterments	302,742.77	657,567.93	134,843.16
	Surplus	\$139,523.10	8,682,568.31	6,323,043.21
	Deficit			

Exhibit R-114.

EXHIBIT R-114.
ERIE RAILROAD COMPANY.
INCOME STATEMENT.

For the two months ending August 31, 1914 and 1913

	1914	1913	Increase	Decrease
OPERATING INCOME:				
I TRANSPORTATION—RAIL LINE—				
(a) 101 Merchandise	4,876,148.19	4,997,002.74		120,914.55
(b) 101 Coal	2,927,577.31	2,853,425.11	74,152.20	
102 Passenger	2,993,039.38	2,266,910.97		171,871.59
103 Excess baggage	10,804.87	11,492.39		687.52
105 Parlor and chair car	3,428.05	3,522.04		93.99
106 Mail	76,171.61	68,497.45	7,674.16	
107 Express	256,195.17	269,809.57		13,614.40
108 Other passenger-train	1,929.26	10,538.82		8,609.26
109 Milk	171,609.48	182,571.24		10,961.76
110 Switching	165,037.76	164,252.98	784.78	
111 Special service train	3,288.53	5,254.65		1,966.12
112 Other freight-train	255.23	179.18	76.05	
113 Water transfers—Freight	661.64	578.32	83.32	
114 Water transfers—Passenger	15,065.41	15,098.46		33.05
115 Water transfers—Vehicles and live stock	37,955.11	36,312.36	1,642.75	
116 Water transfers—Other	9,620.39	2,024.92	7,595.47	
II TRANSPORTATION—WATER—LINE—				
121 Freight	87,855.21	123,933.20		36,077.99
127 Special service				
128 Other				

Exhibit R-114.

Exhibit R-114 (Continued).

III INCIDENTAL—					
131 Dining and buffet	25,068.75	30,210.05			5,141.30
132 Hotel and restaurant	48,532.10	51,430.75			2,898.65
133 Station, train, and boat privileges	15,992.82	17,339.04			1,346.22
134 Parcel room	2,681.88	2,643.13	38.75		
135 Storage—Freight	9,881.71	6,947.02	2,934.69		
136 Storage—Baggage	1,055.72	1,319.90			264.18
137 Demurrage	34,309.50	42,330.00			8,020.50
138 Telegraph and telephone	1,433.74	2,017.18			583.44
140 Stockyard	2,216.25	1,308.25	908.00		
142 Rents of buildings and other property	2,960.31	3,421.28			
143 Miscellaneous	27,268.58	22,747.66	4,520.92		460.97
IV JOINT FACILITY—					
151 Joint facility—Cr.	357.81	823.17			465.36
152 Joint facility—Dr.	2,054.22	2,247.44	1,193.22		
501 Total Railway Operating Revenues	10,908,347.55	11,190,754.39			282,406.84
OPERATING EXPENSES—					
I Maintenance of way and structures	1,274,640.44	1,555,391.42			280,750.98
II Maintenance of equipment	2,266,823.97	1,998,891.24			
III Traffic	225,734.63	254,594.71			
IV Transportation—Rail line	3,720,829.55	3,841,227.09	267,932.73		28,860.08
V Transportation—Water line	73,798.04	112,625.09			123,398.14
VI Miscellaneous operations	76,870.01	82,692.94			38,827.05
VII General	223,456.90	235,156.34			5,822.93
VIII Transportation for investment—Cr.	15,142.84				11,699.44
531 Total Railway Operating Expenses	7,847,010.70	8,083,579.43			236,568.73

Exhibit R-114.

Exhibit R-114 (Continued).

	OPERATING EXPENSES (Continued).		1913	Increase	Decrease
	1914	1913			
Net Revenue from Railway Operations	3,061,336.85	3,107,174.96			45,838.11
532 Railway tax accruals	302,883.16	302,883.16			
533 Uncollectible railway revenues	393.30				393.30
Railway Operating Income	2,758,060.39	2,804,291.80			46,231.41
Total Operating Income					
NON-OPERATING INCOME:					
503 Hire of freight cars—Credit balance					12,404.45
504 Rent from locomotives	21,438.30	33,842.75		4,098.69	
505 Rent from passenger-train cars	23,988.19	19,889.50		128.00	
506 Rent from floating equipment	128.00				17.34
507 Rent from work equipment	431.66	449.00			9,868.75
508 Joint facility rent income	108,789.72	118,658.47		1,450.00	
509 Income from lease of road	3,950.00	2,500.00			4,001.65
510 Miscellaneous rent income	18,875.61	22,877.26		8,566.01	
512 Separately operated properties—Profit	8,566.01				
513 Dividend income	22,742.77	22,742.77			
514 Income from funded securities	91,664.00	94,187.33			2,523.33
515 Income from unfunded securities and accounts	63,115.28	40,139.47		22,975.81	
516 Income from sinking and other reserve funds					868.04
517 Release of premiums on funded debt					
519 Miscellaneous income		868.04			
Total Non-operating Income	362,689.54	356,154.59		7,534.95	
Gross Income	3,121,749.93	3,160,446.39			38,696.46

Exhibit R-114.

Exhibit R-114 (Continued).

DEDUCTIONS FROM GROSS INCOME:

536 Hire of freight cars—Debit balance		255,062.52	157,539.70
537 Rent for locomotives	97,522.82	8,298.73	1,513.92
538 Rent for passenger-train cars	6,784.81	23,252.48	479.78
539 Rent for floating equipment	22,772.70	11,371.19	9,171.19
540 Rent for work equipment	2,900.00	390.00	380.00
541 Joint facility rents	10.00		
542 Rent for leased roads	120,643.22	105,818.99	14,824.23
543 Miscellaneous rents	371,801.38	368,994.58	2,806.80
544 Separately operated properties—Loss	122,767.17	122,532.92	234.25
545 Interest on funded debt	1,673,937.02	1,642,454.76	31,482.26
547 Interest on unfunded debt	73,389.17	10,813.06	62,576.11
548 Amortization of discount on funded debt	273.00		273.00
549 Maintenance of investment organization	4,125.64		4,125.64
551 Miscellaneous income charges			

Total Deductions from Gross Income

52,762.30

Net Income

DISPOSITION OF NET INCOME:

- 552 Income applied to sinking and other reserve funds
- 554 Income appropriated for investment in physical property

Total Appropriations

Surplus

Deficit

	625,523.00	611,457.16	14,065.84
	133,568.84	127,034.58	6,534.26
	351,933.13	171,453.82	180,479.31
	485,501.97	298,488.40	187,013.57
	140,021.03	312,968.76	
			172,947.73

*Exhibit R-115.***EXHIBIT R-115.****ERIE RAILROAD COMPANY.**

**Statement showing Obligations (Principal only) maturing during
Period October 14th, 1914 to June 30th, 1915.**

Class of Obligation	Date of Issue	Date of Maturity	Par Value Maturing
Equipment Trust Certificates	June 1905	November 1914	\$100,000
Equipment Trust Certificates	Nov. 1906	November 1914	47,000
Equipment Trust Certificates	Apl. 1913	November 1914	23,000
Construction Obligation	June 1911	December 1914	13,890
Equipment Trust Certificates	Dec. 1905	December 1914	350,000
Equipment Trust Certificates	Dec. 1912	December 1914	100,000
Equipment Trust Certificates	June 1913	December 1914	66,000
Equipment Trust Certificates	Dec. 1911	December 1914	19,000
Equipment Trust Certificates	Dec. 1913	December 1914	18,246
Equipment Trust Certificates	July 1907	January 1915	107,000
Equipment Trust Certificates	July 1907	January 1915	29,000
Equipment Trust Certificates	July 1913	January 1915	117,000
Equipment Trust Certificates	Feb. 1907	February 1915	29,000
Equipment Trust Certificates	Aug. 1911	February 1915	230,000
Equipment Trust Certificates	Aug. 1911	February 1915	108,000
Equipment Trust Certificates	Aug. 1914	February 1915	45,000
Equipment Trust Certificates	Sep. 1913	March 1915	56,000
Equipment Trust Certificates	Dec. 1913	March 1915	18,246
Erie R. R. Co. Collateral Notes	Apl. 1912	April 1915	10,000,000
Real Estate Mortgage	Feb. 1913	April 1915	37,000
Equipment Trust Certificates	Oct. 1907	April 1915	152,000
Equipment Trust Certificates	Oct. 1907	April 1915	50,000
Equipment Trust Certificates	June 1905	May 1915	100,000
Equipment Trust Certificates	Nov. 1906	May 1915	47,000
Equipment Trust Certificates	Apl. 1913	May 1915	23,000
Construction Obligation	June 1912	June 1915	90,000
Equipment Trust Certificates	Dec. 1905	June 1915	350,000
Equipment Trust Certificates	Dec. 1912	June 1915	100,000
Equipment Trust Certificates	June 1913	June 1915	66,000
Equipment Trust Certificates	June 1913	June 1915	100,000
Equipment Trust Certificates	Dec. 1911	June 1915	19,000
Equipment Trust Certificates	Dec. 1913	June 1915	18,246
Erie RR Co. Collateral Notes	Oct. 1914	March 1915	5,000,000
Erie RR Co. Collateral Notes	Oct. 1914	March 1915	1,000,000
Par Value Maturing—Total			\$18,624,807
Equipment Trust—(Initial Payment)		Oct. 1914	200,332
Total			\$18,825,139

Exhibit R-116.

EXHIBIT R-116.

ERIE RAILROAD SYSTEM

Statement showing Obligations (Principal only) maturing during
year ending June 30, 1916.

Class of Obligation	Date of Issue	Date of Maturity	Par Value Maturing
Promissory Note, Long Dock Co.,	July 1914	July 1915	\$700,000
Erie RR Co. Collateral Notes	Oct. 1914	Oct. 1915	4,550,000
Mortgage Bonds, Tioga	Dec. 1885	Nov. 1915	239,500
Mortgage Bonds, B. N. Y. & E. 1st	—	—	—
Construction Obligation	June 1876	June 1916	2,380,000
Construction Obligation	June 1912	June 1916	90,000
Construction Obligation	Various	July 1915	52,000
Equipment Trust Certificates	Dec. 1905	Dec. 1915	350,000
	Dec. 1905	June 1916	350,000
	Nov. 1906	Nov. 1915	47,000
	Nov. 1906	May 1916	47,000
	Feb. 1907	Aug. 1915	29,000
	Feb. 1907	Feb. 1916	29,000
	July 1907	July 1915	107,000
	July 1907	Jan. 1916	107,000
	July 1907	July 1915	29,000
	July 1907	Jan. 1916	29,000
	Oct. 1907	Oct. 1915	152,000
	Oct. 1907	Apl. 1916	152,000
	Oct. 1907	Oct. 1915	50,000
	Oct. 1907	Apl. 1916	50,000
	Aug. 1911	Feb. 1916	230,000
	Aug. 1911	Aug. 1915	230,000
	Aug. 1912	Feb. 1916	108,000
	Aug. 1912	Aug. 1915	108,000
	Dec. 1912	Dec. 1915	100,000
	Dec. 1912	June 1916	100,000
	June 1913	Dec. 1915	66,000
	June 1913	June 1916	66,000
	July 1913	July 1915	118,000
	July 1913	Jan. 1916	117,000
	June 1913	June 1916	100,000
	Sep. 1913	Sep. 1915	56,000
	Sep. 1913	Mar. 1916	56,000
	Aug. 1914	Aug. 1915	45,000
	Aug. 1914	Feb. 1916	45,000
	Dec. 1911	Feb. 1915	19,000
	Dec. 1911	June 1916	19,000
	Apl. 1913	Nov. 1915	23,000
	Apl. 1913	May 1916	23,000
	Dec. 1913	Sep. 1915	18,246
	Dec. 1913	Dec. 1915	18,246
	Dec. 1913	Mar. 1916	18,246
	Dec. 1913	June 1916	18,245
			<hr/>
			\$11,241,483

Exhibit R-117.

EXHIBIT R-117.

ERIE RAILROAD SYSTEM

Statement showing Obligations (Principal only) maturing during
year ending June 30, 1917.

Class of Obligation	Date of Issue	Date of Maturity	Par Value Maturings
Erie RR Co. Collateral Notes	Apl. 1914	Apl. 1917	\$13,500.00
Construction Obligation	June 1912	June 1917	90.00
Construction Obligation	Various	July 1916	52.00
Equipment Trust Certificates	Nov. 1906	Nov. 1916	28.50
	Nov. 1906	May 1917	28.50
	Feb. 1907	Aug. 1916	29.00
	Feb. 1907	Feb. 1917	29.00
	July 1907	July 1916	107.00
	July 1907	Jan. 1917	107.00
	July 1907	July 1916	29.00
	July 1907	Jan. 1917	29.00
	Oct. 1907	Oct. 1916	152.00
	Oct. 1907	Apl. 1917	152.00
	Oct. 1907	Oct. 1916	50.00
	Oct. 1907	Apl. 1917	50.00
	Aug. 1911	Aug. 1916	230.00
	Aug. 1911	Feb. 1917	230.00
	Aug. 1912	Aug. 1916	108.00
	Aug. 1912	Feb. 1917	108.00
	Dec. 1912	Dec. 1916	100.00
	Dec. 1912	June 1917	100.00
	June 1913	Dec. 1916	66.00
	June 1913	June 1917	66.00
	July 1913	July 1916	118.00
	July 1913	Jan. 1917	117.00
	June 1913	June 1917	100.00
	Sep. 1913	Sep. 1916	56.00
	Sep. 1913	Mar. 1917	56.00
	Aug. 1914	Aug. 1916	45.00
	Aug. 1914	Feb. 1917	45.00
	Dec. 1911	Dec. 1916	20.00
	Apl. 1913	Nov. 1916	20.00
	Apl. 1913	May 1917	20.00
	Dec. 1913	Sep. 1916	18.50
	Dec. 1913	Dec. 1916	18.50

\$16,073.00

Exhibits R-118—R-121.

EXHIBIT R-118.

EXHIBIT R-119.

EXHIBIT R-120.

Copies of these Exhibits are bound in a separate volume, marked Volume III.

EXHIBIT R-121.

ERIE RAILROAD COMPANY

Estimate of revenue which will be obtained from increases already granted in Central Freight Association territory. This will include the few in Trunk Line territory, which the Commission permitted to be made, in order to make effective the increase in Central Freight Association territory—based on the fiscal year ended June 30th, 1914.

Erie R. R. revenue in Central Freight Association territory	\$16,256,239.61
Revenue in Central Freight Association territory, on anthracite coal, bituminous coal, coke, iron, and other ores, cement, brick, tile and lime	6,737,065.67
Revenue on other commodities to which the five per cent increase may be applied	9,519,173.94
Five Per Cent on the above.....	475,958.70
Traffic local to Central Freight Association territory on Erie RR lines, estimated to be 15%, or.....	71,393.81

Exhibit R-122.

(The words in italics should be omitted as appears by the following letter:)

Copy

ERIE RAILROAD COMPANY

New York, October 30, 1914.

File 1.

Mr. C. P. Crawford,
Comptroller.

Dear Sir:

Upon examining the statement prepared in this office, showing our estimate of revenue which will be obtained from rate increases in Central Freight Association territory, permitted by the recent opinion of the Interstate Commerce Commission, we find that the text of the 4th item is somewhat misleading, as the amount noted represents our estimate of the revenue which accrues to the Erie R. R. Co., lines in Central Freight Association territory, not only from local traffic, but from traffic, also, in which other roads are interested. The heading should be "Traffic local to Central Freight Association Territory, estimated to be 15%." The words "Erie R. R. Lines" should be eliminated.

Yours truly,

(Signed) C. E. HILDUM

Auditor of Freight Accounts.

EXHIBIT R-122.

ERIE RAILROAD COMPANY

Estimate of the revenue which will accrue to the Erie R. R. Company from the extension, to Trunk Line territory, of the increases in rates granted to Central Freight Association territory by the Commis-

Exhibit R-123.

sion in its report—based on the fiscal year ended June 30, 1914.

Total Erie System Revenue		\$42,779,577.90
Exclusive of:		
Anthracite Coal	\$12,677,550.44	
Bituminous Coal	2,860,622.83	
Coke	471,186.24	
Iron Ore	1,095,496.99	
Cement, Brick, Tile and Lime,	624,261.02	17,729,117.52
		<hr/>
		\$25,050,460.38
Less:		
Trans-Continental	\$771,617.07	
C. M. & St. P.	86,799.41	
C. & N. W.	58,827.00	
C. R. I. & P.	32,659.38	
C. B. & Q.	27,307.45	977,210.31
		<hr/>
Five Per Cent of	\$24,073,250.07	
	1,203,662.50	

NOTE:—This includes the estimate of increased revenue in Central Freight Association territory, and the latter would, of course, be very largely increased by the inclusion of inter-territorial traffic.

EXHIBIT R-123.**ERIE RAILROAD COMPANY.****NINETEENTH ANNUAL REPORT.**

New York, October 13, 1914.

To the Bond and Share Holders of the Erie Railroad Company:

The following report of the operations of your Company for the year ending June 30, 1914, is respectfully submitted by the Board of Directors:

MILEAGE.

Table No 1 shows in detail the mileage of road operated June 30, 1914, from which you will note that the Company:

	Miles.
Owens in fee or controls by ownership of entire capital stock	1,673.40

Exhibit R-123.

	Miles.
Controls by ownership of a majority of capital stock	160.31
Leases	276.96
Has trackage rights over.....	146.73
<hr/>	
Total mileage operated.....	2,257.40
Has restricted trackage rights over.....	131.20
Owens and leases to other companies.....	15.12
Leases and re-leases to other companies....	2.35
Controls lines operated independently.....	37.87
<hr/>	
Total mileage controlled but not operated.	186.54
Grand Total	2,443.94
—of which 1,205.96 miles, or 49.34 per cent., have second track, 18.47 miles have third track and 18.42 miles have fourth track.	

The increase of 9684 miles in second track is due to the construction of additional track, as follows:

At Newburgh Junction, N. Y., .09 miles; between Red House and Steamburg, N. Y., 4.50 miles; Concord and Saegertown, Pa., 21.99 miles, and between Marion, Ohio and Wilders, Ind., 70.26 miles.

Exhibit R-123 (Continued).

OPERATING REVENUE AND EXPENSE.

The following statement shows the gross operating revenue, operating expenses, and operating income of the system for the fiscal year:

	REVENUE.			
	1914	1913	Increase	Decrease
Merchandise				
Coal	\$29,770,279.39	\$27,458,445.40		\$23,227.00
Passenger	16,009,339.51	16,887,293.79		877,954.28
Mail	10,245,372.00	10,213,955.29	\$31,316.49	
Express	633,983.63	412,164.53	41,799.10	
Milk	1,051,772.88	1,720,683.02		84,910.14
Miscellaneous	983,664.98	964,213.20	21,451.78	
	1,683,202.17	1,791,699.60		108,497.43
Revenue—Rail Operations	\$57,801,813.64	\$50,463,183.03		\$7,638,371.49
Revenue—Outside Operations	3,178,761.56	3,182,174.68		3,412.82
Gross Operating Revenue	\$60,980,575.20	\$53,645,357.71		\$7,603,794.22

Exhibit R-123 (Continued).

EXPENSES

	1914	1915	Increase	Decrease
Maintenance of Way and Structures	\$6,300,146.45	\$6,300,000.48	\$15,145.97	
Maintenance of Equipment	11,313,881.11	10,700,000.70	313,881.41	
Traffic Expenses	1,336,800.70	1,335,800.78	999.92	
Transportation Expenses	20,223,445.44	20,918,673.77	695,228.33	
General Expenses	1,484,375.06	1,264,463.46	219,911.60	
Operating Expenses—Rail Operations	\$42,815,147.86	\$40,103,173.78	\$2,711,974.08	
Operating Expenses—Other Operations	3,322,932.27	3,300,406.08	22,526.19	
Total Operating Expenses	\$46,138,080.13	\$43,403,580.86	\$2,734,499.27	
Taxes	1,853,756.74	1,915,118.11	61,361.37	
Total Operating Expenses and Taxes	\$47,991,836.87	\$45,318,700.97	\$2,673,135.90	
Operating Income	\$12,159,567.03	\$16,500,500.13	\$4,340,933.10	
Ratio of Operating Expenses and Taxes to Gross Operating Revenue	79.68%	73.66%	5.02%	
Ratio of Operating Expenses to Gross Operating Revenue	79.67%	70.37%	9.30%	

MERCHANDISE.

The merchandise tonnage for the year was 20,306,275 tons, a decrease of 1,673,283 tons or 7.61 per cent.

The decrease in revenue from haulage of merchandise was \$688,227.01 or 2.51 per cent. less than the last year.

A detailed statement of the commodities hauled is shown in Table No. 18.

COAL AND COKE.

The total coal and coke tonnage for the year was 17,819,134 tons, a decrease of 1,189,301 tons, or 6.26 per cent. less than the last year.

The anthracite tonnage was 9,882,781 tons, a decrease of 259,686 tons, or 2.56 per cent. less than the last year.

The bituminous tonnage was 6,821,387 tons, a decrease of 829,913 tons, or 10.84 per cent. less than the last year.

The coke tonnage was 1,114,966 tons, a decrease of 169,692 tons, or 8.28 per cent.

The revenue from haulage of coal and coke decreased \$877,934.19 or 3.20 per cent.

The coal and coke tonnage was 46.74 per cent. of the total revenue tonnage hauled.

GENERAL FREIGHT TRAFFIC.

The total revenue freight traffic of the Company during the year, including merchandise, coal and coke, was 38,125,409 tons, a decrease of 2,862,584 tons, or 6.98 per cent.

The number of tons hauled one mile was 7,428,034,970, a decrease of 302,640,080 ton miles, or 3.91 per cent.

The total revenue derived from haulage of freight was \$42,779,577.90, as compared with \$44,345,739.10 for the year 1913, a decrease of \$1,566,161.20, or 3.53 per cent.

Exhibit R-123.

The average freight revenue per ton per mile was .576 cents, as compared with .574 cents the last year, an increase of .002 cents, or .35 per cent.

In addition to the above, 4,748,906 tons of Company's freight were hauled, making the total tonnage 42,874,315 tons.

In hauling this tonnage 12,583,346 train miles were run, a decrease compared with the last year, of 371,187 train miles, or 2.87 per cent.

The average distance each ton was hauled was 194,832 miles, an increase of 6.224 miles, or 3.30 per cent.

The revenue per freight train mile was \$3.40 as compared with \$3.42 the previous year, a decrease of 2 cents, or .69 per cent. The average train load of revenue freight was 590.31 tons, a decrease of 6.44 tons, or 1.08 per cent. Including Company's freight, the average train load was 641.32 tons, a decrease of 5.82 tons, or .90 per cent. The average carload of revenue freight was 21.27 tons, a decrease of .17 tons, or .79 per cent. Including Company's freight, the average carload was 23.11 tons, a decrease of .14 tons, or .60 per cent. less than last year.

PASSENGER TRAFFIC.

The total number of passengers carried during the year was 27,628,242, an increase of 265,406, or .97 per cent.

The number of passengers carried one mile was 651,393,355, an increase of 4,367,228 passenger miles, or .67 per cent.

The increase in gross revenue therefrom was \$33,316.49 or .33 per cent.

The average fare received from each passenger per mile was 1.573 cents, a decrease of .006 cents, or .38 per cent.

The average distance travelled was 23.58 miles, a decrease of .07 miles, or .29 per cent.

The average fare received from each passenger was • 37.09 cents, a decrease of .24 cents.

Exhibit R-123.

The passenger train mileage was 10,170,532 train miles, a decrease of .59 per cent.

The passenger train revenue per train mile was \$1.324, an increase of .53 per cent.

The average number of passengers in each train was 64.05, an increase of .81 passenger, or 1.28 per cent.

The average number of passengers in each car was 16.91, an increase of .14 passenger, or .83 per cent.

Of the total number of passengers carried, 26,896,144 were local and 732,098 were through passengers, the local traffic showing an increase in number of passengers carried and a slight decrease in the average revenue received per passenger per mile. The number of through passengers decreased, while the average revenue received per passenger per mile shows a slight increase.

MAIL.

A partial adjustment of the compensation for transportation of United States Mail was made during the year, resulting in an increased revenue of \$41,799.10, or 10.14 per cent.

EXPRESS.

The reduction in rates by the express companies and loss in volume of business due to Parcel Post, is reflected in the revenue from transportation of express, which shows a decrease of \$84,910.14, or 4.89 per cent.

MILK.

Revenue from transportation of milk was \$985,664.98, an increase of \$21,421.78, or 2.22 per cent.

MISCELLANEOUS.

Revenue from miscellaneous sources was \$1,685,262.17, a decrease of \$105,837.43, or 5.91 per cent.

OPERATING EXPENSES.**MAINTENANCE OF WAY AND STRUCTURES.**

The expense of Maintenance of Way and Structures was \$6,998,746.35, an increase of \$729,686.87, or 11.64 per cent. The details of this account in Table No. 10 show that among the principal items increased are Ties, Rails, Track Maintenance, Removal of Snow, Sand, and Ice, and Signals and Interlocking Plants.

60 bridges were reconstructed or are in the course of reconstruction, 303 repaired and 91 repainted.

25,098 tons of new 100-pound, 12,737 tons of new 90-pound and 2,417 tons of new 80-pound steel rails were laid, with the necessary frogs, switches, etc.

1,206,993 cross ties and 2,791,211 feet of switch timber were used in the track, with 839,086 tie plates.

146.05 miles of track were fully ballasted and 15.35 miles of track were partially ballasted.

79 miles right-of-way fences were built.

31.74 miles of passing and other sidings and 7.68 miles industrial side tracks were constructed.

Stations at Huntington and Rochester, Ind., were enlarged, and the stations at Hutchins and Rasselas were rebuilt. At West Nutley, Horseheads, Mount Morris, Rochester, N. Y., Buffalo and Warren the stations were remodeled.

MAINTENANCE OF EQUIPMENT.

Maintenance of Equipment expenses were \$11,314,881.41, an increase of \$515,811.62, or 4.78 per cent. more than last year. The details are shown in Table No. 10.

The total tractive power of locomotives is 49,007,245 pounds, an increase of 3,030,646 pounds.

The total number of locomotives at the close of the fiscal year was 1,501, an increase of 40. 68 new locomotives were received, 18 old locomotives were scrapped and 10 were sold.

Exhibit R-123.

The average age of locomotives is 13 years, 11 months.

The average mileage made by steam locomotives was 22,214 miles, a decrease of 1,474 miles, 6.22 per cent.

The average mileage made by motor cars was 29,467 miles, an increase of 601 miles, 2.08 per cent.

One tug boat was purchased and two condemned, one steam barge built, six covered barges built and twenty-four purchased, two open barges and three car floats purchased. The floating equipment in New York Harbor and on the Great Lakes was fully maintained.

The changes in equipment during the year are shown in Table No. 14.

TRAFFIC EXPENSES.

Traffic expenses increased \$62,987.42, or 4.33 per cent.

TRANSPORTATION EXPENSES.

Transportation Expenses were \$21,523,448.44, an increase of \$604,774.67, equal to 2.89 per cent.

Table No. 10 indicates that the increases are quite general, two of the principal items being increase in the price of fuel for locomotives and settlements for loss and damage—freight.

GENERAL EXPENSES.

General Expenses were \$1,481,375.06, compared with \$1,264,463.46 for last year, an increase of 17.15 per cent as per detail shown in Table No. 10.

TAXES.

The Taxes for the year were \$1,865,726.74, a decrease of \$69,391.37 or 3.59 per cent.

*Exhibit R-123.***ADDITIONS AND BETTERMENTS—ROAD.**

The Capital Account Additions and Betterments for the year is charged with \$5,438,378.79, as follows:

Right of Way and Station Grounds....	\$327,348 35
Protection of Banks and Drainage....	1,657 51
Grade Reductions and Changes of Line.	245 19
Tunnel Improvements	3,264 38
Bridges, Trestles, and Culverts.....	14,049 83
Additional Main Tracks	3,957,633 26
Sidings and Spur Tracks	96,118 64
Terminal Yards	180,473 12
Elimination of Grade Crossings.....	164,143 22
Interlocking Apparatus	1,365 54
Block and Other Signal Apparatus.....	555,927 36
Telegraph and Telephone Lines.....	8,251 93
Station Buildings and Fixtures.....	54,059 19
Shops, Enginehouses, and Turntables..	20,404 34
Shop Machinery and Tools.....	39,351 14
Water and Fuel Stations.....	44,135 46
Grain Elevators and Storage Ware-	
houses	967 94
Dock and Wharf Property	Cr. 41,857 65
Electric—Power Transmission	11,740 04

Total\$5,438,378 79

**ADDITIONS AND BETTERMENTS—EQUIP-
MENT.**

Capital Account has been charged during the year with \$8,534,581.77 for additional equipment as follows:

60 Locomotives	\$1,585,390 04
3,500 Box Cars	3,606,423 94
2,000 Gondola Cars	2,426,955 12
25 Express Cars	237,870 46
4 Locomotive Cranes	28,633 62
1 Ballast Spreader Car.....	5,140 00

Exhibit R-123.

3 Harbor Barges	\$19,860 80
2 Tug Boats	125,560 23
1 Steel Car Float	46,105 00
2 Wooden Car Floats	74,551 27
40 Wooden Lighters	113,552 51
1 Steam Lighter	28,185 32
50 Locomotives—Partial Payment..	75,566 84
80 Refrigerator Cars—Partial Pay- ment	96,130 60
5 Caboose Cars—Partial Payment.	1,695 03
25 Passenger Cars—Partial Payment	8,326 42
3 Tugs and 2 Car Floats—Partial Payment	54,634 57
Total	<u>\$8,534,581 77</u>

ADDITIONS AND BETTERMENTS—INCOME.

During the year \$502,742.77 has been appropriated from Income for additions and betterments to the property, as follows:

Right of Way and Station Grounds....	\$9,430 91
Real Estate	521 60
Grade Reductions and Changes of Line	825 26
Bridges, Trestles, and Culverts.....	108,110 61
Increased Weight of Rail.....	236,537 62
Improved Frogs and Switches.....	2,390 04
Track Fastenings and Appurtenances..	231,631 30
Ballast	321,194 55
Sidings and Spur Tracks.....	16,425 63
Terminal Yards	1,693 88
Fencing Right of Way.....	475 21
Elimination of Grade Crossings.....	766 60
Interlocking Apparatus.....	8,644 89
Block and Other Signal Apparatus....	55,033 83
Telegraph and Telephone Lines.....	37,351 26
Station Buildings and Fixtures.....	26,380 33
Roadway Machinery and Tools.....	928 52
Shops, Enginehouses, and Turntables..	3,762 25

Exhibit R-123.

Shop Machinery and Tools.....	\$2,220 25
Water and Fuel Stations.....	758 33
Dock and Wharf Property.....	93,137 50
Other Additions and Betterments.....	546 02
2 Harbor Barges	12,518 20
50 Caboose Cars....Balance	10,619 05
350 Caboose Cars....Partial Payment	7,943 26
259 Cinder Cars....Partial Payment	34,438 67
1 Dynamometer Cars..Balance	10,580 99
Miscellaneous Equipment	260,727 77
	<hr/>
	\$1,495,603 33

Less credits account of
property destroyed or
sold as follows:

Locomotives	\$133,776 83
Freight—Train Cars...	624,383 54
Passenger—Train Cars.	37,566 67
Floating Equipment ...	37,000 00
Work Equipment.....	96,585 23
Buildings	43,537 46
Miscellaneous	20,010 83
	<hr/>
	992,860 56
	<hr/>
Total,	\$502,742 77

EQUIPMENT TRUSTS.

The balance outstanding	
June 30, 1913, on Equip-	
ment Trusts created	
prior to this fiscal year	
was	\$14,108,000 00
Payments made during	
the year	2,642,000 00
	<hr/>
Leaving a balance of,	\$11,466,000 00

Exhibit R-123.

Equipment Trusts were
made during the year
covering:

3,000 Box Cars.....	}	\$3,670,000 00
1,000 Gondola Cars..		
1,000 Gondola Cars..		1,000,000 00
50 Locomotives ...		1,120,000 00
10 Locomotives ...		218,948 94
25 Express Cars...		230,000 00
		<hr/>
		\$6,238,948 94

Payments made to June

30, 1914	487,491 49
----------------	------------

Leaving a balance of,

5,751,457 45

Equipment Trusts out-
standing June 30,
1914

\$17,217,457 45

Total payments made
during the year.....

\$3,129,491 49

CAPITAL STOCK.

The Company's outstanding Capital Stock remains
unchanged.

	AUTHORIZED.	ISSUED.
Non-cumulative 4 per cent.		
First Preferred	\$48,000,000	\$47,892,400
Non-cumulative 4 per cent.		
Second Preferred	16,000,000	16,000,000
Common	153,000,000	112,378,900
	<hr/>	<hr/>
Total,	\$217,000,000	\$176,271,300

BONDED DEBT.

Of the Prior and General Lien bonds secured by the
First Consolidated Mortgage Deed, an additional \$2,-
000,000 General Lien Bonds have been issued during

Exhibit B-123.

the year. There has been no increase in the amount of bonds secured by the General Mortgage.

Total amount of bonds issued under these mortgages now outstanding:

Prior Lien Bonds.....	\$25,000,000
General Lien Bonds.....	51,724,000
Convertible Bonds	32,000,000

INCOME STATEMENT.

Gross Operating Revenue.....	\$60,983,574	90
Operating Expenses and Taxes.....	48,224,006	97
Operating Income	\$12,759,567	93
Other Income	2,852,654	26
Gross Income	\$15,612,222	19
Deductions from Gross Income.....	14,189,246	99
Net Income	\$1,422,975	20
Appropriated to Sinking Funds	\$760,709	33
Appropriated for Addi- tions and Betterments.	502,742	77
	1,263,452	10
Surplus	\$159,523	10

FINANCIAL.

The financial condition at the close of the fiscal year is shown by the General Balance Sheet, Table No. 4.

During the year your Company has received from the Trustee \$2,000,000 General Lien Bonds, being the fourteenth and fifteenth millions of the \$17,000,000 of General Lien Bonds reserved for construction purposes.

On April 1, 1914, \$13,500,000 three-year five and one-half per cent. Collateral Gold Notes and on April 8, a special note maturing October 1, 1914, for \$1,000,000, were issued, the proceeds thereof being applied toward

Exhibit R-123.

the payment of \$12,500,000 Collateral Gold Notes and \$2,500,000 short term notes maturing April 8, 1914, \$500,000 of the last mentioned notes being retired.

Special promissory notes for \$5,000,000, due October 1, 1914, were issued on March 2, 1914, to cover amounts theretofore expended from current funds for construction purposes.

Statements of charges to "Additions and Betterments" shown herein explain the increase in the account "Investment Since June 30, 1907."

Depreciation on equipment during the year was \$1,234,163.44, as shown by the increase in the account "Reserve for Accrued Depreciation—Cr."

The increase in the account "Securities of Proprietary, Affiliated, and Controlled Companies—Pledged," "Funded Debt," is caused by including Erie & Jersey Railroad bonds and Genesee River Railroad bonds with the securities pledged under the indenture of April 8, 1914, securing payment of the special \$1,000,000 note mentioned above, less Chicago & Western Indiana Railroad bonds released from pledge and sold.

\$336,000 Erie Railroad Company Pennsylvania Collateral Bonds pledged under the Collateral Indenture of April 8, 1911, were released and sold; \$2,000,000 General Lien Bonds were pledged under the new Collateral Indenture dated April 1, 1914, which items explain the increase in the account "Securities Issued or Assumed—Pledged" "Funded Debt."

The decrease in "Securities of Proprietary, Affiliated, and Controlled Companies—Unpledged" "Funded Debt," is due to the pledging of the bonds of Erie & Jersey Railroad and Genesee River Railroad heretofore mentioned, and sale of \$174,000 Chicago & Western Indiana Railroad bonds, less a slight increase due to miscellaneous securities acquired.

"Advances to Proprietary, Affiliated, and Controlled Companies for Construction, Equipment and Betterments" increased \$68,100.24, representing amounts ad-

Exhibit R-123.

vanced to the Long Dock Company, Penhorn Creek Railroad Company and the Industrial Center Land Company.

Elmira, Corning & Waverly Railway bonds valued at \$686,875 acquired during the year, bonds of the same company, \$100,000, heretofore shown as unpledged, and New Jersey & New York Railroad Company capital stock, were pledged under the Indentures of April 1, 1914, and Mutual Terminal Company and other miscellaneous securities were acquired, which explains the changes in the accounts "Miscellaneous Investments"—"Securities Pledged" and "Securities Unpledged."

The decrease of \$814,562.12 in the account "Temporary advances to Proprietary, Affiliated, and Controlled Companies," is principally explained by credits account securities received from the Southern Tier Development Company and the Erie Land & Improvement Company, in reimbursement for advances made in previous years.

"Working Funds" decreased \$89,232.75 account of reduction in advances made to the Erie Despatch Fast Freight Line.

There is an increase of \$765,051.64 in the account "Cash and Securities in Sinking and Redemption Funds," representing increased balances in Akron & Barberton Belt Railroad, Chicago & Western Indiana Railroad and Pennsylvania Collateral Sinking Funds.

The increase in "Mortgage Bonds," "Collateral Trust Bonds" and "Equipment Trust Obligations" has been heretofore explained.

The decrease of \$55,465.89 in "Miscellaneous Funded Obligations" is due to the payment of real estate mortgages, reduction in obligations issued for construction work, less amount of mortgages assumed on property acquired during the year.

The account "Loans and Bills Payable," \$6,000,000, represents special notes maturing October 1, 1914, heretofore mentioned.

Exhibit R-123.

The increase of \$861,425.99 in the account "Reserves from Income or Surplus," represents 10 cents per ton on coal mined from the mines of the Pennsylvania Coal Company during the fiscal year, together with interest on the Erie Railroad Company Pennsylvania Collateral Bonds purchased by the Trustee and held in the Trust Account.

All of the securities for construction purposes turned over by the Erie Reorganization Committee have been converted into cash, as follows:

Value as placed on the Books, January, 1897.	Cash Realized from Sale.
\$115,200 00 Buffalo & Southwestern Railroad Second Lien Bonds	\$126,720 00
405,000 00 Erie Railroad Company Prior Lien Bonds....	414,000 00
364,055 22 New York & Greenwood Lake Railway Prior Lien Bonds	385,570 22
1,034,400 00 Erie Railroad Company General Lien Bonds...	1,214,908 93
630,000 00 Delaware & Hudson Ex- clusive Car Trust Certi- ficates	630,000 00
202,000 00 Car Trust of New York Certificates	202,000 00
<hr/> \$2,750,655 22	<hr/> \$2,973,199 15

In addition to these securities there have been certified by the Trustee of the Erie Railroad Company First Consolidated Mortgage Deed and turned over to your Company in reimbursement for expenditures already made, \$5,000,000 Erie Railroad Company Prior Lien Bonds and \$15,000,000 Erie Railroad Company General Lien Bonds; and by the Trustee of the Erie Rail-

Exhibit R-123.

road Company General Mortgage \$32,000,000 Erie
Railroad Company Convertible Bonds.

Of these securities the following have been converted
into cash:

Par Value.	Cash Realized, from Sale.
\$5,000,000 00 Erie Railroad Company Prior Lien Bonds....	\$4,539,884 27
3,000,000 00 Erie Railroad Company General Lien Bonds..	2,484,111 11
21,015,000 00 Erie Railroad Company Convertible Bonds....	19,215,000 00
<hr/> \$29,015,000 00	<hr/> \$26,238,995 38

leaving still owned by the Company:

Erie Railroad Company General Lien Bonds	\$12,000,000 00
Erie Railroad Company Convertible Bonds	10,985,000 00

From December 1, 1895, to June 30, 1914, the Com-
pany has received cash from all sources for Construc-
tion and equipment purposes, as follows:

\$500,000 00 Sale of Erie & Wyoming Valley Rail- road Co. Capital Stock.	
500,000 00 Settlement of account with the Na- tional Transit Co.	
4,343,850 13 From the Erie Reorganization Com- mittee.	
2,973,199 15 Proceeds of sale of securities received from the Erie Reorganization Com- mittee.	
7,023,995 38 Proceeds of sale of securities received from the Farmers' Loan and Trust Co., Trustee.	
19,215,000 00 Proceeds of sale of securities received from the Standard Trust Company of New York, Trustee.	

Exhibit R-123.

\$9,382,081 23 Proceeds of sale of Collateral Gold Notes.

230,227 05 Proceeds of sale of securities received for the purchase of Erie & Wyoming Valley Railroad Equipment.

2,500 00 Sale of Pittsburgh, Chartiers & Youghiogheny Railroad Co. Bonds acquired from the Receivers of the New York, Lake Erie & Western Railroad Co.

457,867 50 Sale June 1, 1899, of Capital Stock of the Northern Railroad Company of New Jersey, originally paid for by the Erie Reorganization Committee from Construction Funds.

740,000 00 Sale of Union Dry Dock property and franchises.

107,989 22 Special Tax deposit made by Erie Reorganization Committee, returned June 14, 1901, by the British Government.

\$45,476,709 66

This amount has been applied to partially reimburse the Company for the following expenditures:

\$457,867 50 Purchase of Northern Railroad Company of New Jersey Capital Stock.

1,729,611 68 New York, Lake Erie & Western Car Trusts.

65,000 00 Payment of Mortgages on Real Estate.

348,377 50 Disbursed on account of Union Steamboat Company in liquidation of its affairs and in building or acquiring additional property.

111,241 84 Liquidating Receivership New York, Lake Erie & Western Railroad Company.

Exhibit R-123.

\$30,437,216 62 New Construction.

44,740,648 62 New Equipment.

\$77,889,963 76

Your Company has expended from current cash for construction and equipment purposes from December 1, 1895, to June 30, 1914, \$32,413,254.10, for which it is or will be entitled to be reimbursed from the sale of either Erie Railroad Company General Lien Bonds or Erie Railroad Company Convertible Bonds.

The amount shown as expended for "New Equipment" includes payments aggregating \$18,233,086.33 for cars and locomotives covered by equipment trusts.

GENERAL REMARKS.

Additions and Betterments to the property and equipment of the Company, aggregating \$14,475,703.33, have been made during the year, as per tables shown.

On March 2, 1914, special promissory notes for \$5,000,000, due October 1, 1914, were issued to cover amounts theretofore expended from current funds for construction purposes.

On April 8, 1914, the Company's notes aggregating \$15,000,000 matured, of which \$500,000 were retired, the balance being paid from the proceeds of \$13,500,000 Collateral Gold Notes maturing April 1, 1917, and a special note for \$1,000,000, maturing October 1, 1914.

The special notes, \$5,000,000 and \$1,000,000 mentioned above, have been renewed on favorable terms to March 1, 1915, and the Company's three-year Collateral Gold Notes, \$4,550,000, due October 1, 1914, have been renewed for one year.

The double tracking, grade reductions and changes of alignment between Marion, Ohio, and Lomax, Ind., is completed, with the exception of about two miles near Laketon, Ind., and four miles near Akron, Ind., the completion of the work at these two points having

Exhibit R-123.

been deferred in February, 1914. It is expected that the uncompleted portion will be finished by January, 1915.

With the completion of the work between Lomax and Griffith, Ind., for which surveys have been made, the double tracking of the Chicago & Erie Railroad will be accomplished.

The double tracking, grade reductions and changes of alignment on the Meadville Division between Red House and Steamburg, N. Y., and between Corry and Meadville, Pa., has been completed.

There were added to the floating equipment of the Company in New York Harbor one tug, one steam barge, thirty covered barges, two open barges, and one steel and two wooden car floats.

During the year thirty-five hundred box cars, five hundred drop-end gondolas, fifteen hundred hopper bottom gondolas, sixty locomotives, and twenty-five express cars were added to the equipment.

Grade crossings have been eliminated at Narrowsburg, Barton, East First Street, Corning, Columbia Street, Corning, Main Street, Buffalo, Delaware Avenue, Buffalo, Collins and Gowanda, N. Y.

The work of eliminating grade crossings at Nanuet, Otisville, Military Road, Buffalo, and Jamestown, N. Y., is in progress.

The Interstate Commerce Commission's order denying the application of the railroads for a five per cent. increase in freight rates resulted in further stagnating the business of your Company and the country. Attention is called to the minority report of the Commission. The carriers' application for a rehearing having been granted, it is hoped that a modification of the order may be obtained, which will furnish a substantial increase in revenues.

To avoid the so-called interlocking directorate feature involved, Messrs. H. P. Davison, James J. Goodwin, Robert S. Lovett, Charles A. Peabody and Charles

Exhibit R-123.

Steele resigned as Directors of your Company. Messrs. Dwight W. Morrow and Albert H. Wiggin were elected to the Board. Since the close of the fiscal year Mr. Dwight W. Morrow resigned and Mr. Gates W. McGarrah was elected to the Board.

Mr. D. W. Cooke was elected Vice-President and General Traffic Manager on January 28, 1914.

Mr. A. J. Stone was elected Vice-President and General Manager on July 1, 1914.

Mr. John C. Stuart, late Vice-President in charge of Operation, died March 4, 1914. He was a valued officer and had rendered your Company intelligent and loyal service for many years.

\$28,297,226.76, equivalent to 61.04 per cent. of the Total Operating Expenses, was paid by the Company direct to labor, being distributed among 38,782 employes.

The efficient services of the officers and employes are hereby acknowledged.

By order of the Board,

Respectfully submitted,

F. D. UNDERWOOD,
President.

Table 2.

**INCOME STATEMENT (ENTIRE SYSTEM) FOR
THE YEAR ENDING JUNE 30, 1914.**

OPERATING EXPENSES—

RAIL OPERATIONS.

Maintenance of Way and Structures	\$6,998,746 35
Maintenance of Equip- ment	11,314,881 41
Traffic Expenses	1,516,896 70
Transportation Expenses	21,523,448 44
General Expenses	1,481,375 06
	<hr/> \$42,835,347 96

Exhibit R-123.

OUTSIDE OPERATIONS.

Water Routes	\$2,637,453	03
Coal Storage and Ship- ping Plants	192,557	25
Miscellaneous	692,921	99
	\$3,522,932	27

Total Operating Expenses.....	\$46,358,280	23
Taxes	865,726	74

Total Operating Expenses and Taxes \$48,224,006 97

DEDUCTIONS—

Lease of Other Roads

(See Table No. 7) ... \$2,226,702 18

Hire of Equipment (Bal-
ance)

49,134 49

Joint Facility Rent....

777,228 60

Miscellaneous Rent....

761,322 97

Interest on Funded Debt:

Bonds (See Table No.

5) 7,729,358 00

Collateral Gold Notes 1,492,291 67

Serial 5% Gold Notes 17,625 00

Equipment Trusts... 760,366 98

Mortgages 21,541 65

Construction Obliga-
tions

16,949 32

Interest on Unfunded

Debt 211,959 00

Miscellaneous 124,767 13

Total Deductions.....	14,189,246	99
Net Income	1,422,975	20

\$63,836,229 16

Net Income for Year..... \$1,422,975 20

Exhibit R-123.

Appropriated to Sinking and Other Reserve Funds	\$760,709 33	
Appropriated for Addi- tions and Betterments	502,742 77	\$1,263,452 10

Balance for Year Transferred to Credit of Profit and Loss.....	\$159,523 10
---	--------------

OPERATING REVENUE—

RAIL OPERATIONS.

Merchandise	\$26,770,218 39	
Coal	16,009,359 51	
Passenger	10,248,572 08	
Mail	453,963 63	
Express	1,651,772 88	
Milk	985,664 98	
Miscellaneous	1,683,262 17	
		<hr/> \$57,804,813 64

OUTSIDE OPERATIONS.

Water Routes	\$2,180,549 11	
Coal Storage and Ship- ping Plants	347,516 25	
Miscellaneous	650,695 90	3,178,761 26

Gross Operating Revenue.....	\$60,983,574 90
------------------------------	-----------------

OTHER INCOME—

From Lease of Road	\$21,033 87
Joint Facility Rent....	683,521 50
Miscellaneous Rent....	133,436 62
Separately Operated Properties—Profit ...	213,131 01
Dividend Income.....	800,320 50
Interest on Funded Se- curities	572,735 44

Exhibit R-123.

OTHER INCOME—(Continued).

Interest on Unfunded Securities & Accounts	\$424,453 14
Release of Premiums on Funded Debt	4,022 18
	<hr/>
Total Other Income.....	\$2,852,654 26
	<hr/>
	\$63,836,229 16

PROFIT AND LOSS STATEMENT, YEAR END-
ING JUNE 30, 1914.

TABLE 3.

DEBITS:

Debt Discount Extin- guished through Sur- plus	\$379,250 00
Loss on Retired Road and Equipment.....	553,296 82
Delayed Income Debits	188,149 55
Miscellaneous Debits...	107,976 24
	<hr/>
	\$1,228,672 61
Balance Credit June 30, 1914, carried to General Balance Sheet.....	31,818,915 67
	<hr/>
	\$33,047,588 28

CREDITS:

Balance June 30, 1913.....	\$31,889,199 06
Balance Transferred from Income Ac- count	\$159,523 10
Delayed Income Credits	125,718 50
Miscellaneous Credits..	873,147 62
	<hr/>
	1,158,389 22
	<hr/>
	\$33,047,588 28

Exhibit R-123 (Continued).

Table 5.

BONDED DEBT AND INTEREST FOR THE YEAR ENDING JUNE 30, 1914.

Entire System, exclusive of "Leased Lines" shown in Table No. 7.

	Principal.	Date of Maturity.	Rate.	Interest. Due.	Amount.
New York and Erie Railroad Company First Mortgage Bonds.....	\$2,482,000	May 1, 1947.....	4% Currency.	May and November....	\$99,280
New York and Erie Railroad Company Second Mortgage Bonds...	2,149,000	September 1, 1919	5% Gold....	March and September.	107,453
New York and Erie Railroad Company Third Mortgage Bonds....	4,617,000	March 1, 1923...	4½% Gold...	March and September.	307,763
New York and Erie Railroad Company Fourth Mortgage Bonds...	2,926,000	October 1, 1929..	5% Gold.....	April and October.....	146,300
New York and Erie Railroad Company Fifth Mortgage Bonds....	709,500	June 1, 1928.....	4% Gold.....	June and December....	26,380
Buffalo, New York and Erie Railroad Company First Mortgage Renewal Bonds	2,380,000	June 1, 1916.....	7% Currency.	June and December....	106,600
Buffalo Branch Mortgage Bonds...	182,400	July 1, 1931.....	4% Gold.....	January and July.....	7,296
Erie Railway Company First Consolidated Mortgage Bonds.....	16,691,000	September 1, 1920	7% Gold....	March and September.	1,182,370
New York, Lake Erie and Western Railroad Company First Consolidated Mortgage Coupon Bonds.	3,699,500	September 1, 1920	7% Gold....	March and September.	252,963

Exhibit R-123.

Exhibit R-123 (Continued).

Buffalo and Southwestern Railroad Company First Mortgage Bonds	1,500,000	July 1, 1915.....	3% Gold.....	January and July.....	75,000
Newburgh and New York Railway Company First Mortgage Bonds.	250,000	January 1, 1929..	3% Gold.....	January and July.....	12,500
Erie Railroad Company Prior Lien Bonds	38,000,000	January 1, 1906..	4% Gold.....	January and July.....	1,400,000
Erie Railroad Company General Lien Bonds	81,734,000A	January 1, 1906..	4% Gold.....	January and July.....	1,435,400
Erie Railroad Company Pennsylvania Collateral 4 per cent. Gold Bonds	34,000,000B	February 1, 1951.	4% Gold.....	February and August..	1,091,552
Erie Railroad Company 4 per cent. Convertible 50-year Gold Bonds.	32,000,000C	April 1, 1953....	4% Gold.....	April and October.....	840,800
Erie Railroad Company, Buffalo and Southwestern Division, Second Lien 5 per cent. Gold Bonds....	1,000,000	July 1, 1918.....	3% Gold.....	January and July.....	50,000
Chicago and Erie Railroad Company First Mortgage Gold Bonds....	12,000,000	May 1, 1952.....	3% Gold.....	May and November...	600,000
Chicago and Atlantic Railway Company Terminal Bonds	300,000	July 1, 1918.....	3% Gold.....	January and July.....	15,000
Chicago and Erie Railroad Company non-cumulative 5 per cent. Income Bonds outstanding .....	.....	.....	.....	.....	4,900
Total, \$203,810,400	.....	.....	.....	.....	\$7,779,356

BONDS OWNED BY COMPANY:

A \$15,839,000	Pledged.
B 6,953,000	In Sinking Fund.
C 10,955,000	Pledged.

Table 6.
Exhibit R-123 (Continued).
BONDED DEBT OF LEASED LINES FOR THE YEAR ENDING JUNE 30, 1914
Interest on which is paid by Erie Railroad Company
and included in Rentals shown in Table No. 7.

	Principal.	Date of Maturity.	Rate.	Interest. Due.	Amount.
Long Dock Company Bonds.....	\$7,200,000	October 1, 1933..	6% Gold.....	April and October....	\$480,000 00
New York, Lake Erie and Western Docks and Improvement Com- pany Bonds.....	2,200,000	July 1, 1942.....	5% Gold.....	January and July.....	160,000 00
New York and Greenwood Lake Railway Company Prior Lien Bonds.....	1,671,500	May 1, 1946.....	5% Gold.....	May and November....	73,380 00
Northern Railroad Company of New Jersey First Mortgage Bonds.....	634,000	July 1, 1917.....	6% Currency....	January and July.....	30,340 00
Northern Railroad Company of New Jersey General Mortgage Bonds	154,000	January 1, 1930..	4½% Gold.....	January and July.....	6,200 00
Bergen County Railroad Company Bonds.....	200,000	April 1, 1921.....	5% Gold.....	April and October....	10,000 00
Middletown and Crew-Red Railroad Company Bonds.....	60,000	April 1, 1921.....	4½% Gold.....	April and October....	2,970 00
Jefferson Railroad Company Bonds.....	2,000,000	April 1, 1919.....	5% Gold.....	April and October....	160,000 00
Honesdale Branch Railroad Bonds.....	304,000	July 1, 1927.....	4½% Currency....	January and July.....	3,150 00
Honesdale Branch Railroad Bonds.....	64,200	January 1, 1929..	6% Gold.....	January and July.....	3,700 00
Tinga Railroad Company First Mort- gage Bonds.....	230,500	November 1, 1913	5% Gold.....	May and November....	11,475 00
New York, Lake Erie and Western Coal and Railroad Company Bonds.....	1,100,000	May 1, 1929.....	6% Currency....	May and November....	60,610 00
New York, Pennsylvania and Ohio Railroad Company Prior Lien Bonds.....	2,000,000	March 1, 1933..	4½% Gold.....	March and September	100,000 00

Exhibit R-124.

EXHIBIT R. 124.

ERIE RAILROAD SYSTEM

Statement showing disposition of profit and loss
surplus to June 30, 1914

Expended from current cash for liquidating the receivership of the New York, Lake Erie and Western R. R. Co. and for construction and equipment purposes, since December 1, 1905, for which the Company is or will be entitled to be reimbursed from the sale of General Lien and Convertible Bonds as per detailed statement shown on page 13 of annual report to stockholders for the year 1914.		\$28,413,334.20
Proceeds sale of Collateral Gold Notes		5,392,961.23
Final payments on N Y P & O Car Trusts for which the Company has received bonds, which are yet unsold.		582,836.20
Cost of New Equipment transferred to Cost of Road and Equipment from Replacement Account in 1910 (not included in first item).	\$4,738,951.54	
Less outstanding balances on Equipment Trusts H & K	374,990.90	4,363,960.64
Discount on General Lien Bonds taken at par for construction purposes.		438,815.58
Buffalo, Rochester & Pittsburgh RR Notes paid.		137,000.00
Invested in Securities (list attached)		14,894,421.60
Invested in material in excess of amount December 1, 1905.		4,784,882.34
Cash.		6,897,435.51
Due from Agents and Conductors.		1,351,572.90
Miscellaneous Accounts Receivable		2,649,782.23
Advances,		
Penhorn Creek R. R. Co.	4,900,437.65	
Other Affiliated Companies	2,820,571.17	7,720,998.82
Working Funds and Special Deposits.		278,828.12
Miscellaneous.		217,002.14
		<u>\$85,488,291.40</u>
Less—		
Collateral Gold Notes Outstanding	\$4,650,000.00	
Vouchers and Wages Unpaid	4,374,500.93	
Interest and Rents Unpaid	4,400,513.30	
Reserve for Accrued Depreciation on Equipment.	9,602,300.25	33,012,000.00
Miscellaneous	2,721,847.63	
		<u>\$31,874,180.38</u>
Profit and Loss Balance June 30th 1914		\$31,818,915.07
R.		
9-21-14.		

EXHIBIT B-125

Statement of the increased expense to Erie Railroad Company, including the New Jersey & New York R. R. Co., New York, Susquehanna & Western R. R. Co. and The Wilkes-Barre & Eastern Railroad Company, Resulting from the Operation of Full Crew Laws in the States of New York, New Jersey and Pennsylvania.
For the Months of September 1913 to March 1914, inclusive, for the State of New York; July 1913 to March 1914, inclusive, for the States of New Jersey and Pennsylvania; with Estimates for the Full Year.

NEW YORK																							Total	
New York		Northern R. R.		Delaware		Susquehanna		Rochester		Buffalo		Allegheny		Meadville		Total Erie		N. J. & N. Y.		Including N. J. & N. Y.				
Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.			
\$200.00	\$197.00	\$2.00	.....	\$1,701.51	\$203.41	\$1,501.11	\$465.50	\$202.74	\$268.17	\$1,501.05	\$661.97	\$1,411.80	\$449.97	\$204.97	\$181.50	\$1,007.47	\$1,001.07	\$14.00	\$61.00	\$11,061.07	\$1,006.07		
1,000.00	100.00	20.00	.....	2,700.04	343.00	2,700.00	441.00	277.04	335.33	1,801.40	650.79	1,617.00	613.47	300.37	134.74	688.56	2,701.89	304.00	72.00	12,000.00	2,000.00		
1,000.00	100.00	20.00	.....	2,600.00	320.40	2,600.00	390.30	241.01	330.00	2,079.30	780.01	1,607.00	678.40	1,000.30	191.40	12,000.00	2,003.71	54.00	69.00	12,000.00	2,701.70		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00	1,600.00	643.04	1,000.44	191.00	12,000.00	2,131.85	81.00	74.00	12,000.00	2,100.00		
1,000.00	100.00	20.00	.....	2,600.00	340.40	2,600.00	443.34	190.04	333.33	1,800.00	780.00</												

NEW JERSEY															
New York		Northern R. R.		Greenwood Lake		Total Erie		N. J. & N. Y.		N. Y. S. & W.		Total Including N. J. & N. Y. & N. Y. S. & W.			
Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.		
\$200.00	\$1,970.00	\$21.07	\$44.03	\$130.10	\$200.00	\$1,000.97	\$1,500.00	\$04.00	\$200.00	\$210.11	\$03.00	\$1,400.00	\$1,800.04		
\$75.10	1,200.00	\$4.00	\$5.43	130.10	\$27.00	1,000.00	1,500.70	\$0.20	\$20.10	\$14.01	\$20.10	1,400.00	1,910.00		
\$21.00	\$04.00	\$0.00	\$0.00	\$20.00	\$00.00	\$00.00	1,100.00	\$0.00	\$71.00	\$00.77	\$0.00	\$43.77	1,307.00		
\$00.00	\$00.00	\$0.00	\$1.00	\$00.00	\$10.00	1,100.00	1,100.00	\$07.00	\$70.00	\$00.01	\$00.00	1,000.01	1,400.00		
\$00.00	\$07.00	\$0.00	\$0.00	\$00.00	\$00.00	1,207.00	1,110.00	\$0.00	\$70.00	\$00.00	\$00.00	1,000.00	1,300.00		
\$71.00	\$00.00	\$4.00	\$4.00	\$20.00	\$11.00	1,201.00	1,104.00	\$0.00	\$00.00	\$00.00	\$00.07	1,000.00	1,400.07		
\$00.00	\$00.00	\$0.00	\$0.00	\$00.00	\$07.00	1,201.00	1,110.00	\$0.00	\$00.00	\$43.00	\$00.00	1,000.00	1,400.00		
\$00.00	\$07.00	\$1.00	\$0.00	\$00.00	\$00.00	1,200.00	1,000.00	\$0.00	\$70.00	\$00.00	\$00.00	1,000.00	1,300.00		
\$71.00	\$07.00	\$0.00	\$0.00	\$20.00	\$10.00	1,204.00	1,100.00	\$0.00	\$00.00	\$70.00	\$0.00	1,700.00	1,304.00		
\$7,700.10	\$1,701.00	\$201.10	\$271.10	\$1,707.10	\$1,500.00	\$10,000.97	\$10,000.00	\$214.10	\$1,704.10	\$2,407.10	\$000.01	\$12,100.70	\$12,500.70		

PENNSYLVANIA																						New York, Susq. & Western		Total Including N. Y. S. & W.	
Wyoming		Jefferson		Susq. (N. Y. Cent.)		Tioga		Bradford		Meadville		Mahoning		Total Erie		Frt.	Pass.	Frt.	Pass.	Frt.	Pass.				
Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.	Frt.	Pass.										
July 1913	\$200.00	\$79.00	\$204.00			\$24.00		\$24.04		\$768.17		\$2,002.00	\$208.91	\$20.00		\$4,402.17	\$792.19	\$27.00		\$2,510.00	\$712.19				
Aug	679.07	17.31																							
	510.00	70.00																							
Sept	620.64	17.67	602.60			27.00		64.90		607.51		2,043.40	708.00	32.00		3,323.40	904.00	60.70		3,000.20	608.00				
	420.00	70.00																							
Oct	601.48	9.70	600.00			24.00		67.76		606.13		2,043.40	477.84	10.00		3,006.87	106.70	62.70		2,979.00	594.30				
	500.00	70.00																							
Nov	600.00		600.00			100.10		64.90		607.70		2,797.00	424.30	1.12		3,601.60	100.00	62.04		3,781.50	606.00				
	600.00	70.00																							
Dec	620.73	4.33	621.00			121.60		69.01		742.70		2,073.30	473.70	14.18		3,491.63	134.70			3,491.63	534.70				
	600.00	70.00																							
Jan	607.00	6.10	608.00			100.00		62.00		634.36		2,004.04	682.64			3,073.73	707.61			3,373.73	707.61				
	600.00	70.00																							
February	642.00	2.10	670.00			186.01		70.00		738.40		2,610.00	400.00	74.00		3,766.77	571.00			3,766.77	571.00				
	620.00	71.00																							
March	614.00		630.00			100.70		67.00		604.30		2,002.40	446.10	10.43		4,530.60	517.00			4,530.60	517.00				
	600.70	70.00																							
April	600.00		600.70			100.14		70.00		913.00		2,000.70	400.00	64.74		3,938.00	572.04			3,938.00	572.04				
Total	\$20,041.07	\$754.00	\$1,120.40			\$1,540.00		\$104.20		\$7,017.00		\$24,606.34	\$4,918.04	\$261.77		\$42,339.54	\$1,705.56	\$100.40		\$49,070.00	\$2,702.56				

RECAPITULATION

NEW YORK		NEW JERSEY		PENNSYLVANIA		Total	
Seven Months September, 1913, to March, 1914, inclusive	Full Year	Nine Months July, 1913, to March, 1914, inclusive	Full Year	Nine Months July, 1913, to March, 1914, inclusive	Full Year	Full Year	Full Year
\$104,000.00	\$178,745.51	\$104,000.00	\$178,745.51	\$104,000.00	\$178,745.51	\$104,000.00	\$178,745.51
\$104,000.00	\$178,745.51	\$104,000.00	\$178,745.51	\$104,000.00	\$178,745.51	\$104,000.00	\$178,745.51

*Exhibit R-124.***ERIE RAILROAD SYSTEM**

List of securities making up the item of \$14,924,621.68 on the analysis of surplus statement, June 30th, 1914.

Stocks—	Book Value
Akron and Barberton Belt R. R.	\$28,375.00
Columbus and Erie R R	130,000.00
Erie Land and Improvement Co.	1,184.93
Eriton Railroad	10,000.00
Erie Terminals Railroad	60,000.00
Genesee River Railroad	350,000.00
Lehigh and Hudson River Railroad	123,956.00
Mutual Terminal Co. of Buffalo,	26,826.87
New Jersey and New York Railroad	3,197.75
New York, Susquehanna and Western RR Co.	
Common and Preferred.	72,729.06
New York and Greenwood Lake Railway	7,069.51
Temple Iron Company	145,700.00
Weehawken Stock Yard Company	7,900.00
Industrial Center Land Company	1,000.00
Bonds—	
Bath and Hammondsport Railroad	100,000.00
Chicago and Western Indiana Railroad	70,000.00
Lake Kenka Navigation Company	6,000.00
New York and Greenwood Lake Railway	90,807.56
Erie and Jersey Railroad	6,843,000.00
Genesee River Railroad	5,550,000.00
Akron and Barberton Belt Railroad	10,000.00
Elmira, Corning and Waverly Railroad	686,875.00
Notes—	
Erie Terminals Railroad Company	600,000.00
	<hr/>
R.	\$14,924,621.68
9-21-14.	

*Exhibit R-126.***EXHIBIT R-126.****ERIE RAILROAD COMPANY.**

Statement Showing Amounts Included in Income
Account of Erie Railroad Company, Derived from
Pennsylvania Coal Company as Dividends for Years
Ending June 30th.

Years	Received by Erie R. R. Co. as sole Stockholder as a distribution from surplus available for Dividends.	Received by Erie R. R. Co. as Dividends
1905	\$2,275,846.94	
1906	1,562,636.20	
1907	1,619,169.15	
1908	1,647,117.57	
1909		\$1,034,571.93
1910		1,958,497.31
1911		1,500,000.00
1912		1,500,000.00
1913		2,450,000.00
1914		500,000.00
Total	<hr/> \$7,104,769.86	<hr/> \$8,943,069.24
Average four years 1905-1908 Inclusive		<hr/> \$1,776,192.46
Average ten years 1905-1914 Inclusive		<hr/> \$1,604,783.91

NY 10-30-14

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*Exhibit R-127.***EXHIBIT R-127.**

Memorandum showing basis of estimate of additional revenue to be secured by the Erie R. R. Co. on account of advance in price of mileage books.

The number of mileage books issued and the value of the coupons collected during the year ended June 30, 1914, are as follows:

Kind	No. of Books Sold	Value of Mileage Coupons Collected
Trunk Lines	13,393	\$236,668.90
New York State	1,292	24,861.30
Form "C"	6,513	129,210.90
	<hr/>	<hr/>
	21,198	\$390,741.10
Proposed increase $12\frac{1}{2}\%$		
	$12\frac{1}{2}\%$ of \$390,741.10	\$48,842.64

Based on the above calculations the Erie R. R. Co. advised the Trunk Line Association that we estimated the proposed increase would amount to approximately \$50,000 to the Erie R. R. Co., and it is our understanding that this item was used in making up the total of all railroads, which was said to be ten millions of dollars.

This is on the assumption that there would be used in the future the same amount of mileage strips or coupons as were used in the year 1914, and does not take into consideration the fact that due to an increase in price a large number of people might change the form of transportation which they would use.

The Erie R. R. Co. has not yet decided to advance its rate for mileage books in the C. P. A. Territory, which is that part of our line west of Salamanca and Buffalo, although the Trunk Line books are also good for passage in C. P. A. Territory on the Erie R. R. as far as Youngstown, Ohio.

10.30.14.

EXHIBIT R-128.

Expenditures, Additions and Betterments—Road
1906 to 1914 inclusive.

	Capital	Income	Total
Right of way and station grounds	\$2,798,817.	\$54,613.	\$2,853,430.
Grade reduction and changing line	830,076.	51,175.	881,251.
Bridges, trestles and culverts	221,720.	1,054,877.	1,276,597.
Additional tracks and sidings	13,806,066.	1,472,747.	15,278,813.
Elimination of grade crossings	2,472,142.	198,171.	2,670,313.
Interlocking and signal apparatus	958,557.	666,505.	1,625,062.
Telephone and Telegraph lines	13,998.	262,316.	276,314.
Yards, stations and buildings	2,276,436.	1,599,863.	3,876,299.
Shop, Machinery and tools	1,089,758.	327,571.	1,417,329.
Water and fuel stations	69,218.	106,963.	176,181.
Grain elevator and storage warehouses	409,603.	303,240.	712,843.
Dock and wharf properties	807,270.	456,606.	1,263,876.
Electric power transmission	248,662.	27,354.	276,016.
Tunnel improvement	38,444.		38,444.
Miscellaneous	129,641.	115,334.	244,975.
Shops and enginehouses		190,010.	190,010.
Terminal yards		44,915.	44,915.
Increased weight of rail		616,165.	616,165.
Improved frogs and switches and track fastenings		323,080.	323,080.
Additional ballast		1,132,303.	1,132,303.
Track fastenings and appurtenances		370,804.	370,804.
Erie & Jersey Railroad	7,482,550.		7,482,550.
Genesee River Railroad	6,737,586.		6,737,586.
Erie Terminals Railroad	977,711.		977,711.
Columbus & Erie Railroad	701,562.		701,562.
Penhorn Creek Railroad	4,282,610.		4,282,610.
Total	\$46,352,427.	\$9,374,612.	\$55,727,039.

EXHIBIT R-129.

APPROXIMATE ESTIMATE OF COST OF CONSTRUCTION
EXPENDITURES WHICH SHOULD BE MADE
WITHIN FIVE YEARS.COMPLETION OF DOUBLE TRACKING WITH ATTEND-
ANT GRADE REDUCTION.

M. P. 401 to CY Tower, Allegheny Division	\$514,000
Steamburg to Jamestown	2,600,000
Buchanan Junction to Shenango	1,204,000
Pymatuning Junction to Youngstown	300,000
Completion of work Marion to Lomax	651,000
Lomax to Griffith	2,051,000
Ferrona Branch	386,000
Penna. Detour Belfast, N. Y.	100,000
	<hr/>
	\$7,806,000

Exhibit R-129.

ADDITIONAL TRACKS AND GRADE REDUCTION NECESSARY IN ADDITION TO THE ABOVE.

Penhorn Creek tangent line	\$70,000
Grade reduction and 2 additional tracks Croxton to Suffern	3,560,000
Grade reduction and 2 additional tracks Suffern to Newburgh Junction	2,500,000
Jamestown to Lakewood, Grade reduction	100,000
Columbus to Concord, Grade reduction	900,000
Cereal Belt Line, Akron, O.	379,000
Youngstown to Cleveland, Grade Reduction	4,769,000
Binghamton to Union, 3rd and 4 tracks	300,000
Youngstown, O., Double tracking Canal Branch	40,000
Belt Line at Franklin, Pa.	14,000
	<hr/> \$12,632,000

EXTENSION TO YARDS AND TERMINAL FACILITIES AT DIVISION POINTS.

Additional facilities at Kent, Ohio	\$36,000
Yard Extension at Port Jervis, N. Y.	100,000
" " " Meadville, Pa.	200,000
" " " Marion, O.	100,000
" " " Huntington, Ind.	150,000
" " " Hammond, Ind.	200,000
" " " Highlands & Coal Storage Plant	350,000
Flood Protection at Meadville yard and shops	157,000
	<hr/> \$1,293,000

NECESSARY TERMINAL IMPROVEMENTS.

Revision of Jersey City Terminal, including new office bldg.	\$6,000,000
Weehawken Terminal Revision	4,000,000
New Mill, Long Dock	42,000
Duane St. Improvement	500,000
28th St. Storage Warehouse	1,190,000
Harlem Terminal (150th St.)	200,000
Bulkhead Shed Pier 7, East River	10,000
Pier 36, East River	170,000
Pier 67, North River	150,000
Grain Elevator, Buffalo	250,000
Dock, Buffalo River (Required by ordinance)	95,000
Coal Docks, Buffalo	250,000
Additional Coal Unloader, Cleveland	300,000
Rebuilding bulkhead, Cleveland	150,000
Webster Ave. yards, Chicago, 1 mile up on North Branch	100,000
Erie St. yard, Chicago	107,000
Storage Warehouse at Erie St. yard, Chicago	500,000
18th St. Float Bridge, C. & G.	20,000
Engine house, Croxton, N. J.	335,000
Remodeling lake line station, Buffalo, Ohio, basin	200,000
Extension of Ore Storage plant at Randall, O.	72,000
Dunmore, Pa., Engine Terminal	125,000
	<hr/> \$14,866,000

Exhibit R-129.

BRIDGES AND BUILDINGS.

Bridge 383.27 (Old 30) Rochester Division	\$76,825
Bridge 12.98, Niagara Falls Br.	200,000
Bridge 5.49, Newark Branch Drawbridge	235,000
Bridge 13.73 and 15.11 Tioga Division	160,000
Bridge 17.40 Piermont Br.	30,000
Bridge 0.60 Niles and Lisbon Br.	27,300
Bridge 7.14 New York Division (balance to complete)	14,000
Bridge 192.16 Delaware Division	160,233
Bridge 3, Jefferson Divn.	30,000
Bridge Program for 1913 & 1914 in addition to above	428,000
Bridge program for 1914-1915	603,100
Yearly general bridge renewal, 250,000 per annum for three years	750,000
Yearly station renewal, average \$100,000 per annum for five years	500,000
New freight station at Akron, O.	233,000
	<hr/>
	\$3,457,458

NOTE: Authorized expenditures on bridge renewals being done this year \$613,458.

AUTOMATIC SIGNALS AND INTERLOCKING.

Completing Mahoning Division	\$50,000
Completing C. & E. Divn.	120,000
Completing Meadville Divn. from Leavittsburgh to Kent	42,700
Allegheny Divn.	200,000
Meadville Divn. Salamanca to Pymatuning	162,000
C. & E. Divn. Lomax to Griffith	43,000
Interlocking at S.J. Tower, Lima, O.	12,000
Interlocking at North Judson, Ind.	15,000
Interlocking at Leavittsburgh	12,000
Distant Signals on Greenwood Lake, Rochester & Allegheny Divns.	13,000
	<hr/>
	\$669,700

ERIE RAILROAD'S PROPORTION OF COST OF ELIMINATING GRADE CROSSINGS COVERED BY EXISTING AGREEMENTS, ORDERS OF COURTS AND COMMISSIONS.

Jamestown, N. Y. (3)	\$385,000
Youngstown, General (10)	1,730,000
Union Avenue, Cleveland	98,000
Buffalo, General.	
Main St.	\$24,000
Delaware Ave.	7,000
Military Road, under construct.	59,000
Walden Ave.	118,000
Doat St.	78,000
Genesee St.	73,000
Amherst & Austin Sts. (3)	243,000
Louisiana St.	152,000
East Ferry St.	56,000
Delevan Ave.	45,000
Kensington Ave.	81,000
Colvin St.	52,000
	<hr/>
	988,000
East First St. Corning, under construction, to complete	13,000
Rivare (2)	25,000
Midvale	11,000

Exhibit R-129.

Chester, N. Y.	\$25,000
Depot St., Mill Village	15,000
Swartzwood, under construction, to complete	3,000
Dykes crossing, under construction, to complete	1,000
Dunmore, Pa., Monroe Ave.	8,000
Haverstraw	5,000
	<hr/>
	\$3,317,000

ERIE RAILROAD'S PROPORTION OF COST OF ELIMINATING GRADE CROSSINGS IN REGARD TO WHICH PROCEEDINGS ARE NOW PENDING.

Paterson (17)	\$3,000,000
Rutherford	465,000
Huntington (2)	41,000
Youngstown	
Oak St.	36,000
West Avenue	32,500
Hubbard Road	26,500
New Castle	36,000
Warren	
South Todd Avenue	32,000
North Todd Avenue	33,000
Pine St.	13,000
Carbondale	20,000
Howels (2)	28,000
	<hr/>
	\$3,767,000

SUMMARY

Completion of double track now required and attendant grade reduction	\$7,806,000
Additional tracks and grade reduction necessary in addition to above	12,032,000
Extension of yards and facilities at Division Terminals	1,293,000
Necessary Terminal Improvements	14,866,000
Bridges and Buildings	3,457,458
Signals and Interlocking	669,700
Grade Crossings covered by existing agreements, orders of courts and commissions	3,317,000
Grade Crossings in regard to which proceedings are pending	3,767,000
	<hr/>
	\$47,808,158

Erie Railroad Company,
Office of Supt. of Construction,
New York, N. Y.
Oct. 16, 1914.

*Exhibit R-130.***EXHIBIT R-130.****ERIE RAILROAD COMPANY.**

Office of Principal Asst. Engineer.

New York, October 16, 1914.

Memorandum re Various Improvements

WEEHAWKEN TERMINAL IMPROVEMENT: The revision of Weehawken Terminal consists of the entire remodeling of the yard to increase its capacity and to provide receiving tracks sufficiently long so that incoming trains will not have to be cut at Willow Avenue. It embraces the extension of all the piers to the pier head line and double decking and widening Pier "A," the construction of a new fire-proof covered pier doubled decked, and the construction of two open piers for the handling of our heavy freight. Our present facilities are so small that the freight is only handled at excessive cost.

DUANE STREET IMPROVEMENT: Consists of extending existing piers to the pierhead line, renewing the present timber sheds which were built in 1880 and cutting off piles under timber sheds at low water and erecting pony bents, and putting on new flooring.

PIER No. 36, EAST RIVER, IMPROVEMENT: Our pier facilities in the East River are inadequate, which results in the crowding of the present Pier No. 7 so that the cost of handling traffic is much greater than it should be. It is proposed to lease from the City Pier No. 36 and, as that is an old structure, we would have to replace it with a modern pier in accordance with the approved plan of the City. The City's present policy is to require the leases to make all improvements.

PIER No. 67, NORTH RIVER, IMPROVEMENT: It is proposed to extend this pier to the pierhead line and remodel the shed. This is to be done to relieve the

Exhibit R-130.

station at 28th Street, as we are handling too much business there now to do it economically.

WEBSTER AVENUE CHICAGO, IMPROVEMENT: This improvement consists of freight and yard on the North Branch of the Chicago River to which freight is to be taken in cars on car floats. The idea is to relieve the congestion of our present freight facilities by establishing sub stations on the Chicago River for freight delivery.

ERIE STREET, CHICAGO, IMPROVEMENT: It is proposed to establish a freight station and yard tracks at Erie Street and Chicago River, for the same reason as at Webster Avenue. In addition, we have now at Erie Street a freight house which is served by our floats but the freight has to be unloaded by hand from the car floats into the house and from there on to teams. By putting in a transfer bridge and tracks as proposed, we will be relieved of 50% of the cost of freight handling at this station.

EIGHTEENTH STREET, CHICAGO, IMPROVEMENT: It is proposed to establish a transfer bridge at 18th Street so that cars can be loaded on car floats at that point from our main tracks for delivery to the various sub stations on the Chicago River. We are at present using the Chicago River & Indiana Railroad's transfer bridge at Robey Street for this purpose. By putting in the 18th Street bridge, we will enable our tugs to do 50% more work and, in addition, save about three hours' delay to all freight handled at Erie Street.

ERIE STREET STORAGE WAREHOUSE: It is proposed to erect a storage warehouse at Erie Street and Chicago River which will serve to relieve congestion at our lake line warehouse and also at 14th Street.


LAKE LINE STATION, BUFFALO, N. Y.: The State of New York proposes to widen the present entrance to

Exhibit R-130.

the Ohio Basin from the Buffalo River, as Ohio Basin is to be one of the barge canal ports. This will necessitate rebuilding one of our lake line freight houses and the extension and improvement of the other, as the widening of the canal cuts off part of our west-bound house.

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ERIE RAILROAD COMPANY.

Supplementary Memoranda to Memoranda of October 16th, 1914, re Various Improvements. 
Office of Principal Assistant Engineer.

New York, October 22, 1914.

REVISION OF JERSEY CITY TERMINAL, INCLUDING NEW OFFICE BUILDING: Revision of Jersey City Terminal consists of the entire remodeling of the yard which is at present badly congested and hardly adequate to handle the present business even with much unnecessary expense. It can be remodeled in such manner as to materially decrease the switching expense and to insure more prompt delivery of freight. Economy can be effected by the construction of an office building for the use of departments which now have their headquarters in New York City. The yard is barely sufficient, as before stated, to take cars of our present business, and we have virtually completed the double tracking of our entire line and have made no terminal arrangements to take care of the increased business which is bound to come. This reason applies to all expenditures in previous memoranda and in these.

NEW MILL AT LONG DOCK, JERSEY CITY: We lease this mill to a Feed Company. It is especially valuable for such purposes on account of its proximity to our grain elevator. The mill is in such bad condition that we will either have to abandon it or renew it within the next five years.

Exhibit R-130.

DUANE STREET IMPROVEMENT: This is also necessary because it is probable that the City of New York will order us to put in new foundations under the present wooden sheds and to rebuild the wooden sheds. We hold this pier under a lease which gives the City power to enforce such an order.

28TH STREET STORAGE WAREHOUSE: The construction of this warehouse is necessary because we are unable, with the present facilities, to handle the business consigned to our 28th Street Station. We have now a large storage business there which is overcrowded, and consequently expensive, and we are continually forced to hold freight for this station in our Jersey City yard, which increases the congestion there and consequently increases our expense of operating the yard.

HARLEM RIVER TERMINAL, 150TH STREET: We are at present occupying, jointly with the D L & W R. R., a terminal at 135th Street. We will be forced out of this location shortly on account of the City's program for constructing subways which will so interfere with the operation of this joint yard that the D L & W, which controls it, will only be able to handle their own business there; consequently, we will have to provide a similar station at 150th Street.

BULKHEAD SHED, PIER No. 7, EAST RIVER: On account of increased business, our present bulkhead shed at Pier No. 7 is inadequate and we are handling the westbound business at that point at an extra cost. The construction of the new bulkhead shed will relieve the situation.

GRAIN ELEVATOR, BUFFALO, N. Y.: Our grain elevator at Buffalo burned down some time since, and it will be necessary, in order to maintain our grain business, to rebuild it in the near future. Conditions in the grain trade have changed so that there is a very lively movement between Buffalo and New York City.

Exhibit R-130.

DOCK, BUFFALO RIVER: The City of Buffalo, which has power to issue such orders, has given us an order to renew this dock immediately or they will renew it and collect the cost from us.

COAL DOCKS, BUFFALO: Our present coal docks will not last more than one or two years longer. We ship in the neighborhood of 1,000,000 tons of anthracite coal from this station a year. The station is old and the facilities are antiquated and expensive to operate. A saving of at least 5 cents per ton can be made here by the construction of a modern plant and, if we do not construct this modern plant, we will have to renew the existing coal trestle, which will cost more than to construct a modern plant.

ADDITIONAL COAL UNLOADER, CLEVELAND, O.: Our present car dumper on the Cuyahoga River is inadequate to handle the business in sight. We ship in the neighborhood of 1,000,000 tons a year of bituminous coal at this station and, if new facilities are provided in addition, we could cut out the service of one or two switch engines and handle the business of 3,000,000 tons a year which is in sight.

REBUILDING BULKHEAD, CLEVELAND: This consists of renewing bulkheads on the Cuyahoga River which have rotted and are no longer sufficient to keep our existing tracks and facilities from falling into the river.

ENGINE HOUSE, CROXTON, N. J.: Our present engine house at Croxton is in bad repair and needs renewal. Its location is such that it interferes with the proper arrangement of tracks at the east end of our main receiving yard on the meadows. It is proposed to build a new one to replace it beyond and west of County Road, where it will also serve to house the Jersey City engines which are not now housed in it, and this will materially relieve the congestion in the Jersey City yard, as well as relieving the congestion in our main receiving yard.

Exhibit R-131.

EXTENSION OF ORE STORAGE PLANT, NORTH RANDALL, OHIO: Our present ore storage plant is inadequate for the business. We have contracted to store ore of certain companies at North Randall and the extension of the plant is in virtual fulfillment of our contract obligations.

DUNMORE, PA. The present engine terminal at Dunmore is in dilapidated condition and is improperly arranged so that it can only be operated under additional expense. It is proposed to replace it with a modern engine terminal, which should materially decrease the operating expense at Dunmore.

EXHIBIT 21.*M. P. 401 to Cy Tower, Allegheny Division.*

This is a stretch of single track about four and a half miles long and is the only stretch on the main line of the Allegheny Division where there are not two tracks on which to handle business. This work was authorized together with other double tracking and grade reduction in 1906. This stretch should be double tracked and its alignment improved in order to eliminate delay in the operation of trains. Estimated cost \$514,000.

Steensburg to Jamestown.

On Meadville Division East after expending \$5,000.00 in partially providing an additional track and in reducing grades to .2% and .3% east and westbound respectively, there still remains on this division 18 miles of line on which grades should be reduced, 10 miles of which is single track. The division now is operated with two pusher grades or on a basis of $\frac{1}{2}$ grade. On this .8% grade an H-21 engine will haul 30-40 ton cars, while if the proposed improvement were carried out, the same engine and crew would haul 75-40 ton cars westbound and 94-40 ton cars eastbound. The additional track on the 10 mile

Exhibit R-131.

stretch would also furnish relief badly needed as the operation of our present business over single track on this division involves burdensome delays and consequent increased expense. This work is estimated to cost \$2,600,000.

Buchanan Junction to Shenango.

We have at present a single track between these points with ruling grades of about 1% in each direction. We operate some westbound freight trains over the Bessemer and Lake Erie Railroad between these points as this road has lower grades than ours. The Bessemer and Lake Erie R. R. throughout a large portion of this distance is also a single track railroad and cannot take care of our traffic in both directions, and we, of necessity, operate eastbound freight trains on our own line. The route by the Bessemer and Lake Erie R. R. is seven (7) miles longer than our line. We should double track and reduce grades between these points in order to provide a railroad adequate to handle our present business and that increase which is bound to come when the double tracking through to Chicago is completed. As an item of the saving in operating expense and greater capacity of low grade line, we estimate that an H-21 engine can haul 30-40 ton cars up a 1% grade as against 94-40 ton cars on a .2% grade and 75-40 ton cars on a .3% grade. We expect to reduce the grades on this division to .2% and .3% east and westbound respectively. The estimated cost of this work is \$1,204,000.

Pymatuning Junction to Youngstown.

This part of the Mahoning Division should be double tracked and grades reduced both ways on account of the heavy business through and out of Youngstown. Estimated cost \$300,000.

Completion of Work Marion to Lomax.

Authority was granted for the double tracking of the Chicago and Erie R. R. from Marion to Lomax

Exhibit R-131.

in 1912 and \$7,548,000. has been expended on this work. There still remains work to be done which is estimated to cost \$651,000. This work consisted of double tracking and reducing grades on 205 miles of railroad. The ruling grades were originally .5%. They have been reduced to .2% and .3% with the exception of two pushers grades immediately east and west of Huntington, Ind. This improvement will result in material saving in operation expenses and has already greatly increased the capacity of the railroad.

Lomax to Griffith.

Between Lomax and Hammond, the western end of the Railroad owned by the Erie Company, there still remains 36 miles on which grades must be reduced and additional track completed in order to secure entire benefit of the grade reduction and double tracking already done. The ruling grades on this portion of the line are .5%. It is proposed to reduce grades to .2% westbound and .3% eastbound. The Operating Division containing this stretch of track is 77 miles long and extends from Huntington, Ind. to Hammond and now of necessity must be operated on basis of .5% grade division. On this basis, an H-21 engine can haul 53-40 ton cars whereas if the improvements were completed the same engine and crew would handle 75 eastbound and 94 westbound, 40 ton cars. The estimated cost of this improvement is \$2,031,000.

Perrona Branch.

On account of congestion of traffic in and through New Castle, Pa., and in and through Sharon and south to West Middlesex, it is necessary at this time to double track these two stretches of this branch. The branch is operated jointly by the Erie and Pittsburg and Lake Erie RRs. It is proposed to establish passenger service on this branch but this cannot be done safely until the congested portions of it have been

Exhibit R-131.

double tracked. The portion of this expense which is to be borne in the first instance by the Erie Co. is estimated at \$386,000.

Pennsylvania detour Belfast.

In connection with the construction of the Genesee River R.R. which was a low grade line between Cuba on the Allegheny Division and Hunts on the Buffalo Division, to avoid two very bad grades on the Allegheny Division between Cuba and Hornell, it is now necessary to build a new stretch of track for the Pennsylvania & Rochester R. R., one of the constituents of the Pennsylvania System. The detour is necessary because of the failure of the arch carrying the Genesee River R. R. over their tracks. The detour is about $1\frac{1}{4}$ miles long and will cost \$100,000. The construction of this line is incident to the construction of the Genesee River Railroad and cannot be avoided.

Penhorn Creek Tangent Line.

In order to straighten the passenger tracks between the Hackensack River bridge west of Jersey City and Croxton and to give sufficient room for the development of Bergen Yard, it is necessary to construct about two miles of new double track railroad. Authority for this work was granted and it has been largely completed. The work is now at a standstill and has been for a year or more. The estimated cost to complete is \$80,000.

Grade Reduction and Two Additional Tracks Croxton to Suffern.

On account of the great congestion of passenger and freight business on the main line between Suffern and Jersey City, it is now very desirable and soon will be imperative to build two additional tracks so that the freight business may be handled on independent tracks from the passenger business. This will add very greatly to the safety of operation and will result in saving in operating expenses as it is proposed

Exhibit R-131.

to reduce grades at the same time. Ruling grades now in both directions are about 1%. Proposed ruling grades will be .2% against eastbound traffic and .6% against westbound traffic. The estimated cost is \$3,560,000.

The operating division, known as the New York Division, extends from Jersey City to Port Jervis a distance of about 88 miles. We have already built the Erie and Jersey R. R., a low grade double track freight line from Guymard a point nine miles east of Port Jervis to Highland Mills, a length of 38 miles and improved the Newburgh Short Cut, double tracking it and reducing grades to Newburgh Junction, about 4 miles, so that we now have a new double track low grade railroad 42.2 miles long avoiding the bad grades on the old line. The cost of this work was \$7,766,000. In order to get the entire benefit of this expenditure, it is necessary to reduce grades between Jersey City and Newburgh Junction. The proposed work between Croxton and Suffern before referred to is a part of this work. Between Suffern and Newburgh Junction grades should be reduced and two additional tracks built at an estimated cost of \$2,500,000, so that there is a further expenditure on the New York Division of about \$6,000,000 in order to secure the benefits of the low grades.

As a single illustration of an item of the saving in operating expenses, we estimate that an H-21 engine can handle 30-40 ton cars on the existing 1% grades in both directions between Suffern and Jersey City, whereas the same engine and crew could handle 94-40 ton cars on a .2% grade. The grades westbound are to be reduced to only .6% for two reasons:—First, this is the best that the topography of the country affords and second, a very large proportion of the cars westward on the main line from Jersey City are empty and the higher rate of grade is permissible. An H-21 engine will handle 81-20 ton cars on a .6% grade as against 54-20 ton cars on a 1% grade.

*Exhibit R-131.**Grade Revision on C. & M. V. R. R. between Youngstown and Cleveland.*

85% of the iron ore produced in the United States is produced in the Lake Superior region. This ore is transported by water to the lake ports in northern Ohio and Pennsylvania, and thence by rail to the mill districts in the Mahoning and Shenango Valley, and the Pittsburgh District. The five ports receiving the greater portion of this ore are Lorraine, Cleveland, Fairport, Ashtabula and Conneaut, and the traffic from these ports is competitive.

The traffic between Cleveland and Youngstown consists chiefly of iron ore eastbound and coal and coke westbound. Between these lake ports and the mill and mine districts there are seven lines of transportation competing with the C & M. V. R. R. Four of these lines are low grade lines. The ore traffic on the C & M. V. R. R. is not increased in proportion to the tonnage on the remainder of the Erie system. Expert engineers have attributed this to the physical condition of the line. They have estimated that with an increase of 2.4% over the traffic carried in 1913, the saving in operation over the present line would pay 5% interest on the estimated cost of the proposed low grade improvement. This saving in operation would increase with any further increase in traffic. It is necessary that this improvement be made in order that the C. & M. V. R. R. can maintain its place in the competitive transportation of ore, coal and coke.

The ruling grades on the present line are .8% in each direction. An H-21 engine can haul on these grades only 37-40 ton cars as against 75-40 ton cars on the proposed .3% grades. The loads of ore and coal average about 70 tons per car. An H-21 engine will haul 22 of these 70 ton cars on the present grades or 50-70 ton cars on the proposed grades.

*Exhibit P. S. R.-1.***EXHIBIT P.S.R.-1.**

Summary of features in connection with the proposed Erie Railroad grade crossing elimination at Paterson which affect Public Service Railway Company.

1.—PARK AVENUE AND MARKET STREET.

This location involves 1895 lineal feet of single track street railway. The present plans call for elevating the railroad tracks fifteen feet and depressing the street three feet, giving approximately fourteen feet clearance under the bridge girders. The grade of the street on the easterly side of the railroad will be run out at Straight Street and that on the westerly side will be run out at Railroad Avenue. The total estimated cost to the Railway Company on account of the improvement at this point is \$18,816.12, which includes excavation under our tracks. In addition, the change will result in a decrease in our Capital Account of \$1,858.54, which will also have to be provided for. The alignment of our tracks will not be affected.

2.—BROADWAY.

The proposed change at this location involves 1379 lineal feet of single track street railway. The plans call for the same elevation of the railroad tracks and the same depression of the street grade as at Park Avenue and Market Street. The grade on the easterly side of the railroad will be run out at a point about one hundred feet east of Straight Street, affecting also about one hundred feet on Straight Street northwardly from Broadway. The grade on the westerly side of the railroad will be run out at a point in our present crossover between Paterson Street and the railroad tracks. The total estimated cost to the Railway Company at this point is \$14,830.80, which includes the excavation under our tracks. The align-

Exhibit P. S. R.-1.

ment of our tracks at this location will not be affected by the improvement.

3.—RIVER STREET AND PUTNAM STREET.

The proposed change at this point involves 940 lineal feet of double track street railway. The railroad tracks are to be elevated fourteen feet and the street depressed about three feet, giving a clearance under the bridge girders of about fourteen feet. The grade will be run out at Warren Street on the westerly side of the railroad and at Lyons Street on the easterly side of the railroad. The plans call for closing up the present River Street crossing, the reason given by Engineer Harder's office being on account of the sharp incline of crossing making such an expensive type of bridge necessary to carry the railroad over the street, should River Street be maintained in its present alignment. One opening under the elevated structure is to be provided to accommodate traffic from both Putnam and River Streets, making necessary a detour in our tracks and the installation of a sharp reverse curve. This means a very bad operating condition, both because of the sharp curve with increased track and equipment maintenance, and because of the obstructed view and traffic congestion which is bound to result. This proposed blocking of River Street should, therefore, be strenuously opposed by our Company. The estimated cost to the Railway Company is \$8,659.00, which includes excavation under the railway tracks.

4.—MADISON AVENUE.

Our track does not cross the railroad at this point, but turns from Madison Avenue into Railway Avenue, on which street it parallels the railroad. The plans call for depressing the railroad tracks ten feet and raising the grade at the junction of Railway and Madison Avenue twelve feet, the streets to cross the railroad above grade. The grade on Railway Avenue

Exhibit P. S. R.-1.

will be run out at Iowa Avenue and that on Madison Avenue at a point between Railway Avenue and 23rd Avenue. This proposition involves 1028 lineal feet of single track street railway, and the estimated cost to the Company is \$14,621.33, which includes the fill under the railway tracks.

5.—CLAY STREET.

Our track does not cross the railroad at this point, but turns from Straight Street into Clay Street, both of which streets diverge from the railroad tracks. The plans call for raising the railroad tracks nine feet and depressing the streets at their intersection about seven feet, running out the grade on Clay Street at Madison Street and on Straight Street at Bond Street, making the streets cross the railroad tracks under grade. This proposition involves 614 lin. ft. of street railway, and the estimated cost to the Company is \$5,351.52, which includes the excavation under the railway tracks.

EXHIBIT P. S. R. 2.
MAINTENANCE OF WAY DEPARTMENT
ESTIMATE

Division—Passaic. Distance—725'. Ft. or S. T.—1028'. Laid.....
Proposed change in grade of single track on Madison Avenue and East Railway Avenue
from Beckwith Avenue to Iowa Avenue to conform to grade of street as proposed for elimina-
tion of Erie R. R. grade crossing at Madison Avenue, Paterson, N. J.

(For track and paving work only)

	Description and Estimated Value of		Description and Estimated Value of		Value
	Labor and Material	Kind	Proposed New Work	Number	
Rail	L. S. 90-237	637'	Same	1002'	716.88
	P. S. 70-97, 4 1/4 T	1002'	L. S. 116-434	75'	73.00
	Guard	107'	L. S. 132-443		
	Bolted Guard	184'	Elec. Welds	32	172.00
Joints	Continuous	12			
Rail Braces	Weber	39	Same	266	79.80
	Standard	164	None	0 kegs	34.00
Tie Rods	None		Standard		
	Standard	3 kegs	None		
Spikes	Concealed	12			
Bonds	Wire	39	None	514	314.00
	Mixed	412	Treated	1028'	303.60
	Stone	322'	Stone } Matl.	1028'	257.00
Pallast	Macadam	700'	Nk. Specif.		
Pavement	Belg. Block	300'	Gran. Block	874 Sq. Yds.	2534.60

Exhibit P. S. R.-2.

Exhibit P, R, R.2 (Continued).

[illegible]

Exhibit P. S. R.-2 (Continued).

DISTRIBUTION DEPARTMENT—ESTIMATE

Location—Passaic Division, Paterson—Railway and Madison Aves.

Present Conditions

Work Proposed—Change of grade on account of elimination of Erie R. R. Grade Crossing.

ITEMS	Description and Estimated Value of Labor and Material to be Replaced	Kind	Description and Estimated Value of Proposed New Work	Number	Value
Labor:					
Resetting poles					\$205.00
Changing construction					105.00
Changing feeders					100.00
Total					\$470.00

Total
Salvage
Balance
Remarks

Construction
Depreciation
Operating
Approved
General Manager.

Estimate Book D-3. Page 70. Date 9/21/14.
Approved

Attached to the foregoing estimate is blueprint No. 13272A, entitled as follows:
"Sketch showing proposed change in grade of single track on Madison Ave and E Railway Ave, from Beckwith Ave to Iowa Ave, to conform to grade of street as proposed for elimination of Erie R. R. grade crossing at Madison Ave., Paterson, N. J."

Exhibit P. S. R-2 (Continued).

MAINTENANCE OF WAY DEPARTMENT

ESTIMATE

Division—Passaic. Distance—614'. Ft. or S. T.—614'. Laid.....
 Proposed change of grade of single track on Straight and Clay Sts. from Bond St. to Madison St. to conform to grade of street as proposed for elimination of Erie R. R. grade crossing at Clay St. and Straight St., Paterson, N. J.

(For track and paving work only)

Rail	Description and Estimated Value of Labor and Material to Be Replaced	Kind	Number	Value	Description and Estimated Value of Proposed New Work	Number	Value
	L. S. 107-222	700'	1		Same		
	L. S. 107-227	121'	1		Same		
	Geared Rail	100'	1		Same		
	Elec. Weld	6			Same		
	Cut Weld	16			Same		
	Standard				Same		
	Standard				Standard		
	None	2 Kgs		6.30	Stone	3 bags	12.00
	Treated	40			Same		
	Mixed	100		90.00	Treated		
	Same	164'		17.60			
	Dry	450'			Stone } Mch.	215	225.00
					} Labor	614'	120.00
	Spec. Trap Block	353 Sq. Yds.		617.75	Newark Spec.		153.50

Exhibit P. S. R.-2 (Continued).

110 Sq. Yds. 1679.00
614' 131.30
614' 131.30

Gran Block
Concrete } Mat.
Nona } Lab.

Wood Block
Dirt
Concrete

Pavement
Pavement
Foundation
Special Work
Special Line
Work
Special Work
Labor

{ N. B.—(For Line, Poles and Fixtures see attached
{ estimate of Distribution Department.)

Line Work
Feeder
Poles and
Fixtures
Excavation
Engineering 8%
Contingencies 5%
Labor (Track)

1810 Cu. Yd. 1312.00
824.61
824.61
981.00
\$2966.22

614' 614.00
\$1940.60

Total
Value of Scrap
Balance

Construction
Depreciation
Operating
Approved

General Manager.

Estimate Book 1013. Page 1. Date 9/20/54.

Approved Eng. M. O. W.

Exhibit P. R. R. 2 (Continued).

DISTRIBUTION DEPARTMENT—ESTIMATE

Location—Palmdale Division. Paterson—Clay and Straight Sts.

Present Conditions

Work Proposed—Change of grade on account of elimination of Erie R. R. Grade Crossings.

ITEMS	Kind	Description and Estimated Value of Labor and Material to Be Replaced	Number	Value	Description and Estimated Value of Proposed New Work	Number	Value
Lowering poles							\$20.00
Changing construction							25.00
Changing feeders							21.00
Total							\$146.00
Salvage							
Balance							\$146.00
Remarks							

Construction
Depreciation
Operating

Estimate Book D-3. Page 70. Date 9/21/16.

Approved

Approved

General Manager.

Attached to the foregoing estimate is blueprint No. 13275A, entitled as follows:

Sketch showing proposed change in grade of single track on Straight St. and Clay St. from Road St. to Madison St. to conform to grade of street as proposed for elimination of Erie R. R. grade crossing at Straight St. and Clay St., Paterson, N. J.

W. L. B.

Exhibit P. R. R. 2 (Continued).

MAINTENANCE OF WAY DEPARTMENT

ESTIMATE.

Division—Passaic. Distance—548'. Ft. or R. T.—1883'. Laid 1900-1912.
Proposed elimination of Grade Crossing at Park Avenue and Market Street over the Erie Railroad, Paterson, N. J.

(Track and paving work only)

	Description and Estimated Value of Labor and Material to Be Replaced		Description and Estimated Value of Proposed New Work	
	Kind	Number	Kind	Value
Rail	P. S. 92-901	1000'	L. S. 116-434	3212.50
	L. S. 116-434	700'	Same	150.00
	9" Guard 1116	200'	L. S. 120-443	
	7" Guard 1328	420'	Same	
Joints	Elec. Welds	13	Same	150.00
	Fish Plates	60	Elec. Welds	
	Standard	240	Same	980.50
	Standard	235	Standard 5 1/2"	64.00
Tie Rods Spikes Bonds	Standard 5"	9 bogs	Treated	600.00
	Concealed	40	Same	375.00
	Mixed	534	Stone { Mail	304.80
	Treated	253	Laber Newark Spec.	
Ties	Stone	510'	Gran. Block	
Pavement	Wood Block	1611 Sq. Yds.		1611 Sq. Yds.
Pavement		3024.75		4671.50

Exhibit P. S. R.-2.

Exhibit P. S. R.-2 (Continued).

	Description and Estimated Value of Labor and Material to Be Replaced		Description and Estimated Value of Proposed New Work		Value
	Kind	Number	Kind	Number	
Foundation	Concrete	1895'	Concrete	1895'	758.00
Special Work Special Line Work	Hard Center & Built Up				663.25
Special Work Labor			Hard Center		2475.00
Line Work					600.00
Feeder					
Poles and Fixtures					
2 sets Derrail Levers and Switch Operating Mechanism					
Grading					
Engineering 5%					
Contingencies 5%					
Labor					
		1895'		974 Cu. Yds.	974.00
					811.41
					811.41
				1895'	2442.50
					\$17851.12
Total Value of Scrap					
					\$20029.66
					482.00
Balance					\$19547.66
Estimate Book 1010.					
Page 296-297.					
Date 9/24/14.					
Approved					
Engr. M. o W.					
Construction Depreciation Operating Approved					
General Manager.					

DISTRIBUTION DEPARTMENT—ESTIMATE

Location—Passaic Division, Paterson—Park Ave. & Market St.

Present Conditions

Work Proposed—Change of grade on account of elimination of Erie R. R. Grade Crossings.

ITEMS	Description and Estimated Value of		Description and Estimated Value of		Value
	Labor and Material	To Be Replaced	Kind	Proposed New Work	
	Kind	Number		Number	
Troughing		276'		210'	\$168.00
Trolley					
Guard					
Labor:					
Troughing Poles			Iron	210'	210.00
Lowering laterals				16	102.00
Lowering cables				6	180.00
Moving cables				900'	133.00
Changing construction					50.00
Trolley guard					
Trolley guard, removing					30.00
					<u>\$965.00</u>
Total					
Salvage					
Balance					
Remarks					
Estimate Book D-3, Page 69, Date 4/21/14.					
Approved					
					\$478.00
					\$487.00
					General Manager.

Attached to the foregoing estimate is blueprint No. 13276A, entitled as follows:

"Sketch showing proposed elimination of Erie R. R. grade crossing at Park Ave. and Market St., Paterson, N. J."

9-23-14

Exhibit P. S. R.-2 (Continued).

MAINTENANCE OF WAY DEPARTMENT

ESTIMATE

Division—Passaic. Distance—547'. Ft. or S. T.—1379'. Laid—1899-1900.
Proposed elimination of Grade Crossing at Broadway and Erie Railroad, Paterson, N. J.

(Track and paving work only)

	Description and Estimated Value of Labor and Material to Be Replaced		Description and Estimated Value of Proposed New Work		Value
	Kind	Number	Kind	Number	
Rail	L. S. 109-340	89'	Same		
	P. S. 85-201	1688'	L. S. 116-434	1862'	1256.85
Joints	9" Gd. Rl. 107-352	53'	L. S. 132-443	53'	53.00
	Fish Plate	30	Elec. Welds	30	150.00
Rail Braces	None		Standard	600	207.00
Tie Rods	Standard	197	None		
Spikes	Standard	7 kegs	Standard	8 kegs	32.00
Bonds	Concealed	30			
Ties	Mixed	559			
Ballast	Dirt				
Pavement	Vitrified Brick	1223 Sq. Yd.	Treated	690	690.00
	Planking	46 Sq. Yds.	Stone } Matl.	1379'	275.90
Foundation	Concrete	1379'	Nk. Specif.	1379'	206.85
	Built up &		Gran. Block	1269 Sq. Yds.	3680.10
			Concrete { Mat.		
			Concrete { Lab.		
					344.75
					344.75

DISTRIBUTION DEPARTMENT—ESTIMATE

Present Conditions
Work Proposed—Change of grade on account of elimination of Erie R. R. Grade Crossings.

Attached to the foregoing estimate is blueprint No. 13273A, entitled as follows:

son, N. J.
9-23-14

MAINTENANCE OF WAY DEPARTMENT

ESTIMATE

Division—Passaic. Distance—665'. Ft. or S. T.—940'. Laid—1900.
 Proposed change in grade and relocation of track on River Street from Lyon Street to Warren Street, to conform to grade of street as proposed for elimination of Erie R. R. grade at River Street, Paterson, N. J.

(For track and paving work only)

	Description and Estimated Value of Labor and Material to Be Replaced		Description and Estimated Value of Proposed New Work		Value
	Kind	Number	Kind	Number	
Rail	L. S. 107-333	722'	L. S. 116-434	570'	384.70
	L. S. 116-434	255'	Same		
	L. S. 132-443	155'	Same		
	Cast Weld	14	Elec. Weld	20	108.00
Joints	Continuous	8	Same		
	Standard		Standard	165	49.50
Rail Braces	Standard	102			
	Standard	4 kegs		5 kegs	20.00
Tie Rods	Standard	8			
Spikes	Concealed	304	Treated	340	340.00
Bonds	Mixed	142	Same		
Ties	Treated		Stone { Matl.	940	188.00
	Dirt		Labor	940	141.00
Ballast	Gran. Block	144 Sq. Yds.	Nk. Specif.		
	Brick	624 Sq. Yds.	Gran. Block	752 Sq. Yd.	2190.80
Pavement	Dirt	283'			

Exhibit P. S. R.-2.

Exhibit P. S. R.-2 (Continued).

Description and Estimated Value of Labor and Material to Be Replaced	Kind	Number	Yds.	Description and Estimated Value of Proposed New Work	
				Kind	Value
Foundation	Concrete	624	Sq. Yds.	Concrete	235.00
Special Work	Built up & Hard Center				235.00
Special Line Work					1000.00
Special Work					
Labor					200.00
Line Work					
Feeder					
Poles and Fixtures					
Excavation					
1 set Derrail Levers and Switch operating mechanism					
Engineering 5% Contingencies 5%					
Labor, placing track		283			354.50
Labor, removing track		386'			283.00
Labor (Track)		760'			193.00
Total Value of Scrap					987.00
Balance					\$7799.00
Estimate Book 1013. Page 40-5. Date 9/23/14.					
Approved					
Engr. M. o W.					
Construction					
Depreciation					
Operating					
Approved					
General Manager.					

Exhibit P. S. R.-2.

DISTRIBUTION DEPARTMENT—ESTIMATE

Location—Passaic Division, Paterson—River St. at Erie R. R.

Present Conditions

Work Proposed—Relocation and change of grade on account of elimination of Erie R. R. Grade Crossing.

[illegible]

Approved _____

Approved

General Manager.

Attached to the foregoing estimate is blueprint No. 13274A, entitled as follows:

“Sketch showing proposed change in grade and relocation of track on River Street from Lyon St. to Warren St., to conform to grade of street as proposed for elimination of Erie R. R. grade crossing, River St., Paterson, N. J.

W. L. B.”

9-23-14

W. L. B."

Exhibit P. S. R.-3.

EXHIBIT P. S. R.-3.

Comparison of Estimates on Paterson
Grade Crossing Elimination—Erie Railroad

		P. S. Ry.	City	Erie R. R.
Park Ave. and Market St. (1998')	Track and (1340')			
	Overhead	\$10,126.15	\$4,200.00	\$4,200.00
	Paving	6,093.15	3,222.00	3,222.00
Partly on paving	Excavation	974.00	487.00	974.00
Partly on 600 ft. dis- tance (excess)		\$17,193.30	\$8,909.00	\$10,296.00
		1,662.82	990.90	1,559.40
		\$18,816.12	\$10,899.90	\$11,955.40
Madison Ave. & Railway (1088')	Track	\$4,986.28	\$3,500.00	\$3,500.00
	Paving	3,048.60	524.40	699.20
Macadam vs. Granite Bl.	Grading	4,830.00	724.50	2,415.00
No allowance made for 2nd Track T. O.		\$12,864.88	\$4,748.90	\$6,614.20
Excess est. on excavation 15c.	Overhead	1,286.48	474.80	992.00
	1.00	470.00		
		\$14,621.33	\$5,223.70	\$7,606.20
Straight & Clay Street (614')	Track & (600')			
	Overhead	\$1,500.30	\$3,000.00	\$3,000.00
	Paving	1,786.00	1,632.00	1,632.00
	Grading	1,512.00	756.00	756.00
		\$4,878.30	\$5,388.00	\$5,388.00
		473.23	538.60	808.00
		\$5,351.52	\$5,926.60	\$6,196.00
Broadway (1379)	Track & (1100')			
	Overhead	\$8,904.50	\$5,500.00	\$5,500.00
	Paving	4,369.60	3,553.20	3,553.20
	Grading	260.00	180.00	300.00
		\$13,534.10	\$9,233.20	\$9,413.20
		1,296.70	923.33	1,411.00
		\$14,830.80	\$10,156.53	\$10,824.20
River Street (940')	Track & (820')			
	Overhead	\$4,754.20	\$4,400.00	\$4,400.00
	Paving	2,650.80	2,416.40	2,416.40
	Grading	545.00	272.50	418.00
		\$7,950.00	\$7,088.90	\$7,235.00
		709.00	709.80	1,085.00
		\$8,659.00	\$7,797.70	\$8,320.00

Exhibit 8. O.-1.

EXHIBIT 8. O.-1.

THE HINCHCLIFFE BREWING AND
MALTING COMPANY, a corpora-
tion of the State of New Jersey,
to

THE PATERSON BREWING AND
MALTING COMPANY, a corpora-
tion of the State of New Jersey.

DEED

Dated July 1st, 1899.

Ack's July 1st, 1899.

Rec'd July 3rd, 1899.

Liber U-13 of Deeds, pages 483, &c., Passaic
County.

Consd. \$1.00 and other good and valuable con-
siderations.

CONVEYS all those tracts or parcels of land and
premises, hereinafter particularly described, situate,
lying and being in the City of Paterson in the County
of Passaic and State of New Jersey:

Beginning at the Northeasterly corner of Ann and
Governor Streets and running thence (1) Northerly
along the easterly line of Ann Street two hundred
feet to Harrison Street (2) Easterly along Harrison
Street two hundred and sixty nine feet to the west-
erly line of the Paterson and Ramapo Rail Road (3)
Southwesterly along said westerly line two hundred
and sixteen feet (more or less to Governor Street and
(4) Westerly along Governor Street one hundred and
eighty seven feet to the place of beginning:

Being the same premises described in a deed from
The S. U M to John Hinchcliffe and John Shaw dated
March 1, 1867, and recorded in the Passaic County
Clerk's Office in Book E-5 of Deeds, page 588 &c.

Exhibit 8. O-1.

SECOND TRACT: Beginning in the East line of Ann Street and at the Northwesterly corner of a lot heretofore conveyed to Shaw and Hinchcliffe and running thence (1) Northerly in line with said line of Ann Street forty feet and three tenths of a foot to the Northerly line of said Society; thence (2) Easterly along said Northerly line and in the line therewith two hundred and eighty seven feet to the Westerly line of the Paterson and Ramapo Railroad (3) thence southerly along said Railroad forty five feet and two tenths of a foot to the aforesaid lot of Shaw and Hinchcliffe and thence (4) Westerly along the same two hundred and sixty nine feet to the beginning.

Being the same premises described in a deed from The S. U. M. to Shaw Hinchcliffe and Penrose dated Jan'y 27, 1870, and recorded in the Passaic County Clerk's Office in Book Z 3 of Deeds, page 80 &c.

Both of the above tracts being the same land and premises conveyed to the party of the first part by John Hinchcliffe, et als., by Deed dated May 10th, 1890, and Recorded in the Passaic County Clerk's Office in Book W 9 of Deeds on pages 562, &c.

It is also intended hereby to convey all the fixed machinery of every kind and description in the buildings on said lands, including engines, boilers, ice machines, shafting, piping and malting machinery.

Habendum in fee, covenants of seizin against encumbrances and right to convey.

Warranty.

HABENDUM IN FEE.

COVENANTS OF SEIZIN AGAINST ENCUMBRANCES
AND RIGHT TO CONVEY.

WARRANTY.

Exhibit 8. O-2.

EXHIBIT 8. O-2.

THE PATERSON CONSOLIDATED
 BREWING COMPANY, a corporation
 of the State of New Jersey,
 to
 PATERSON BREWING AND MALTING
 COMPANY, a corporation of the
 State of New Jersey.

DEED

Dated July 1st, 1899.

Ack'd July 1st, 1899.

Rec'd July 3rd, 1899.

Liber U-13, p. 470 &c.

Cons. \$1 and other valuable cons.

Passaic County.

CONVEYS all those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey:

FIRST TRACT: Beginning at the corner formed by the intersection of the northerly side of Matlock Street with the Westerly side of Hamburg Avenue and running thence (1) Westerly along the Northerly side of Matlock Street one hundred and nineteen feet and three inches to lands now or formerly of Blauvelt; thence (2) along the same North fifty eight degrees and ten minutes West twenty-five feet and ten inches; thence (3) North thirty-seven degrees and thirty minutes east seven feet; thence (4) North forty-seven degrees and thirty five minutes west forty-nine feet and six inches; thence (5) North thirty four degrees and thirty minutes East five feet and three inches; thence (6) North fifty-four degrees and three minutes West twenty-six feet to lands now or for-

Exhibit B. O. 2.

merly of Thomas D. Honey; thence (7) Easterly along the same and at right angles to Hamburg Avenue ninety-nine feet to the Westerly side of Hamburg Avenue and thence (8) Southerly along the same one hundred feet to the place of beginning.

Being the premises known and designated as the brewery lots.

SECOND TRACT: Beginning in the line of division between lands of John J. Blauvelt and lands of Sarah J. and James A. Graham at a point distant twenty-five feet northwesterly from the westerly line of Matlock Street in the rear of the brick copper shops of Graham and Company, and running thence (1) along said line produced northwesterly and parallel with Hamburg Avenue fifty feet to a point; thence (2) northeasterly and parallel with Matlock street five feet; thence (3) northwesterly parallel with the first course twenty five feet; thence (4) northeasterly parallel with Matlock Street fourteen feet and eighty-eight hundredths of a foot; thence (5) Southeasterly twenty-five feet and seventy-five hundredths of a foot to a point; thence (6) South thirty five degrees and twenty-four minutes west four feet and fifty hundredths of a foot; thence (7) South forty-four degrees and forty-six minutes east fifty feet; thence (8) South thirty-five degrees and twenty-four minutes west seven feet to the place of beginning.

The above two tracts being the same premises conveyed to the Paterson Consolidated Brewing Company by Sarah J. Graham by deed dated January 13, 1893, and recorded in the Clerk's office of Passaic County in Book C 11 of Deeds on pages 455, &c.

THIRD TRACT: Beginning at the corner formed by the intersection of the Easterly line of Marshall Street (formerly called the Bloomfield Road) with the Southerly line of Braun Street (formerly called William Street) and running thence (1) Southerly along the Easterly line of Marshall Street seventy-

Exhibit 8. O. 2.

four feet and eight hundredths of a foot (74.08/100); thence (2) Easterly parallel with Braun Street two hundred and one feet and twenty-five hundredths (201.25/100) of a foot to the Westerly line of Chadwick street; thence (3) Northerly along the Westerly line of Chadwick street seventy-four feet and eight hundredths (74.08) of a foot to the Southerly line of Braun street and thence (4) Westerly along the Southerly line of Braun street two hundred and one feet and twenty-five (201.25/) hundredths of a foot to the easterly line of Marshall street and the place of beginning.

FOURTH TRACT: Beginning in the Easterly line of Chadwick Street and in the division line between the property formerly of Christian Braun and the property now or lately of John Peter Post and running thence (1) Easterly along said division line fourteen feet and fifty-one hundredths (14.50/100) of a foot to a bend in said division line, thence (2) North-easterly in a straight line and still along said division line and the division line between the said Christian Braun and the School House Plot belonging to the City of Paterson one hundred and ninety one (191) feet to a point in line with the Northerly line of the Brick stable now on the property formerly of said Christian Braun; thence (3) Northwesterly and along said northerly line of said Brick stable and in the prolongation thereof seventy two feet and fifty hundredths (72.50/) of a foot to the dividing line between the property formerly of said Christian Braun and the property now or lately of Mary Phalon, thence (4) Southwesterly along said division line One hundred and seventeen feet and ten hundredths of a foot to the Easterly line of Chadwick street; and thence (5) Southeasterly along the same One hundred and nine feet and sixty-one hundredths of a foot (109.60) to the place of beginning.

Exhibit S. O.-2.

The above two tracts as shown on map of property (formerly of Christian Braun made by Wm. Ferguson C. E., March 1890; and being the same premises conveyed to The Paterson Consolidated Brewing Company by Christian Braun and others by deed dated March 6, 1890 and recorded in the Clerk's Office of Passaic County in Book Y 9 of Deeds on pages 354 &c.

FIFTH TRACT: Beginning at the intersection of the Westerly line of Straight street with the Northerly line of Cedar street, thence running (1) Northerly along the Westerly line of Straight street one hundred and twenty-five feet; thence (2) Westerly parallel with Cedar Street about one hundred and ninety two feet to the Easterly line of Ramapo Avenue; thence (3) Southerly along the Easterly line of Ramapo Avenue one hundred and twenty-five feet to the Northerly line of Cedar Street and thence (4) Easterly along the Northerly line of Cedar Street one hundred and ninety two feet to the place of beginning.

Being lots 394, 396, 398, 400 and 402 Straight street and 66, 67, 68, 69 and 70 Ramapo avenue as laid down on the official map of the City of Paterson.

Also the rights in relation to laying and maintaining a switch tract conveyed to James A. Graham by Esther Ann Beckwith by deed dated November 12, 1886 and recorded in said Clerk's office in Book U 8 of Deeds page 299 &c. The above described tract being the same premises conveyed to The Consolidated Brewing Company by James A. Graham by deed dated March 6, 1890 and recorded in the Clerk's Office of Passaic County in Book Y 9 of Deeds on pages 352 &c.

SIXTH TRACT: Beginning in the Westerly line of Marshall Street at the point where said line is intersected by the division line between lands formerly of James M. Powers and lands formerly of Conrad

Exhibit S. O.-2.

Plock, about one hundred and eighty seven feet and five inches to the line of the Morris Canal; thence (2) Northerly along the line of said Canal seventy five feet, thence (3) Easterly parallel with the first line about one hundred and eighty seven feet and five inches to Marshall Street and thence (4) Southerly along Marshall street seventy five feet to the place of beginning.

SEVENTH TRACT: Beginning in the Westerly line of Marshall street at the Northeast corner of a lot heretofore conveyed to the said Gustav Sprattler and Christian Mennel by John M. Powers and wife and running thence (1) Northerly along Marshall street twenty five feet thence (2) Westerly parallel with the line of said party of the first part one hundred and eighty seven feet, five inches more or less to the line of the Morris Canal, thence (3) Southerly along the same twenty five feet to the aforesaid line of the party of the first part and thence (4) Easterly along the same one hundred and eighty seven feet and five inches more or less to the place of beginning.

EIGHTH TRACT: Beginning in the Westerly line of Marshall street at the Northeast corner of a lot conveyed to Gustav Sprattler and Christian Mennel by John M. Powers and wife by deed dated November 18, 1873, recorded in Book Z 4 of Deeds for the county of Passaic, pages 164 &c. and running thence (1) Northerly along Marshall street twenty-five feet thence (2) Westerly parallel with the line of the aforesaid lot of the party of the first part one hundred and eighty seven feet and five inches more or less to the line of lands of the Morris Canal, thence (3) Southerly along said Canal twenty-five feet to the aforesaid lot of the party of the first part, and thence (4) Easterly along the same one hundred and eighty seven feet and five inches to the place of beginning.

Exhibit S. O. 2.

NINTH TRACT: Beginning at a point in the Westerly line of Marshall Street distant one hundred and twenty five feet Northerly from the Northerly line of a lot of land of Conrad Ploch running thence (1) Westerly at right angles from Marshall Street one hundred and ninety feet (190) to the line of lands of the Morris Canal and Banking Company thence (2) Northerly along the same five and three quarter ($5\frac{3}{4}$) inches, thence (3) Easterly one hundred and ninety feet to Marshall street; and thence (4) Southerly along Marshall street seven and seven eighths ($7\frac{7}{8}$) to the place of beginning.

It is hereby understood and agreed that the said party of the second part or its successors or assigns are to be permitted to allow any and all projections of the roof or cornice of their building to be and remain as the same now are until such time as John M. Powers or any purchaser of the lands adjoining the lands above described or their heirs and assigns shall require the lands so encroached upon by reason of said projection for the purpose of erecting a building thereon.

TENTH TRACT: Beginning at the point where the westerly line of Marshall street intersects the Northerly line of a road laid out May 7th, 1833, which road is now called Van Winkle street, and running from thence (1) Westerly along the Northerly line of Van Winkle street one hundred and forty five feet to a corner in said street or road; thence (2) Northerly along another line of said road fifty feet; thence (3) Easterly parallel with the first course, to Marshall Street and thence (4) Southerly along Marshall street fifty feet to the place of beginning.

The above described five tracts constituting the Brewery plant with all the appurtenances thereto belonging as now used and occupied by the party of the first part and further being the same premises conveyed to The Paterson Consolidated Brewing

Exhibit S. O.-2.

Company by Christian Mennel and Catharine Spratler by deed dated March 6, 1890, and recorded in the Clerks office of Passaic County in Book X 9 of Deeds on pages 433 &c.

ELEVENTH TRACT: Beginning at the corner formed by the intersection of the Northerly line of Governor Street with the Easterly line of Straight street from thence running (1) Easterly along the north line of Governor street one hundred and ninety-four feet and seventy seven hundredths of a foot to a point distant four hundred feet Westerly from the West line of Summer street thence (2) Northerly at right angles from Governor street one hundred feet thence (3) Westerly parallel with Governor street one hundred and ninety one feet and seven hundredths of a foot to Straight Street; thence (4) Southerly along Straight street one hundred feet and eight hundredths of a foot to Governor Street and the place of beginning.

Being lots numbers ninety nine to one hundred and five alternately on map U of Society U M Straight street, numbers eighty nine to ninety five alternately on same map Governor Street.

TWELFTH TRACT: Beginning at the corner formed by the intersection of the Northerly line of Governor street with the westerly line of Straight street and thence running (1) Westerly along the Northerly line of Governor Street forty two feet and fifteen hundredths of a foot to the Easterly line of the New York, Lake Erie and Western Railroad thence (2) Northerly along the easterly line of said railroad one hundred and twenty three feet and sixty eight one hundredths of a foot to the westerly line of Straight street; thence (3) Southerly along said line of Straight street one hundred and fourteen feet and seventy two one hundredths of a foot to the place of beginning.

Exhibit S. O. 2.

Containing two thousand four hundred and sixteen square feet.

THIRTEENTH TRACT: Beginning in the Easterly line of Straight street at a point distant one hundred feet Northerly at right angles from the Northerly line of Governor Street running thence (1) Northerly along the Easterly line of Straight street four feet and eighty seven hundredths of a foot to a bend in the same thence (2) Northerly still along the Easterly line of Straight street twenty-two feet and fifty-eight hundredths of a foot to the Southerly line of lot number 95 thence (3) Easterly along said line of lot number 95 and parallel with Governor street one hundred and six feet and forty-four hundredths of a foot to the Westerly line of lot number 84 fronting on Harrison Street, thence (4) Southerly at right angles to the last mentioned course twenty five feet to a point distant one hundred feet Northerly at right angles from the Northerly line of Governor street, thence (5) Westerly parallel with Governor Street one hundred and sixteen feet and seven hundredths of a foot to the Easterly line of Straight street and the place of beginning.

Being lot number 97 as laid down on map U of property of Society for Establishing Useful Manufactures made by A. A. Fonda C. E.

FOURTEENTH TRACT: Beginning at the corner formed by the intersection of the Southerly line of Harrison Street with the Easterly line of Straight street, thence running (1) Easterly along the South line of Harrison Street two hundred and two feet and ninety hundredths of a foot thence (2) Southerly at right angles from Harrison Street ninety five feet and sixty seven hundredths of a foot to the North line of lots fronting on Governor Street; thence (3) Westerly along the rear line of said lots one hundred and twenty five feet to line of lot now of said party of the first

Exhibit S. O. 2.

part, thence (4) Northerly along said lot twenty five feet to the Northeast corner of same thence (5) Westerly still along the North line of said lot one hundred and six feet and forty-four hundredths of a foot to Straight street thence (6) Northerly along Straight street seventy five feet and ninety one hundredths of a foot to Harrison Street and the place of beginning.

Being lots numbers 91, 93 and 95 Straight Street and lots numbers 84, 86, 88, 90 and 92 Harrison Street as laid down on Map U of lots of said Society U. M.

FIFTEENTH TRACT: Beginning in the North line of Governor Street and at the Easterly line of land now of said company distant one hundred and ninety four feet and seventy seven hundredths of a foot Easterly from Straight Street; thence running (1) Northerly along said line one hundred feet to the south line of lots of said company, thence (2) Easterly along same and beyond same and parallel with Governor Street seventy five feet, thence (3) Southerly parallel with the first line one hundred feet to Governor street and thence (4) westerly along Governor street seventy five feet to the point of beginning.

Being lots numbers 97, 99 and 101 Governor street as laid down on Map U of lots of the Society U. M.

SIXTEENTH TRACT: Beginning in the South line of Harrison Street at the distance of two hundred and two feet and ninety hundredths of a foot Easterly from Straight street thence (1) Southerly along the East line of land of said Paterson Consolidated Brewing Company ninety five feet and sixty seven hundredths of a foot to another line of said Brewing Company's land; thence (2) Easterly along the same twenty five feet; thence (3) Northerly parallel with the first course ninety five feet and seventy three hundredths of a foot to Harrison Street and thence (4) Westerly along Harrison street twenty five feet to the place of beginning.

Exhibit D. F.-1.

Being lot numbers 94 Harrison Street as laid down on map U of lots formerly of the Society U. M.

The last six described tracts constituting the Brewery plant with all the appurtenances thereto belonging as now used and occupied by the parties of the first part and further being the same premises conveyed to the Paterson Consolidated Brewing Company by The Burton Brewing Company by deed dated March 6, 1890, and recorded in the Clerk's Office of Passaic County in Book X 9 on pages 427 &c.

It is also intended hereby to convey all the fixed machinery of every kind and description in all the buildings on the above described sixteen tracts of land including engines, boilers, ice machines, shafting, piping, &c.

HABENDUM IN FEE.

COVENANTS OF SEIZIN AGAINST ENCUMBRANCES
AND RIGHT TO CONVEY.

WARRANTY.

EXHIBIT D. F.-1.

EMMONS T. FULLERTON AND ANNA	}
H. FULLERTON, HIS WIFE, AND	
ETHELBERT G. FULLERTON AND	
SUSAN V. FULLERTON, HIS WIFE,	
to	
D. FULLERTON & Co., a corporation.	

DEED.

Dated April 9, 1904.

Ackd April 9, 1904.

Recd. April 12, 1904.

Liber L-16, p. 297 &c., Passaic County.

Consideration \$1.

CONVEYS IN FEE, all those certain tracts or parcels of land and premises, hereinafter particularly de-

Exhibit D. F. 1.

scribed, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey:

FIRST TRACT: Beginning at the southerly corner of River Street and Keene (formerly called Greene) Street, and running thence (1) easterly along Keene Street one hundred and twenty-nine feet and eighty-eight hundredths of a foot to the Paterson and Ramapo Railroad; thence (2) southerly along the said railroad one hundred and eight feet and five hundredths of a foot; thence (3) westerly parallel with Keene Street one hundred and sixty-nine feet and five tenths of a foot to River Street and thence (4) northeasterly along River Street one hundred and twenty-eight feet and thirty-eight hundredths of a foot to the place of beginning.

Being the same premises described in a deed from Sarah J. Fullerton and others to Emmons T. Fullerton and Ethelbert G. Fullerton, dated October 1st, 1901, recorded in the Passaic County Clerk's office in Book C 15 of deeds, pages 571 &c.

SECOND TRACT: Beginning on the westerly side of East Fifth (formerly Pearl) Street in the most southerly line of lands formerly belonging to Edward Van Houten, running from thence (1) northeasterly along the westerly line of East Fifth Street, one hundred feet; thence (2) northwesterly at right angles to said East Fifth Street about one hundred feet to the Passaic River; thence (3) southerly along Passaic River one hundred feet to the said most southerly line of land formerly belonging to Edward Van Houten; thence (4) southeasterly along the same one hundred and three feet and seven inches to the place of beginning.

THIRD TRACT: Beginning in the westerly line of East Fifth Street at a point in the same one hundred feet northerly from Warren Street and running from

Exhibit D. F. J.

thence (1) westerly at right angles with East Fifth street to the easterly line of the Passaic River; thence (2) northerly along the same about fifty feet; thence (3) easterly at right angles with East Fifth Street to the westerly line of the same; thence (4) southerly along the westerly line of East Fifth Street fifty feet to the place of beginning.

FOURTH TRACT: Beginning at a point in the westerly line of East Fifth Street one hundred and fifty feet northerly from Warren street, and running from thence (1) westerly at right angles from East Fifth Street to the easterly line of the Passaic River; thence (2) northerly along the same one hundred and twenty-five feet; thence (3) easterly at right angles with East Fifth Street to the westerly line of East Fifth Street; thence (4) southerly along the same one hundred and twenty-five feet to the place of beginning.

The three tracts of land last above described are the same as conveyed by Sarah J. Fullerton and others to Emmons T. Fullerton and Ethelbert G. Fullerton by deed dated October 1st, 1901, and recorded in the Passaic County Clerk's Office in Book C 15 of Deeds, pages 557 &c.

Also all those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Passaic, County of Passaic and State of New Jersey.

FIRST TRACT: Beginning at a point on the westerly side of Central Avenue one hundred and forty five feet southerly from line of lands of Henry P. Simmons; said point of beginning being the southeasterly corner of lands now or formerly of Miriam H. Demarest, running thence (1) westerly along said Demarest's line one hundred and seven feet more or less to the right of way of the New York, Lake Erie and Western Railroad Company; thence (2) southerly

Exhibit D. F-1.

and along said right of way fifty feet; thence (3) easterly and parallel with the first course one hundred and seven feet, more or less, to the westerly side of Central Avenue; thence (4) northerly along said westerly side of Central Avenue fifty feet to the point or place of beginning.

SECOND TRACT: Beginning at a point on the westerly side of Central Avenue where the southerly line of lands of David Fullerton and the property herein described intersect each other, and running thence (1) westerly and along said division line one hundred and seven feet more or less to the line of the Erie Railway Company; thence (2) southerly and along said line six feet and six inches more or less to the lands of the said railroad; thence (3) easterly and parallel with the first course one hundred and seven feet more or less to the said side of Central Avenue and thence (4) northerly and along the same six and one-half feet to the point or place of beginning.

Being the same premises described in a deed from Sarah J. Fullerton and others to Emmons T. Fullerton and Ethelbert G. Fullerton, dated October 1st, 1901, and recorded in the Passaic County Clerk's Office in Book C 15 of deeds, pages 562 &c.

COVENANTS AGAINST GRANTORS' ACTS.

Supreme Court of the United States

OCTOBER TERM, 1911

38-89

PARTIES TO CASE

THE UNITED STATES
Plaintiff in Error

DEFENDANTS IN ERROR

THE NEW YORK CENTRAL
AND HARTFORD RAILROAD
Company
Defendant in Error

JOHN EDWARD HEDGECOCK

vs.

100

FRANK H. SCOTT

vs.

100

JAMES C. HARRIS & COMPANY

vs.

100

J. EDWARD HEDGECOCK

vs.

100

AND JOHN E. HARRIS, JR.

vs.

100

JOHN A. HARRIS

vs.

100

In Error to the Court of Errors and Appeals of the
State of New Jersey.

VOLUME THREE

Rehearsal—N. 111, N. 112, N. 113.

New York.

(Pages 1000 to 1001)

Filed APR 23 1912

(Sealed)

COLLINS & CHURCH

Attorneys of Erie Railroad Company and Western
Union Telegraph Company.

FRANK HEDGECOCK

Attorney of Public Service Building Company.

JAMES C. HARRIS & COMPANY

Attorneys of Public Water Company.

J. EDWARD HEDGECOCK

Attorneys of John Edgar, Jr., of St. Paul, Minn., and
Harris & Co.

L. EDWARD HEDGECOCK

Attorney of Board of Public Utility Commissioners.

FRANK H. SCOTT

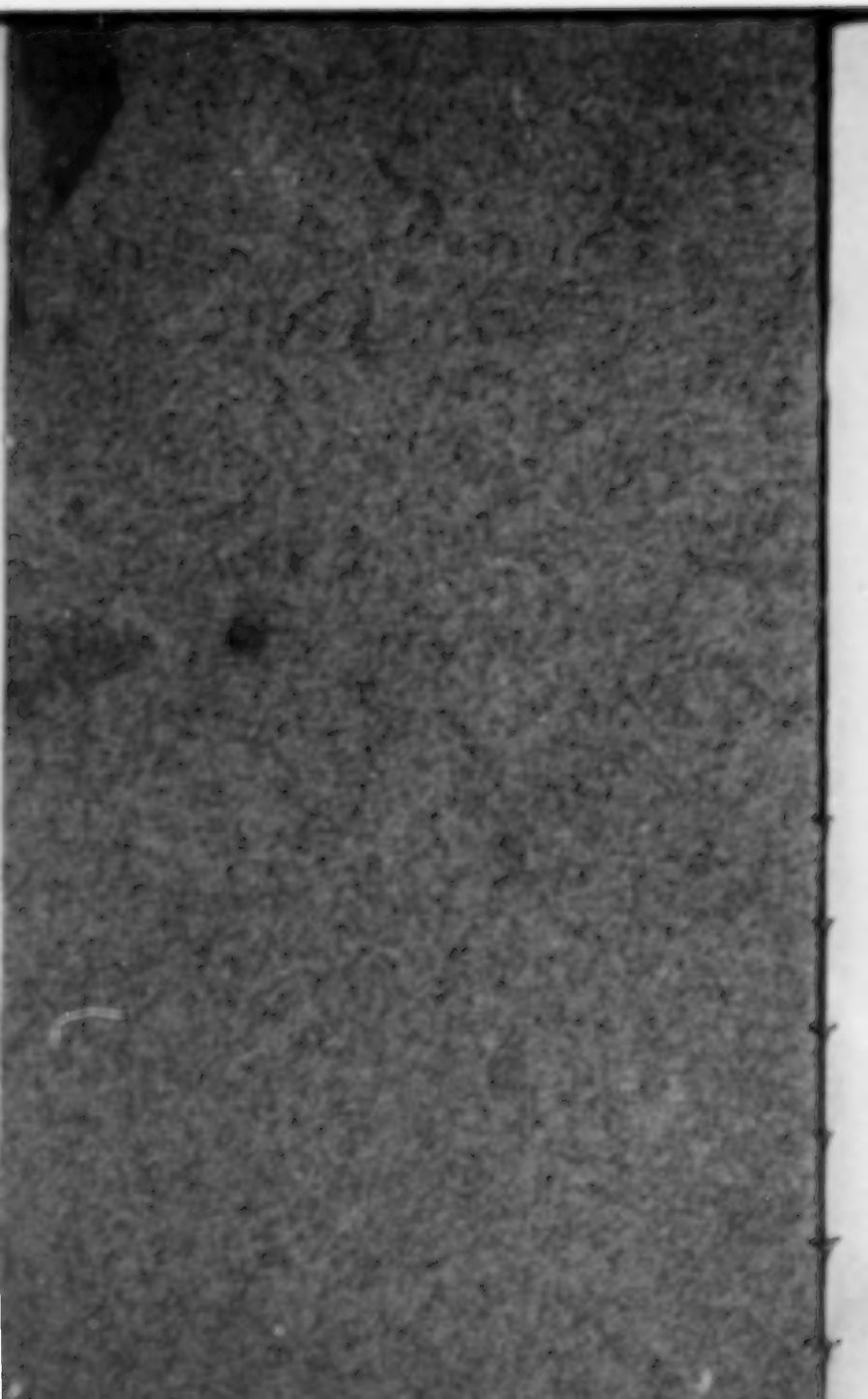
of Counsel.

FRANK HEDGECOCK

Attorney of City of Paterson and Board of Finance
of said City.

WILLIAM C. LEWIS

Attorney of Paterson & Hudson River R. R. Co.
and Paterson & Hudson R. R. Co.



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Exhibit R-118.

EXHIBIT R-118.

FIRST CONSOLIDATED MORTGAGE DEED

ERIE RAILROAD COMPANY

TO

THE FARMERS' LOAN AND TRUST COMPANY

TRUSTEE

Dated December 10, 1895.

STETSON, TRACY, JENNINGS & RUSSELL

GENERAL COUNSEL

15 Broad Street, New York

Exhibit R-118.

This Indenture, made this tenth day of December, in the year one thousand eight hundred and ninety-five, between

ERIE RAILROAD COMPANY, a corporation created by, and existing under, the laws of the State of New York, hereinafter called the "Railroad Company," party of the first part, and

THE FARMERS' LOAN AND TRUST COMPANY, of New York, a corporation created by and existing under the laws of the State of New York, hereinafter called the "Trustee," party of the second part.

WHEREAS, the Railroad Company, party of the first part, owns, possesses, controls or leases divers lines of railway together with franchises, rights, privileges, lands, tenements and hereditaments thereunto belonging or appertaining, on which lines of railway or various portions thereof and of the equipment thereof, bonds, secured by mortgages, and other liens are now outstanding;

AND WHEREAS, the Railroad Company owns various stocks and bonds, including stock and bonds of the Chicago and Erie Railroad Company, a corporation of Indiana;

AND WHEREAS, all such railroads, properties, leaseholds, stocks and bonds have been received by the Railroad Company by, under or in pursuance of a certain plan of reorganization of the New York, Lake Erie and Western Railroad Company and subordinate companies, and of the transfer to it, or for its benefit, of various stocks, bonds and other properties so transferred to or for its benefit by Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas the Committee named in the Certificate of Incorporation of the Railroad Company, upon the express promise and agreement of the Railroad Company, among other things, to make, execute, issue and use its bonds as herein provided, including a limited issue thereof from time to time to be made to the said Coster, Fitzgerald and Thomas, jointly and not severally, or their survivors or successors, and further issues thereof to be made for the redemption and acquisition of bonds and stocks, and equipment liens and for new acquisitions, construction and betterments, all as herein provided;

Exhibit R-118.

AND, WHEREAS, the Board of Directors of the Railroad Company, at a meeting thereof held at New York on the nineteenth day of November, in the year eighteen hundred and ninety-five, adopted a resolution in the following words; that is to say:

Resolved, That the President and the Secretary of the Erie Railroad Company be, and they are hereby, authorized and directed, in its behalf and under the corporate seal, when approved by the stockholders, and in form substantially that now submitted to this Board, to execute and deliver a mortgage or deed of trust upon the property and franchises of the corporation to be known as its "First Consolidated Mortgage Deed," to The Farmers' Loan and Trust Company, as Trustee, to secure two issues of bonds, one to the aggregate amount of \$35,000,000, to be called "Prior Lien Bonds," and the other and remaining issue of bonds, to the aggregate amount of \$140,000,000, to be called "General Lien Bonds," the principal of both such issues of bonds to be payable in gold coin of the United States, of the present standard of weight and fineness, at the office or agency of this Company in the City of New York, on the 1st day of January, 1896, with interest thereon at the rate of four per cent. per annum, except that for two years from July 1st, 1896, the General Lien bonds shall bear interest at the rate of three per cent. per annum; all interest to be payable semi-annually in like gold coin at the said office or agency on the first days of January and July in each year; such bonds to be issued and disposed of, on the terms and conditions, for the purposes and in the manner set forth in said form of mortgage.

AND WHEREAS, it was also resolved by the Board of Directors of the Railroad Company at said meeting that the President, or any Vice-President, and the Secretary, or any Assistant Secretary of the Railroad Company or of any railroad company being lawful and sole successor to the Railroad Company for the time being, should from time to time, as directed by the Board of Directors of the Railroad Company or of its said successor, execute, in the behalf and name of the Railroad Company, and under its corporate seal, the two issues of bonds, to be secured by the said mortgage to the aggregate amount of one hundred and seventy-five million dollars (\$175,000,000), the said two issues to be respectively: "Prior Lien Bonds," for an aggregate principal amount of \$35,000,000, and "General Lien Bonds," subordinate and subject in lien to the Prior Lien Bonds,

Exhibit R-118.

for an aggregate principal amount of \$140,000,000; such bonds to be substantially of the following tenor, to wit:

[FORM OF PRIOR LIEN BOND.]

No.

\$1,000.

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

PRIOR LIEN FOUR PER CENT. GOLD BOND.

Secured by First Consolidated Mortgage Deed.

KNOW ALL MEN BY THESE PRESENTS, That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder, One Thousand Dollars in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, N. Y., with interest at the rate of four per cent. per annum from January 1, 1896, payable semi-annually at said office or agency in like gold coin on the first days of January and July in each year, but only upon surrender of the annexed coupons therefor as they severally mature.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom, under or by reason of any present or future law, the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon and registered bonds of the Railroad Company, known as "Prior Lien Bonds," duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such Prior Lien Bonds at any one time outstanding shall never exceed the total sum of \$35,000,000. All of such Prior Lien Bonds are equally secured by a mortgage deed dated December 10th, 1895, executed by said Railroad Company to the Farmers' Loan and Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and

Exhibit R-118.

franchises mortgaged and the nature and extent of the security and the rights of the holders of said bonds under the same.

This bond may be registered as to principal in the owner's name on the Company's books, at its office or agency in the City of New York, such registry being noted on the bond by the Company's transfer agent, after which no transfer shall be valid unless made on the Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored; but it may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons by delivery merely. This bond is also exchangeable for registered bonds without coupons, as provided in said mortgage or deed of trust.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed of the Trustee under said mortgage deed.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or Assistant Secretary, and coupons for said interest with the engraved signature of its Treasurer to be attached hereunto this tenth day of December, 1895.

ERIE RAILROAD COMPANY,

By

Attest:

President.

Secretary.

Exhibit R-118.

[FORM OF INTEREST COUPON, OF WHICH THE FIRST IS TO BE PAYABLE
JULY 1, 1896.]

On the first day of _____, _____, Erie Railroad Company will pay the bearer at its agency in the City of New York, N. Y., twenty dollars in gold coin, without deduction for taxes, being six months' interest then due on its Prior Lien Bond No. _____.

Treasurer.

[FORM OF REGISTERED PRIOR LIEN BOND.]

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

PRIOR LIEN FOUR PER CENT. REGISTERED GOLD BOND.

Secured by First Consolidated Mortgage Deed.

No. P. R.

\$

KNOW ALL MEN BY THESE PRESENTS: That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay _____ or assigns, the sum of _____ dollars, in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, and to pay interest thereon from the first day of January or July, as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, payable semi-annually in like gold coin, at said office or agency, on the first days of January and July in each year, until payment of said principal sum.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom under or by reason of any present or future law; the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon bonds and registered bonds of the Railroad Company, known as Prior Lien bonds,

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duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such Prior Lien bonds, both coupon and registered, at any one time outstanding, shall never exceed the total sum of \$35,000,000. All of such Prior Lien bonds are equally secured by a Mortgage Deed, dated December 10th, 1895, executed by said Railroad Company to the Farmers' Loan and Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged, and the nature and extent of the security and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the Company's books at its office or agency in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage deed.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage deed.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or Assistant Secretary this day of

ERIE RAILROAD COMPANY,

By

President.

Attest:

Secretary.

Exhibit R-118.

[FORM OF GENERAL LIEN BOND.]

\$1,000.

No.

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

GENERAL LIEN GOLD BOND.

Secured by First Consolidated Mortgage Deed.

KNOW ALL MEN BY THESE PRESENTS, That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder, One Thousand Dollars in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, N. Y., with interest from July 1, 1896, at the rate of three per cent. per annum for two years and at the rate of four per cent. per annum thereafter, payable semi-annually at said office or agency in like gold coin on the first days of January and July in each year, but only upon surrender of the annexed coupons therefor as they severally mature.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom, under or by reason of any present or future law, the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon and registered bonds of the Railroad Company, known as "General Lien Bonds," duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such General Lien Bonds at any one time outstanding shall never exceed the total sum of \$140,000,000.

All of such General Lien Bonds are equally secured by a mortgage deed dated December 10th, 1895, executed by said Railroad Company to The Farmers' Loan & Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged and the nature and extent of the security and the rights of the holders of said bonds under the same.

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duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such Prior Lien bonds, both coupon and registered, at any one time outstanding, shall never exceed the total sum of \$35,000,000. All of such Prior Lien bonds are equally secured by a Mortgage Deed, dated December 10th, 1895, executed by said Railroad Company to the Farmers' Loan and Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged, and the nature and extent of the security and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the Company's books at its office or agency in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage deed.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage deed.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or Assistant Secretary this day of

ERIE RAILROAD COMPANY,

By

President.

Attest:

Secretary.

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[FORM OF GENERAL LIEN BOND.]

\$1,000.

No. UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

GENERAL LIEN GOLD BOND.

Secured by First Consolidated Mortgage Deed.

KNOW ALL MEN BY THESE PRESENTS, That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder, One Thousand Dollars in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, N. Y., with interest from July 1, 1896, at the rate of three per cent. per annum for two years and at the rate of four per cent. per annum thereafter, payable semi-annually at said office or agency in like gold coin on the first days of January and July in each year, but only upon surrender of the annexed coupons therefor as they severally mature.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay or to retain therefrom, under or by reason of any present or future law, the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon and registered bonds of the Railroad Company, known as "General Lien Bonds," duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such General Lien Bonds at any one time outstanding shall never exceed the total sum of \$140,000,000.

All of such General Lien Bonds are equally secured by a mortgage deed dated December 10th, 1895, executed by said Railroad Company to The Farmers' Loan & Trust Company of New York, as Trustee, of all the property and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged and the nature and extent of the security and the rights of the holders of said bonds under the same.

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This bond may be registered as to principal in the owner's name on the Company's books, at its office or agency in the City of New York, such registry being noted on the bond by the Company's transfer agent, after which no transfer shall be valid unless made on the Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored; but it may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons by delivery merely. This bond is also exchangeable for registered bonds without coupons, as provided in said mortgage or deed of trust.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by a certificate hereon endorsed, of the Trustee under said mortgage deed.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or Assistant Secretary, and coupons for said interest with the engraved signature of its Treasurer to be attached hereunto, this tenth day of December, 1895.

ERIE RAILROAD COMPANY,

By

President.

Attest:

Secretary.

[FORM OF INTEREST COUPON, OF WHICH THE FIRST IS TO BE PAYABLE
JANUARY 1, 1897.]

On the first day of _____ ERIE RAILROAD COMPANY
will pay the bearer at its agency in the City of New York, N. Y.,
Dollars in gold coin, without deduction for taxes,
being six months' interest then due on its General Lien Bond No.

Treasurer.

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[FORM OF REGISTERED GENERAL LIEN BOND.]

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

GENERAL LIEN REGISTERED GOLD BOND.

Secured by First Consolidated Mortgage Deed.

No. G. R.

§

KNOW ALL MEN BY THESE PRESENTS: That ERIE RAILROAD COMPANY, a corporation hereinafter called the "Railroad Company," for value received, promises to pay

or assigns, the sum of _____ dollars in gold coin of the United States of the present standard of weight and fineness, on the first day of January, in the year 1996, at the office or agency of the Railroad Company in the City of New York, and to pay interest thereon from the first day of January or July, as the case may be, next preceding the date hereof, at the rate of three per cent. per annum from July 1st, 1896, to June 30th, 1898, and four per cent. per annum thereafter, payable semi-annually in like gold coin, at said office or agency, on the first days of January and July in each year, until payment of said principal sum.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company may be required to pay, or to retain therefrom under or by reason of any present or future law; the Railroad Company hereby agreeing to pay all such tax or taxes.

This bond is one of a series of coupon bonds and registered bonds of the Railroad Company, known as General Lien Bonds, duly authorized and approved by the Directors and Stockholders of the Railroad Company, issued and to be issued, but so that the aggregate amount of such General Lien Bonds, both coupon and registered, at any one time outstanding, shall never exceed the total sum of \$140,000,000. All of said bonds are equally secured by the Mortgage Deed, dated December 10th, 1895, executed by said Railroad Company to the Farmers' Loan and Trust Company of New York, as Trustee, of all the property

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and franchises of the Railroad Company mentioned in said mortgage deed, to which reference is hereby made for a description of the property and franchises mortgaged, and the nature and extent of the security and the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the Company's books at its office or agency in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage deed.

After the expiration of the Voting Trust authorized in the Certificate of Incorporation, the holder hereof shall have the right to vote as described in said certificate.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage deed.

In witness whereof, the Erie Railroad Company has caused these presents to be signed by its President, or one of its Vice-Presidents, and its corporate seal to be hereunto affixed and to be attested by its Secretary or Assistant Secretary, this day of

ERIE RAILROAD COMPANY,

By

President.

Attest:

Secretary.

AND, WHEREAS, The coupons to be attached to said bonds of both issues are to be authenticated by the engraved signature of the present Treasurer or of any future Treasurer of the Railroad Company, or of any successor company, it being intended that the Railroad Company and any such successor company may adopt and use for that purpose the engraved signature of any such Treasurer, notwithstanding the fact that such person

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may have ceased to be such Treasurer at the time when any such bonds shall be actually certified and delivered;

AND, WHEREAS, It was further resolved that there shall be endorsed on each of such bonds of both issues a certificate of the Trustee, which certificate shall be the conclusive and only evidence that such bonds are entitled to the security of the mortgage or deed of trust therein mentioned, and that no bond shall be valid or obligatory for any purpose until such certificate shall have been executed by the Trustee, such certificate, in respect of said two issues severally and respectively, to be substantially of the following tenor, viz.:

I.

[FORM OF TRUSTEE'S CERTIFICATE AS TO PRIOR LIEN BONDS.]

This bond is one of the series of Prior Lien Bonds described in the within-mentioned Mortgage Deed, executed by the Erie Railroad Company to the undersigned.

THE FARMER'S LOAN AND TRUST COMPANY,
Trustee.

By

Vice-President.

II.

[FORM OF TRUSTEE'S CERTIFICATE AS TO GENERAL LIEN BONDS.]

This bond is one of a series of General Lien Bonds, described in the within-mentioned Mortgage Deed, executed by the Erie Railroad Company to the undersigned.

THE FARMER'S LOAN AND TRUST COMPANY,
Trustee.

By

Vice-President.

AND WHEREAS, subsequently, to wit, on the 19th day of November, 1895, all the stockholders of the Railroad Company, owning and holding every share of its capital stock, namely, three hundred thousand shares of first preferred stock, one hundred and sixty thousand shares of second preferred stock, and one million shares of the common stock of said corporation,

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did, in the manner and form provided by and in Section 2 of the Stock Corporation Law of the State of New York, consent to the issue of this mortgage, which consent is in writing, and has been filed and recorded in the office of the Clerk of the City and County of New York, and also in the office of the Register of the City and County of New York, that being the County in which the Railroad Company has its principal place of business.

AND WHEREAS, the printed form of mortgage submitted to and approved by the Board of Directors at their said meeting, and submitted to the stockholders of the corporation at the time of the execution of their consent as aforesaid, was in the form of this indenture.

AND, WHEREAS, In pursuance of said resolutions and consent and of all and every legal power and authority in it vested, the Railroad Company proposes to make and execute, and from time to time to issue and deliver bonds of both the issues secured hereby.

Now, therefore, this indenture witnesseth:

That in order to secure the payment of the principal and interest of all such bonds at any time outstanding and lawfully issued, as provided in such bonds and in this indenture, and the performance of all the covenants and conditions herein contained,

THE RAILROAD COMPANY, party of the first part,

In consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has executed and delivered these presents with all the covenants and conditions thereof, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto

THE TRUSTEE, party of the second part, its successors and assigns forever:

ALL THE ESTATE, RIGHT, TITLE AND INTEREST of the Railroad Company of, in and to:

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ALL AND SINGULAR the railway of the Railroad Company, from and including Piermont, on the Hudson River, in the State of New York, to and including the terminus of the said railway on Lake Erie at or near Dunkirk, in said State, and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway extending from Hornellsville to Attica, in the State of New York, also that part of the railway known as the Newburgh and New York Railroad, extending from Turners on the main line to Vail's Gate on the Newburgh branch; also the railway formerly belonging to the Lockport and Buffalo Railroad Company and extending from Lockport to Black Rock, both in the State of New York; also the railway formerly belonging to the Erie International Railway Company, and extending from a point of connection with Suspension Bridge and Erie Junction Railroad in Niagara County to International Bridge in Erie County, both in the State of New York; and also all other railways now belonging to the Railroad Company in the States of New York, Pennsylvania and New Jersey, or any of them; also, all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action of whatsoever name or nature in law or in equity conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, or to the New York, Lake Erie and Western Railroad Company, by the Union Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Buffalo, New York and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the Bergen County Railroad, a corporation existing under the laws of the State of New Jersey; by the Buffalo, Bradford and Pittsburg Railroad Company, a corporation existing under the laws of the States of New York and Pennsylvania; by the Rochester and Genesee Valley Railroad Company, a corporation existing under the laws of the State of New York; by the Long Dock Company, a corporation existing under the laws of the State of New Jersey; by the Goshen and Deckertown Railroad Company, a corporation existing under the laws of the State of New York; by the Hoboken Land and Improvement Company, a corporation existing under the laws of the State of New Jersey; by the New York and Fort Lee Railroad Company, a corporation existing

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under the laws of the State of New Jersey, and the New Jersey Junction Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Jefferson Railroad Company, a corporation existing under the laws of the State of Pennsylvania; by the Montgomery and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the New York, Lake Erie and Western Docks and Improvement Company, a corporation existing under the laws of the State of New Jersey; by the Paterson, Newark and New York Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Pennsylvania Coal Company, a corporation existing under the laws of the State of Pennsylvania; by the Newark and Hudson Railroad Company, a corporation existing under the laws of the State of New Jersey, and by the Suspension Bridge and Erie Junction Railroad Company, a corporation existing under the laws of the State of New York.

And also all the railroad formerly of the Buffalo and Southwestern Railroad Company, extending from Jamestown, in Chautauqua County, to Buffalo, in Erie County, both in the State of New York, subject only to two mortgages thereon prior to the lien of this indenture; *the first* to secure an issue of bonds for \$1,500,000, *the second* executed November 19th, 1895, by the Railroad Company to secure an issue of its bonds for \$1,000,000.

And also all the estate, right, title and interest of the Railroad Company in and to certain real estate situate in Hudson County, in the State of New Jersey, known as the Penhorn property, and to two certain other parcels of real estate situate in the County of Passaic, in the State of New Jersey, and known respectively as the Post farm and the Fredericks farm. And also to a certain parcel of land lying west of the Bergen Tunnel, in Hudson County, State of New Jersey, known as the Laundry property. And also all other real estate of the Railroad Company, situate in the State of New Jersey, of every kind and description, and wherever in the said State the same may be situate. Also a tract of land, being about four acres, situate in the Township of Texas, County of Wayne, in the State of Pennsylvania.

And also all the estate, right, title and interest of the Railroad Company of, in and to certain piers, bulkheads and water fronts in the said City of New York, that is to say: Piers 29,

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30, 31 and 32, North River, with bulkheads between Piers 30 and 31, 31 and 32, and half the bulkhead between Piers 32 and 33; also the pier at the foot of West Twenty-third street, and the bulkhead between Twenty-second and Twenty-third streets; also the Piers 7 and 8, East River, and the bulkhead between them.

And, also, all tracts of land or interest therein of the Railroad Company lying and being in the following States and counties, namely: counties of Rockland, Orange, Sullivan, Delaware, Broome, Tioga, Chemung, Steuben, Alleghany, Livingston, Wyoming, Genesee, Erie, Niagara, Cattaraugus, Chautauqua and Monroe, in the State of New York; counties of Hudson, Essex, Bergen and Passaic, in the State of New Jersey; counties of Susquehanna, Jefferson, Pike and McKean, in the State of Pennsylvania.

Also all the right, title and interest of every name and nature hereafter acquired by the Railroad Company in or to the property, railroad and franchises now of the New York, Pennsylvania and Ohio Railroad Company, or any branch, extension or leased or operated line thereof or therefrom (except certain lands and interests in lands not immediately appurtenant to said railroad, of which lands and interests the description is on file in the possession of the party of the second part) or in any bonds, stocks or other security of such Railroad Company, or of any successor company or companies, subject to the terms upon which any such acquisition may have been made; provided, however, that nothing herein is intended or shall be construed to affect or limit the reserved right of the Railroad Company at its option to modify from time to time or to elect not to continue the agreement dated November 18th, 1895, under which it is now operating the said New York, Pennsylvania and Ohio Railroad.

Also, all the right, title, estate, interest, property and franchises of the Railroad Company of, in and to any and all other lines of railway, extension and branches now owned, leased or held by the Railroad Company or in which it has any interest whatsoever, wherever located, notwithstanding the same may not be particularly set forth or described in this indenture.

ALSO ALL THE RIGHT, TITLE, ESTATE, INTEREST AND PROPERTY of the Railroad Company in and to any and all lines of railway, extensions and branches, including the franchises appurtenant

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thereto, and any and all bonds, stocks and other property of every kind or description (notwithstanding that the same are not now particularly set forth in this indenture), which, from time to time, in the manner hereinafter provided, shall be designated in the verified certificates to be furnished by the Railroad Company to the Trustee whenever it shall make any call for any of the \$5,000,000 "Prior Lien Bonds" reserved under the provisions of this indenture for enlargement and improvement of terminal facilities, including elevation of tracks at Jersey City, Buffalo and elsewhere, additional wharf facilities at New York, reducing grades, constructing double track and purchasing additional equipment; or whenever it shall make any call for any of the \$17,000,000 "General Lien Bonds" reserved under the provisions of this indenture for construction, equipment, additions to or improvements or purchases of property; and also any and all franchises and rights of any kind relating to any and all lines of railway, extensions, branches and other property constructed or acquired from the use of any such Prior Lien bonds or General Lien bonds or their proceeds.

INCLUDING any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine-houses, freight-houses, wood-houses, machine shops and other shops, turntables, water-stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind in anywise or at any time belonging or appertaining to any and every line of railway at any time subject to the lien of this indenture, or to any branch or operated line thereof, or provided for use thereon, or in connection therewith; and any and all lands designed for depots, warehouses or other structures at any terminus, or on or along such lines of railway, or upon or along any such branch or operated line; and any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels now or hereafter acquired or provided for use upon such lines of railway or branches, or upon any other line or branch or upon any operated line; and any and all lease-holds, leases, rights under lease, or contract, covenants and agreements, terms or parts of terms; and any and all property, real or personal, of every kind and description, now or hereafter

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acquired for use upon, or in connection with, or for the purpose of, such lines of railway, or any such branch, or operated line; and any and all corporate rights, privileges and franchises which the Railroad Company now has, or hereafter can or shall acquire, possess or exercise in, to, upon, or in any respect of such lines of railway or branches or any operated line, or any part thereof, necessary for, or appertaining to, the construction, maintenance or operation of such lines of railway or any such branch or operated line, or any part thereof; and any and all the rents, issues, profits, tolls and other income of such lines of railway, and of any and all branches and operated lines; and also any and all the rights, privileges, franchises, properties, real or personal, rights and things which the Railroad Company may or shall hereafter possess, or become entitled to possess, for the purposes of, or in connection with, such lines of railway or any such branch or operated line.

TOGETHER with all and singular the franchises, rights and privileges now or hereafter appurtenant to or used in connection with, the lines of railway above mentioned, or any branch or operated line thereof.

Also the following shares of stock, to be transferred to the Trustee as hereinafter provided:

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Name of Company.	Par Value Per Share.	No. of Shares.
Buffalo, New York and Erie Railroad Company	\$100	8,238
Jefferson Railroad Company.....	50	41,909
Buffalo, Bradford and Pittsburgh Railroad Company	100	21,899
Bergen County Railroad Company.....	100	2,000
Middletown and Crawford Railroad Company	50	1,600
Newark and Hudson Railroad Company.....	100	2,500
Paterson, Newark and New York Railroad Company	50	5,000
Bergen and Dundee Railroad Company.....	100	400
Long Dock Company.....	100	8,000
New York, Lake Erie and Western Docks and Improvement Company	100	6,040
Suspension Bridge and Erie Junction Rail- road Company	100	4,992
Buffalo Creek Railroad Company.....	100	1,250
Chicago and Erie Railroad Company.....	100	1,000
Pavonia Ferry Company.....	100	1,000
Hillside Coal and Iron Company.....	100	10,000
Northwestern Mining and Exchange Company	100	5,000
Blossburg Coal Company.....	100	10,000
Tioga Railroad Company, Preferred Stock....	50	3,794
Tioga Railroad Company, Common Stock....	50	7,818
Elmira State Line Railroad Company.....	100	610
Arnot and Pine Creek Railroad Company.....	100	2,550
Union Steamboat Company.....	100	10,000
Union Dry Dock Company.....	500	300
Conesus Lake Railroad Company.....	50	375

ALSO the following bonds, to be delivered to the Trustee as hereinafter provided:

\$185,000 bonds of the Buffalo, Bradford and Pittsburgh Railroad Company, secured by its mortgage dated January 1st, 1865, to Derman B. Eaton, as Trustee.

\$57,200 bonds of the Middletown and Crawford Railroad Company, secured by its mortgage dated April 1st, 1871, to Jonathan M. Matthews, Ambrose S. Murray and Alexander Crawford, as Trustees.

\$250,000 bonds of the Newark and Hudson Railroad Company, secured by its mortgage dated September 20th, 1871, to H. N. Otis, as Trustee.

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\$499,000 bonds of the Paterson and Newark Railroad Company, secured by its mortgage dated January 1st, 1868, to W. C. Rushmore and C. Walsh, as Trustees.

\$604,000 bonds of the New York, Lake Erie and Western Docks and Improvement Company, secured by its mortgage dated June 1st, 1883, to The Farmers' Loan and Trust Company, as Trustee, as modified by the supplemental contract dated

\$1,900,000 bonds of the New York, Lake Erie and Western Coal and Railroad Company, secured by its mortgage dated May 15th, 1882, to the Metropolitan Trust Company of the City of New York and J. Lowber Welsh, of the City of Philadelphia, as Trustees.

\$35,000 bonds of the Suspension Bridge and Erie Junction Railroad Company, secured by its mortgage dated June 1st, 1870, to Horatio N. Otis, as Trustee.

\$9,776,000 Income bonds of the Chicago and Erie Railroad Company, secured by its mortgage dated August 21st, 1890, to New York Security and Trust Company and John B. Elam, as Trustees.

Also, all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company or any one in its behalf to the Trustee, which is hereby authorized to receive any property, at any and all times as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of bonds issued or to be issued hereunder, and to hold and apply any and all such property subject to the terms hereof.

It being intended to include within the grant of this indenture all lines of railway, extensions, branches, real estate and railroad property conveyed to or acquired by, or for the benefit of, the Railroad Company, party of the first part hereto, under or in pursuance of the decree confirming the sale, and the deeds of the Special Master and others executed or to be executed pursuant to such decree, in the suit of Trenor Luther Park against The New York, Lake Erie and Western Railroad Company and The Farmers' Loan and Trust Company; The Farmers' Loan and Trust Company against The New York, Lake Erie and Western Railroad Company and Trenor Luther Park; Consolidated cause, in equity, in the Circuit Court of the

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United States for the Eastern District of New York, and in the various decrees ancillary thereto, wherein also foreclosure was had of the second consolidated mortgage made by the New York, Lake Erie and Western Railroad Company, dated October 5th, 1878, to the Farmers' Loan and Trust Company, of New York, Trustee.

To have and to hold, the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stock and bonds hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee, its successor or successors and assigns forever:

But in trust, nevertheless, as to each of the said two issues of bonds respectively, viz., *primarily* the \$35,000,000 "Prior Lien Bonds" as one issue, and *secondarily* the \$140,000,000 "General Lien Bonds," as a separate, subordinate and subject issue, for the equal, proper and proportionate benefit and security severally and respectively of all and every the present and future holders, *first*, of any and every "Prior Lien Bond," and, *second*, and subject thereto, of any and every "General Lien Bond" issued under and secured by this indenture, as well all those now issued as all hereafter issued in addition thereto or by way of substitution or exchange, in accordance with the terms of this indenture, and for enforcing payment thereof when payable, in accordance with the true intent and meaning of the stipulations of this indenture, and of the said bonds and interest obligations respectively, so that the "Prior Lien Bonds," without regard of time of actual issue, shall have priority and preference, as to both principal and interest, over the "General Lien Bonds," and that the General Lien bonds shall all be subject to the prior and superior lien of the Prior Lien bonds; but without preference, priority or distinction as to lien or otherwise, of any one bond of either of such two issues over any other bond of the same issue, by reason of priority in the execution, delivery or negotiation thereof, and so that each and every bond of either of such two issues, issued and to be issued as aforesaid, shall have, under and by this indenture, the same right, lien and privilege as every other bond of that issue, and the principal and interest of every such bond of either issue shall, subject to the terms hereof, be secured hereby equally and proportionately with every other bond of that issue, as though all had been made,

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executed, delivered and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of all such bonds shall take effect from the day of the date of this indenture, without regard to the date of actual issue, sale or disposition thereof; and so that the lien and security of this indenture, and of all bonds issued hereunder, shall take effect from the day of the date hereof as though upon such day, actually issued, sold and delivered to, and in the hands of, innocent holders for value.

AND IT IS HEREBY EXPRESSLY COVENANTED that all such bonds and the coupons for interest thereon are to be issued, certified, delivered, received and negotiated, and that the mortgaged properties and franchises are to be held by the Trustee subject to the following further covenants, conditions and provisions, viz.:

ARTICLE ONE.

All bonds hereby secured shall, from time to time, by the Railroad Company be executed and delivered for certification to the Trustee, which shall thereupon certify and deliver the same as provided in this Article. Only such bonds as shall bear the Trustee's certificate duly endorsed thereon and duly signed shall be secured by this indenture or shall be entitled to any lien or benefit hereunder; and every such certificate of the Trustee upon any bond executed in behalf of the Railroad Company shall be conclusive evidence that the bond so certified has been duly issued hereunder and is entitled to the benefit of the trust hereby created. Such certificates may be made and bonds may be delivered hereunder in advance of registration or record of this indenture.

The bonds and certificates for shares hereby pledged as specifically enumerated in the granting clauses hereof, shall, prior to the certification of any bonds hereunder, be assigned and delivered to The Farmers' Loan and Trust Company, Trustee under this indenture.

Before certifying or delivering any coupon bond, the Trustee shall cut off and cancel all coupons thereof then matured; and the Trustee shall not certify or deliver any registered bond bearing interest from any date more than six months prior to such certification or delivery.

A.

Of the bonds authorized to be issued under and secured by this indenture thirty-five million dollars (\$35,000,000) shall be **Prior Lien Bonds**.

SECTION 1. Of the Prior Lien bonds authorized to be issued under and secured by this indenture, bonds to the amount of fifteen million six hundred thousand dollars (\$15,600,000) shall be certified by the Trustee, and upon a resolution of the Board of Directors of the Railroad Company shall be delivered to Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, or their survivors or successors, the Committee named in the certificate of incorporation of the Railroad Company, immediately upon the execution and delivery hereof, or as soon as may be thereafter.

Sec. 2. Out of and from the remainder of such authorized issue of Prior Lien bonds there shall be reserved, not immediately to be executed or certified by the Trustee, bonds to the amount of fourteen million four hundred thousand dollars (\$14,400,000).

Said fourteen million four hundred thousand dollars (\$14,400,000) of such Prior Lien bonds shall be certified by the Trustee and delivered to the Railroad Company, from time to time hereafter, as and when called for by resolution of the Board of Directors of the Railroad Company, stating, in effect, that the same are to be used from time to time to acquire railroad and railroad equipment, now of the New York, Pennsylvania and Ohio Railroad Company (substantially as covered by its so-called "First Mortgage of May 6, 1880," to the Farmers' Loan and Trust Company, Trustee), subject to "Prior Lien" bonds of said New York, Pennsylvania and Ohio Railroad Company, Equipment obligations and rentals now resting thereon, or to acquire securities of the New York, Pennsylvania and Ohio Railroad Company, or of a successor Company or Companies, in amounts and to an extent which in the opinion of the Board of Directors of the Railroad Company shall give to the Railroad Company, or enable it to acquire, satisfactory control of the operation and management of said railroad.

If said Prior Lien Bonds hereby secured shall be used to acquire securities of the New York, Pennsylvania and Ohio Railroad Company, the Trustee shall certify and deliver said

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\$14,400,000 of Prior Lien Bonds hereby secured from time to time only at the rate of one thousand dollars par value of such Prior Lien Bonds for each five thousand dollars par value of said so-called first mortgage bonds, which shall be acquired and pledged hereunder. If securities of a successor company or companies shall be acquired, then the Trustee shall reserve out of said \$14,400,000 of Prior Lien Bonds hereby secured, an amount equal at par to the aggregate amount of all the secured and unsecured indebtedness of such successor company or companies that shall not be acquired and pledged hereunder, other than the said New York, Pennsylvania and Ohio Prior Lien Bonds and equipment obligations and liens upon or for the benefit of properties leased or controlled by said New York, Pennsylvania and Ohio Railroad Company and ordinary operating accounts; and the bonds so reserved shall from time to time be certified and delivered by the Trustee when and as a like amount of such secured or unsecured indebtedness shall be discharged or acquired by the Railroad Company, and assigned to the Trustee hereunder.

As to the existence and amount of any such secured or unsecured indebtedness of a successor corporation, the written opinion of the Counsel of the Railroad Company shall, according to its terms and to any action pursuant thereto, be sufficient evidence and authority to the Trustee.

When delivering any bonds under this section the Trustee shall require either the immediate subjection of the property acquired to the lien thereof (excepting, however, certain lands and interests in lands of the New York, Pennsylvania and Ohio Railroad Company hereinbefore mentioned), or, if this be not reasonably practicable, shall deliver the bonds upon such trusts as are, in its judgment, calculated to accomplish such subjection within a reasonable period, but the Trustee shall not be liable for any error of judgment in this respect.

Sec. 3. Out of the remainder of such authorized issue of Prior Lien bonds there shall be reserved, not immediately to be executed or certified by the Trustee, bonds to the amount of five million dollars (\$5,000,000).

Said five million dollars of such Prior Lien bonds shall be certified by the Trustee and delivered to the Railroad Company from time to time hereafter, when and as called for by resolution of the Board of Directors to the effect that the bonds so

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called for and their proceeds are to be used, upon lines or property now or hereafter owned by the Railroad Company, and subject to the lien of this indenture or upon lines or property of any company of which a majority of the capital stock shall be subjected to the lien of this indenture, only for the following purposes, or some one or more of them, viz.: (1) enlargement and improvement of terminal facilities, including elevation of tracks or other improvement of crossings at Jersey City, Buffalo and elsewhere, (2) additional wharf facilities at New York or Jersey City, (3) purchasing additional equipment, (4) reducing grades and constructing double track, or to reimburse the Railroad Company for outlays made subsequent to the date hereof for the purposes aforesaid or some one or more of them.

At any time or times, upon any such resolution, and with the written consent of the Voting Trustees (under the voting trust authorized in the certificate of incorporation of the Railroad Company), or the greater number of those then acting as such Voting Trustees, such Prior Lien bonds shall be so delivered to the amount specified in every such resolution, not in any one instance exceeding \$1,000,000, but, in every instance after the first delivery of such bonds (before delivering any additional amount of such bonds) the Trustee shall require the Railroad Company to furnish, in addition to such resolution of the Board, the verified certificate or certificates of some person or persons cognizant of the facts, stating

(a) that all such bonds and the proceeds of all such bonds certified and delivered on or subsequent to the date of the last preceding resolution, or resolution and verified certificate, as the case may be, have been used for such purposes, or for some one or more of them, or to reimburse the Railroad Company as above provided;

(b) the amount of such bonds so certified and delivered, which, or the proceeds of which, on or subsequently to the date of the last preceding resolution, or resolution and verified certificate (as the case may be), shall have been actually used for any such purpose, or to reimburse the Railroad Company, as above provided, and specifically indicating each and every such acquisition or construction, and also stating in detail the amount of bonds, or proceeds of bonds, used or expended for each and every such purpose.

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(c) that the price paid in bonds or their proceeds for such construction or acquisition was not in excess of the fair value of the work done or property acquired, and that the bonds included in such verified certificate were sold, disposed of or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition or accounting.

(d) that of the expenditures for which such certificate shall state that Prior Lien Bonds or their proceeds have been used, no part has been provided by the use of General Lien Bonds; and that of the expenditures for which reimbursement shall be claimed, no part has been obtained by the Railroad Company out of the General Lien Bonds or their proceeds.

Every such verified certificate shall be accompanied by the written statement of the President or of one of the Vice-Presidents, and of the Auditor or Treasurer of the Railroad Company that they believe such certificate to be true, and that such bonds have been used and the expenditures therein certified have been made only for purposes properly chargeable to capital account of the Railroad Company, and that no part thereof has been used for ordinary maintenance of the lines of railway or other property owned or in any way controlled by the Railroad Company or for replacements or other purposes ordinarily treated by railroad companies as a part of their operating expenses.

Such written consent of Voting Trustees, resolutions, statements and verified certificates shall be deemed and taken as plenary authority to the said Trustee for its certification of such Prior Lien bonds or of any one or more of them.

B.

Of the bonds authorized to be issued under and secured by this indenture, one hundred and forty million dollars (\$140,000,000) shall be GENERAL LIEN BONDS.

SEC. 4. Of the General Lien bonds authorized to be issued under and secured by this indenture, bonds to the amount of Thirty million nine hundred and twenty-seven thousand dollars (\$30,927,000) shall be certified by the Trustee and shall be delivered to Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas or their survivors or successors, the Committee named in the certificate of incorporation of the Railroad Company, immediately upon the execution and delivery of this indenture, or as soon as may be thereafter.

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SEC. 5. Out of and from the remainder of such authorized issue of General Lien bonds there shall be reserved, not immediately to be executed or certified by the Trustee, bonds to the amount of Seventy-nine million nine hundred and eighteen thousand dollars (\$79,918,000), for the purpose of providing for the purchase, redemption and acquisition by the Trustee, as hereinafter provided, of bonds secured by the thirty-six following mortgages (such mortgages being stated and described with substantial accuracy and as generally known) :

I.

The first mortgage or charge created by an Act of the Legislature of the State of New York, passed May 14, 1845, entitled "An Act in relation to the Construction of the New York and Erie Railroad," to secure an issue of bonds of said New York and Erie Railroad Company, bearing interest at the rate of seven per cent. per annum and payable on July 1st, 1867, which bonds have been duly extended until May 1, 1897, at interest at the rate of 7 per cent. per annum, and of which \$2,482,000 are now outstanding and unpaid.

The second mortgage made by said New York and Erie Railroad Company, dated March 1, 1849, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable March 1, 1859; which bonds have been duly extended until September 1, 1919, at interest at the rate of 5 per cent. per annum, payable in gold, and of which \$2,149,000 are now outstanding and unpaid.

The third mortgage made by said New York and Erie Railroad Company, dated March 1, 1853, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable on March 1, 1883, which bonds have been duly extended until March 1, 1923, at interest at the rate of 4½ per cent. per annum, payable in gold, and of which \$4,617,000 are now outstanding and unpaid.

The fourth mortgage made by said New York and Erie Railroad Company, dated August 15, 1857, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable on October 1, 1880, which bonds have been duly extended until October 1, 1920, at interest at the rate of 5 per cent. per annum, payable in gold, and of which \$2,926,000 are now outstanding and unpaid.

The fifth mortgage made by said New York and Erie Railroad Company, dated June 1, 1858, to secure an issue of bonds of said company bearing interest at the rate of 7 per cent. per annum and payable on June 1, 1888, which bonds have been duly extended until June 1, 1928, at interest at the rate of 4 per cent.

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per annum, payable in gold, and of which \$709,500 are now outstanding and unpaid.

The mortgage made by the Buffalo branch of the Erie Railway and the Erie Railway Company, dated July 1, 1861, to secure a certain issue of bonds bearing interest at the rate of 7 per cent. per annum and payable on July 1, 1891, which bonds have been duly extended until July 1, 1931, at interest at the rate of 4 per cent. per annum, payable in gold, and of which \$182,600 are now outstanding and unpaid.

The mortgage made by said Erie Railway Company, dated September 1, 1870, to secure a certain issue of its bonds (commonly called "First Consolidated Mortgage Bonds"), bearing interest at the rate of 7 per cent. per annum and payable September 1, 1920, and of which \$16,891,000 are now outstanding and unpaid.

Also, \$3,705,977.10 First Consolidated Mortgage Funded coupon Bonds of the New York, Lake Erie and Western Railroad Company, dated September 1st, 1878, bearing interest at the rate of 7 per cent. per annum, payable September 1st, 1920, and secured by a pledge of coupons for interest on the First Consolidated mortgage bonds of the Erie Railway Company, all of which are now outstanding and unpaid.

The mortgage made by the Newburgh & New York Railroad Company, dated August 1st, 1868, to Jay Gould, as Trustee, to secure an issue of bonds of said Company and payable January 1st, 1889, which bonds have been duly extended until January 1, 1929, with interest at the rate of 5 per cent. per annum in gold, and of which \$250,000 are now outstanding and unpaid.

The mortgage made by the Buffalo and Southwestern Railroad Company, dated December 17, 1877, to Elbridge G. Spaulding, as Trustee, to secure an issue of bonds of said Company bearing interest at the rate of 6 per cent. per annum, payable December 1, 1907, of which \$1,500,000 are now outstanding and unpaid.

The mortgage made by the Lockport and Buffalo Railroad Company, dated October 1st, 1877, to Matthias H. Arnot, as Trustee, to secure bonds bearing interest at 7 per cent. per annum, and due October 1st, 1897, of which \$140,000 are now outstanding and unpaid.

II.

The mortgage made by the Long Dock Company, dated November 16, 1885, to Anthony J. Thomas and Charles Edward Tracy, as Trustees, to secure an issue of gold bonds of said Company, bearing interest at the rate of 6 per cent. per annum and payable October 1, 1935, of which \$7,500,000 are now outstanding and unpaid.

The mortgage made by the Jefferson Railroad Company, dated January 1st, 1889, to the Fidelity Insurance, Trust and

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Safe Deposit Company, as Trustee, to secure an issue of gold bonds of said Company, bearing interest at the rate of 5 per cent. per annum and payable January 1, 1909, of which \$2,800,000 are now outstanding and unpaid.

The mortgage made by the Jefferson Railroad Company on its Honesdale Branch, dated July 1st, 1867, to John Torrey, Z. H. Russell and Coe F. Young, as Trustees, to secure an issue of bonds of said Company, payable July 1, 1927, of which \$204,000, bearing interest at $4\frac{1}{2}$ per cent. per annum, are now outstanding and unpaid.

The mortgage made by the Jefferson Railroad Company on its Honesdale Branch, dated January 1st, 1869, to John Torrey, Z. H. Russell and Coe F. Young, as Trustees, to secure an issue of bonds of said Company, payable July 1st, 1927, and bearing interest at the rate of 6 per cent. per annum, of which \$96,000 are now outstanding and unpaid.

The mortgage made by the Buffalo, Bradford and Pittsburgh Railroad Company, dated January 1st, 1865, to Dorman B. Eaton, as Trustee, to secure an issue of gold bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable January 1, 1896, which bonds other than those pledged hereunder are now outstanding and unpaid to the amount of \$395,000.

The mortgage made by the Bergen County Railroad, dated March 1st, 1881, to the Farmers' Loan and Trust Company, as Trustee, to secure an issue of bonds of said Company bearing interest at the rate of 6 per cent. per annum and payable April 1, 1911, of which \$200,000 are now outstanding and unpaid.

The mortgage made by the New York, Lake Erie and Western Coal & Railroad Company, dated May 15, 1882, to the Metropolitan Trust Company of New York and John Lowber Welsh, of the City of Philadelphia, as Trustees, to secure an issue of gold bonds of said Company, bearing interest at the rate of 6 per cent. per annum, and payable May 1, 1922, which bonds, other than those pledged hereunder, are now outstanding and unpaid to the amount of \$1,100,000.

The mortgage made by the New York, Lake Erie and Western Docks & Improvement Company, dated June 1, 1883, to the Farmers' Loan and Trust Company, Trustee, as modified by the supplemental contract dated February 8th, 1890, to secure an issue of bonds of said Company, bearing interest at the rate of 6 per cent. per annum, and payable July 1, 1913, which bonds, other than those pledged hereunder, are now outstanding and unpaid to the amount of \$3,396,000.

The mortgage made by the Suspension Bridge and Erie Junction Railroad Company, dated July 1st, 1870, to Horatio N. Otis, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable July 1, 1900, of which bonds, other than those pledged hereunder, \$965,000 are now outstanding and unpaid.

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The mortgage made by the Tioga Railroad Company, dated April 24th, 1852, to Theodore Dehon, Alfred S. Fraser and Watts Sherman, as Trustees, to secure an issue of bonds of said Company, bearing interest at the rate of 5 per cent. per annum, and payable November 1, 1915, of which \$239,500 are now outstanding and unpaid.

The mortgage made by the Tioga Railroad Company, dated October 1st, 1875, to George M. Diven, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable October 1, 1905, of which \$265,000 are now outstanding and unpaid.

The mortgage made by the Tioga Railroad Company, dated November 1st, 1876, to Myron P. Bush, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum and payable November 1st, 1896, of which \$125,000 are now outstanding and unpaid.

The mortgage made by the Elmira and State Line Railroad Company, dated October 1st, 1875, to Matthias H. Arnot, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 7 per cent. per annum, and payable October 1, 1905, of which \$160,000 are now outstanding and unpaid.

The mortgage made by the Chicago and Atlantic Railroad Company, dated November 1st, 1888, to Central Trust Company of New York, as Trustee, to secure an issue of bonds of said Company, known as "Terminal Bonds," bearing interest at the rate of 5 per cent. per annum, and payable July 1, 1918, of which \$300,000 are now outstanding and unpaid.

The mortgage made by the Chicago and Erie Railroad Company, dated August 21st, 1890, to the Central Trust Company of New York and Edward Daniels, as Trustees, to secure an issue of bonds of said Company, bearing interest at the rate of 5 per cent. per annum, and payable May 1, 1982, of which \$12,000,000 are now outstanding and unpaid.

The mortgage made by the Blossburg Coal Company, dated January 1st, 1878, to Amaziah S. Kendall, as Trustee, to secure an issue of bonds of said Company, payable January 1st, 1893, which bonds have been duly extended until November 1, 1915, with interest at the rate of 5 per cent. per annum, payable in gold, and of which \$100,000 are now outstanding and unpaid.

The mortgage made by the Buffalo, New York and Erie Railroad Company, dated June 1st, 1876, to John A. C. Gray, as Trustee, to secure bonds, bearing interest at 7 per cent. per annum, due June 1, 1916, of which \$2,380,000 are now outstanding and unpaid.

III.

The mortgage made by the Montgomery and Erie Railroad Company, dated May 1st, 1866, to William Murray, Nathan C. Sanford and Henry Merriam, as Trustees, to secure bonds bearing interest at 5 per cent. per annum and due May 1st, 1926, of which \$130,000 are now outstanding and unpaid.

The mortgage made by the Montgomery and Erie Railroad Company, dated October 1st, 1867, to John M. Quackenbos and Bartow Wright, as Trustees, to secure bonds bearing interest at 5 per cent. per annum, and due October 1st, 1927, of which \$40,500 are now outstanding and unpaid.

The mortgage made by the Goshen and Deckertown Railroad Company, dated July 1st, 1868, to Ambrose S. Murray, Robert H. Berdell and John Stewart, as Trustees, to secure bonds bearing interest at 6 per cent. per annum, due July 1, 1928, of which \$186,500 are now outstanding and unpaid.

The mortgage made by the Goshen and Deckertown Railroad Company, dated November 1st, 1869, to Ambrose S. Murray and Robert H. Berdell and John Stewart, as Trustees, to secure bonds bearing interest at 6 per cent. per annum, due November 1, 1929, of which \$60,000 are now outstanding and unpaid.

The mortgage made by the Middletown and Crawford Railroad Company, dated April 1st, 1871, to Jonathan M. Matthews, Ambrose S. Murray and Alexander Crawford, as Trustees, to secure bonds bearing interest at $4\frac{1}{2}$ per cent. per annum, due April 1, 1921, of which bonds, other than those pledged hereunder, are now outstanding and unpaid to the amount of \$8,800.

IV.

The mortgage made by the New York, Pennsylvania and Ohio Railroad Company, dated May 5, 1880, to the Farmers' Loan and Trust Company, as Trustee, to secure an issue of gold bonds of said Company, payable March 1st, 1895, which bonds have been duly extended to March 1st, 1935, at $4\frac{1}{2}$ per cent. per annum interest, and of which \$8,000,000 are now outstanding and unpaid.

V.

The mortgage made by the Cleveland and Mahoning Valley Railroad Company, dated January 1st, 1888, to Central Trust Company of New York, as Trustee, to secure an issue of \$3,000,000 bonds of said Company, bearing interest at the rate of 5 per cent. per annum, and payable January 1st, 1938, and now or hereafter outstanding and unpaid.

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The mortgage made by the Sharon Railway Company, dated June 1st, 1889, to Farmers' Loan and Trust Company, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of $4\frac{1}{2}$ per cent. per annum, payable June 1st, 1919, of which \$164,000 are now outstanding and unpaid.

The mortgage made by the Newcastle and Shenango Valley Railroad Company, dated July 1st, 1887, to the Farmers' Loan and Trust Company, as Trustee, to secure an issue of bonds of said Company, bearing interest at the rate of 6 per cent. per annum, and payable July 1st, 1917, of which \$250,000 are now outstanding and unpaid.

SEC. 6. The said \$79,918,000 General Lien bonds hereby secured and reserved for the redemption, purchase or acquisition of a like amount of bonds (hereinafter called "old bonds") severally and respectively secured by the mortgages mentioned in the last above section, shall from time to time be issued, certified and delivered when authorized by resolution of the Board of Directors of Railroad Company only as follows, viz.:

(a) Whenever and as often as the Railroad Company shall tender or cause to be tendered any such old bonds, or bonds issued in exchange therefor under the provisions of Article Two, Section 2 hereof, together, in either case, with all unmatured interest obligations thereunto belonging, the Trustee forthwith shall receive the same, and in exchange therefor shall certify and deliver to the Railroad Company, or upon its order, a like amount at par of the said bonds hereby secured and reserved.

(b) Whenever and as often as the Railroad Company, on or after the maturity of any such old bonds, or of bonds issued in exchange therefor, as above, or on or after a date eight months prior to the maturity of such old bonds, or of bonds issued in exchange therefor, as above, shall tender or cause to be tendered, cash sufficient to purchase or to pay the same at par (and shall also provide to the satisfaction of the Trustee for any interest due upon such bonds or accruing before their maturity), the Trustee forthwith shall receive such cash, and in consideration thereof shall certify and deliver to the Railroad Company or upon its order an equivalent amount at par of the said bonds hereby secured and reserved.

All cash so received by the Trustee shall be by it held and applied to the purchase at par, or, if such purchase be impracticable, to the payment at par of an equivalent amount of the old bonds, or of bonds issued in exchange therefor, as above,

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for the purchase or payment of which such case shall have been deposited.

Each and every old bond, or bond issued in exchange therefor, as above, received by the Trustee, shall be by it stamped with the words "Not negotiable, but held in trust for the purposes declared in the First Consolidated Mortgage Deed of the Erie Railroad Company, dated December 10th, 1895," and shall be by it held without extinguishment as additional security for the payment of this mortgage debt until at least ninety-nine per cent. of all bonds of the issue of which such bond is one, shall either have been paid and canceled, or shall have been received by the Trustee hereunder, whereupon in its discretion it may cancel and surrender to the Railroad Company all bonds of such issue then in its possession.

Provided, however, that no bond of any of the issues enumerated under II, III, IV, and V, of Section 5 of this article shall be canceled, unless or until all of the property mortgaged to secure the issue to which such bond belongs, shall have been lawfully vested free from other encumbrance in the Railroad Company, its successors or assigns, whereupon such property so mortgaged for such issue of old bonds forthwith, *ipso facto*, and without further conveyance, shall become and be part of the premises hereby mortgaged, and shall be hereby conveyed, as though herein expressly and specifically conveyed, mortgaged and pledged. Nevertheless, the Railroad Company, its successors and assigns, may, and shall, execute any and all transfers, assignments or conveyances, from time to time, desired by the Trustee in order expressly and specifically to subject to the lien of this indenture any property so acquired. Upon every such conveyance of the property mortgaged for any one of such issues, the Trustee may cancel and surrender to the Railroad Company all of the bonds of such issue then held by it, if not more than one per cent. of the total issue shall then remain outstanding and unsatisfied.

If at the time of the maturity of any such bonds, the holder thereof shall decline to sell and to deliver the same at par and accrued interest, but shall require the payment and cancellation thereof, then upon such payment and cancellation the Trustee shall certify and deliver to the Railroad Company, or upon its order, a like amount at par of said bonds reserved hereunder as though said matured bonds had been purchased

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and had been received by the Trustee; but in every such case, if such matured bonds shall be of any one of the issues enumerated in II., III., IV., or V., of Section 5 of this article, and the Railroad Company shall not as above provided have acquired the property mortgaged to secure such bonds, the Railroad Company shall take and execute and shall cause the Company owning such property to take and execute such action, proceedings and instruments as in the opinion of the Trustee may reasonably be required to subrogate the Trustee to all the claim and security of the holder of such bonds, or else the Railroad Company shall cause to be issued and deposited with the Trustee an amount of renewal or other bonds upon the same property at least equivalent thereto at par.

So long as the Railroad Company shall not be in any default under this indenture in respect of which some request, proceeding or action herein authorized shall have been made or taken by the Trustee or by holders hereby secured, the Trustee shall not collect or be entitled to collect, except with the assent of the Railroad Company, the interest on any old bond at any time held by it hereunder or on any bond now or hereafter pledged with the Trustee under any provision of this indenture. Any sums so collected by it with the assent of the Railroad Company, unless it shall then be in default as aforesaid, shall at once be paid over to the Railroad Company except as hereinafter expressly otherwise provided.

The Railroad Company shall provide and maintain books wherein it shall register as the property of the Trustee all such old bonds received by the Trustee; and except as herein expressly provided no such old bond shall be canceled, unless the holder thereof, at time of maturity, shall require cancellation as a condition of surrender.

SEC. 7. Out of the remainder of the authorized issue hereunder, there shall be reserved, to be executed and to be certified by the Trustee, not immediately, but from time to time only when and as called for by resolutions of the Board of Directors, to the effect that the bonds so called for and their proceeds are to be used for such purpose, bonds to the amount of eight million and sixty-three thousand dollars (\$8,063,000) for the purchase and acquisition by the Railroad Company and simultaneous pledge hereunder to the Trustee, as hereinafter pro-

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vided, of valid certificates of shares of stock issued by the following companies (other than the shares of some of such companies deliverable to the Trustee at the time of execution hereof), viz.:

Name of Company.	Par.	Shares.	Limit of Exchange per share.
Buffalo, New York and Erie Railroad Company	\$100	700	\$150
Montgomery and Erie Railroad Company	10	15,000	7
Goshen and Deckertown Railroad Company	10	9,619	7
Jefferson Railroad Company.....	50	12	50
Rochester and Genesee Valley Railroad Company	100	1,058	100
Buffalo, Bradford and Pittsburgh Railroad Company	100	965	10
Middletown and Crawford Railroad Company	50	841	10
Suspension Bridge and Erie Junction Railroad Company	100	8	100
Tioga Railroad Company.....	50	6	10
Elmira State Line Railroad Company	100	202	100
Newcastle and Seneca Valley Railroad Company	50	2,915	5
Sharon Railroad Company.....	50	9,067	62½
Cleveland and Mahoning Valley Railroad Company	100	30,000	22½

From time to time as and when the Trustee shall receive from the Railroad Company any such shares, it shall in exchange therefor and when and as called for by resolution of the Board of Directors of the Railroad Company certify and deliver to it bonds reserved under this Section in an amount not exceeding the value of such shares then so received at the limit of exchange above stated, which shares shall simultaneously be transferred into the name of the Trustee.

Whenever it shall make any delivery of bonds reserved as provided in this section, the Trustee shall require and receive from the Railroad Company in addition to such resolution of the Board of Directors the affidavit of one of its officers

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recognition of the facts, stating the amount in bonds actually requisite for the express purpose of enabling the Railroad Company to acquire such shares then to be received by the Trustee. In no event shall any bonds be delivered by the Trustee in excess of the amount so stated; but if such amount be less than that in this section limited as the price of such shares, the surplus so left in possession of the Trustee, may thereafter be by it certified and delivered to the Railroad Company when and as necessary to enable it so to acquire other shares above mentioned, at prices exceeding those in this section stated; provided, that such necessity and the reasons therefor shall also be stated in such affidavit of the officer of the Railroad Company; and that, except as to such surplus bonds, deliveries shall not be made in excess of the limits imposed by this section; and provided further, that the Trustee shall not certify or deliver any such bonds in exchange for shares of the Newcastle and Shenango Valley Railroad Company, the Sharon Railroad Company, or the Cleveland and Mahoning Valley Railroad Company, until after the Railroad Company shall have acquired, as provided in Section 2 of this Article, the New York, Pennsylvania and Ohio Railroad or the control thereof, and shall have subjected the same to the lien of this indenture.

Sec. 8. Out of the remainder of the authorized issue of General Lien Bonds hereunder there shall be reserved, to be executed and to be certified by the Trustee, not immediately, but from time to time only when and as called for by resolution of the Board of Directors to the effect that the bonds so called for and their proceeds are to be used for such purpose, bonds to the amount of four million and ninety-two thousand dollars (\$4,092,000) for retiring or acquiring, as hereinafter provided, equipment-bonds and equipment-trust certificates, warrants, notes or obligations, which shall mature as hereinafter set forth, and to reimburse the Railroad Company for such of them as from time to time hereafter it shall acquire.

I.

Equipment Trust Certificates, Warrants, Notes and Obligations of, or affecting certain equipment formerly of the New York, Lake Erie and Western Railroad Company and now of the Erie Railroad Company, maturing after November 1st, 1898, viz.:

Baldwin Locomotive Works	\$ 282,447 72
Car Trust of New York, Series C, D, E, F and G ..	1,859,515 00

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II.

Equipment Trust obligations of and affecting certain equipment of the New York, Pennsylvania and Ohio Railroad Company, viz.:

Bonds of the New York, Pennsylvania and Ohio Railroad Company, known as *London Equipment Trust bonds of 1888*, of which about £181,400 are now outstanding and unpaid.

Bonds of the New York, Pennsylvania and Ohio Railroad Company, known as *Equipment Trust bonds of 1890*, of which about £208,600 are now outstanding and unpaid.

In determining the value of sterling bonds, the Trustee shall treat one pound sterling as the equivalent of five dollars.

From time to time, and only when and as the Trustee shall receive from the Railroad Company, in addition to such resolution of the Board of Directors, the certificate of its President, or one of its Vice-Presidents and of its Treasurer or Auditor, and also (if the Trustee so desire) any additional evidence necessary to satisfy the Trustee (1) that such equipment bonds, certificates, warrants, notes or obligations have been paid to the amount specified in such certificate, and (2) that such payment has not been stated or included in any prior certificate hereunder, the Trustee shall certify and, upon the written order of the Railroad Company, shall deliver such reserved bonds at par to an amount equal to the payment of such outstanding obligations shown to have been made, by such certificate or other evidence, if any, required by the Trustee, provided, however, that the Trustee shall not certify or deliver any such bonds on account of "*London Equipment Trust Bonds of 1888*" or "*Equipment Trust Bonds of 1890*," until after the Railroad Company shall have acquired, as provided in Section 2 of this Article, the New York, Pennsylvania and Ohio Railroad, or the control thereof, and shall have subjected the same to the lien of this indenture.

SEC. 9. Out of the remainder of the authorized issue hereunder, there shall be reserved, to be executed, and to be certified by the Trustee, not immediately but only when and as called for by resolution of the Board of Directors as next hereinafter provided, bonds to the amount of seventeen million dollars (\$17,000,000), which from time to time, on and after January 1st, 1898, the Trustee shall certify upon resolutions of the Board of Directors of the Railroad Company, stating that such bonds, to the amount stated in such resolutions, or

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the proceeds thereof, are to be set aside separate and apart from all other assets and funds of the Railroad Company, and are to be used only for the construction or acquisition of branch lines or extensions subsequent to December 31st, 1897, or for the acquisition of stocks or bonds thereof, subsequent to said date; or for the purchase or construction of rolling stock subsequent to said date; or for construction or betterments, subsequent to said date, or for purchase of additional property subsequent to said date, all such construction, betterments or property purchased to be upon, along or appurtenant to lines of railway of the Railroad Company, at the time of such use subject to the lien of this Indenture, or upon, along or appurtenant to the lines of railway or the terminal properties of some one or more of the companies mentioned in the schedule of stocks in the granting clauses hereof (other than the Buffalo Creek Railroad Company, the Hillside Coal and Iron Company, the Northwestern Mining and Exchange Company or the Blossburg Coal Company), or of other companies of whose capital stock, at least a majority in amount at the time of such use shall be pledged hereunder; or to reimburse the Railroad Company for outlays made subsequent to the thirty-first day of December, eighteen hundred and ninety-seven, for the purposes aforesaid or some one or more of them.

From and out of the \$17,000,000 General Lien bonds reserved under this section, the Trustee shall certify and shall deliver to the Railroad Company, or upon its order, bonds as follows, viz.:

Upon January 1, 1898, or upon any day thereafter, but prior to December 31st, 1898, upon such resolution or resolutions of the Board of Directors of the Railroad Company, such amount of such General Lien bonds not exceeding \$1,000,000 bonds, par value, as specified in such resolution, shall be so certified and delivered.

In each and every calendar year after December 31, 1898, there shall be so certified and delivered such additional amount of such General Lien bonds, not exceeding \$1,000,000, par value in any calendar year, as from time to time shall be specified in similar resolutions; but in every instance, before certifying and delivering any of the \$17,000,000 General Lien bonds reserved under this section (except the \$1,000,000 deliverable in the year 1898), the Trustee shall require the Railroad Com-

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pany to furnish, in addition to such resolution of the Board, the verified certificate or certificates of some person or persons cognizant of the facts, stating

(a) that all such General Lien bonds and the proceeds of all such General Lien bonds certified and delivered on or subsequent to the date of the last preceding resolution, or resolution and verified certificate, in respect of General Lien bonds, as the case may be, have been used for such purposes, or for some one or more of them, or to reimburse the Railroad Company as above provided;

(b) the amount of such General Lien bonds so certified and delivered, which, or the proceeds of which, on or subsequently to the date of such last preceding resolution, or resolution and verified certificate (as the case may be), shall have been actually used for any such purpose, or to reimburse the Railroad Company, as above provided, and specifically indicating each and every such acquisition or construction of any railroad, track, structure, betterment, rolling stock or other property, and each and every acquisition of the bonds or stock of any Company owning or controlling any railroad or other property (which stock shall be acquired only when a majority of the total capital stock of such Company can and shall have been or shall be thereby obtained unless such majority shall theretofore have been acquired and pledged hereunder) and also stating in detail the amount of bonds, or proceeds of bonds, and cash used or expended for each and every such purpose;

(c) that the price paid in General Lien bonds or their proceeds for such construction or acquisition was not in excess of the fair value of the work done or property acquired, and that the bonds included in such verified certificate were sold, disposed of or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition or accounting;

(d) that of the expenditures for which such certificate shall state that General Lien bonds or their proceeds have been used, no part has been provided for by the use of Prior Lien bonds: and that of the expenditures for which reimbursement shall be claimed no part has been obtained by the Railroad Company out of Prior Lien bonds or their proceeds.

No new property shall be acquired by the use of any such General Lien bonds or their proceeds in any one calendar year

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upon which property there shall be any lien or charges prior to this indenture (excepting any of the mortgages specified in Sections 5 and 8 of this Article which may attach thereto and any undetermined liens or charges incidental to construction and ordinary operating accounts) in excess of one million dollars; and, in case of the acquisition hereunder of any new property, every such verified certificate shall further state whether the property so acquired is known or believed to be subject to any lien or charge prior to this indenture (excepting any of the mortgages specified in Sections 5 and 8 of this Article, and any undetermined liens or charges incidental to construction and ordinary operating accounts), and shall specify the amount of any such prior lien or charge (other than as aforesaid) known or believed to exist; and in case any bonds or any shares of the capital stock of any other Company shall have been acquired by the use of such bonds or their proceeds, every such verified certificate shall state whether the property of such other company whose bonds or stock shall have been so acquired is known or believed to be subject to any lien or charge prior to that securing such bonds of such company, and whether the company, whose capital stock shall have been so acquired, is known or believed to be indebted (except to the Railroad Company) in any amount (except for ordinary operating accounts) and whether its property is known or believed to be subject to any lien, charge or indebtedness, and in each instance specifying the amount of any such debt, lien or charge known or believed to exist. In every case of any such lien, charge or indebtedness (except indebtedness to the Railroad Company or undetermined liens or charges incidental to construction or the lien of any of the mortgages for which a reservation of bonds is made in Sections 5 and 8 of this Article or for ordinary operating accounts), and during the continuance of such lien, charge or indebtedness, the Railroad Company shall, by appropriate instrument or instruments, reserve out of the \$17,000,000 General Lien bonds set apart by this section an amount at par equivalent to all such liens, charges or indebtedness (except as aforesaid) affecting such property hereafter acquired, and the bonds so reserved shall be taken from the \$1,000,000 bonds deliverable under this section in such calendar year, or in the next succeeding calendar year, and shall be executed, certified, delivered and used only

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for the retirement or acquisition of such liens, charges or indebtedness in amounts equivalent at least to the par of the bonds delivered therefor, and all the liens, charges or indebtedness so retired or acquired shall be canceled or held by the Trustee as, in its judgment, shall best protect the holders of the bonds hereby secured.

Every such verified certificate shall be accompanied by the written statement of the President or of one of the Vice-Presidents, and of the Auditor or Treasurer, of the Railroad Company that they believe such certificate to be true, and that such bonds have been used and the expenditures therein certified have been made only for purposes properly chargeable to capital account of the Railroad Company, and that no part thereof has been used for ordinary maintenance of the lines of railway or other property owned or in any way controlled by the Railroad Company or for replacements or other purposes ordinarily treated by railroad companies as a part of their operating expenses. Together with such statements and verified certificates, there shall be delivered to the Trustee certificates for all shares of stock and all bonds so acquired, and such further instruments and conveyances as may be necessary to vest in the Trustee all new property so acquired, and, so far as may be, any and all obligations taken up or acquired with, or by, the said bonds or their proceeds; and also the written opinion of counsel for the Railroad Company to the effect that such instruments and conveyances are sufficient for that purpose, or that no additional instrument or conveyance is necessary. The certificates for all shares of stock so acquired shall be duly transferred into the name of the Trustee, and any bonds so acquired shall, if practicable, be transferred in like manner, or, if not susceptible of such transfer, they shall be plainly endorsed as the property of the Trustee hereunder. Such resolutions, statements, verified certificates and opinions shall be deemed and taken as plenary authority to the said Trustee for its certification of such General Lien bonds or of any one or more of them.

Except to retire or acquire liens, charges or indebtedness for which bonds so used shall have been reserved as hereinbefore provided, General Lien Bonds in excess of an aggregate amount of \$1,000,000 shall not be issued or certified under this section in any one calendar year; *provided*, however, and the appro-

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ation of such \$17,000,000 bonds in and by this Section 9 is all respects subject to the condition, and it is hereby expressly declared, that if the beforementioned Charles H. Coster, his Fitzgerald and Anthony J. Thomas, jointly but not severally, the survivors or survivor of them, from time to time, or before January 1, 1898, by writing addressed to the Railroad Company and to the Trustee, shall require the delivery to them jointly, or upon their joint order or orders, of the whole or any part of \$2,000,000 of said bonds, the Railroad Company shall execute, and the Trustee shall certify and deliver to them jointly, or upon their joint order or orders, bonds to the amount specified in such several requisitions to an aggregate amount not exceeding \$2,000,000 of such bonds; but no such delivery shall impair the preceding provision for delivery of the residue of the \$17,000,000 of bonds to the Railroad Company at various dates subsequent to December 31st, 1897, and shall be in addition to any deliveries under the foregoing provisions of this article.

C.

SEC. 10. The Railroad Company shall not and will not issue, negotiate, sell or dispose of any bonds hereunder, in any manner other than in accordance with the provisions of this indenture, and the agreements in that behalf herein contained, and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it shall and will well and truly apply, or cause to be applied, the same, or the proceeds thereof, and for purposes herein described, and to and for no other different purpose.

SEC. 11. The Railroad Company will make all lawful effort and pledge with the Trustee hereunder the bonds above specified in Section 5, III. and V., at the several dates when the same shall respectively mature: provided that it shall not be required to pay more than par for any such bonds.

SEC. 12. Nothing in this indenture expressed or implied intended, or shall be construed, to confer upon, or to give to, any person or corporation, other than the parties hereto and the holders of bonds issued under and secured by this indenture, any right, remedy or claim upon, under or in respect of this indenture, or any covenant, condition or stipulation thereof; its covenants, conditions and stipulations being intended to

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be, and being for the sole and exclusive benefit of the parties hereto and of the holders of bonds hereby secured.

SEC. 14. Whenever any coupon bond or bonds amounting to \$1,000 or to any multiple of \$1,000, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds without coupons, the Railroad Company shall issue, and the Trustee shall thereupon certify and deliver in exchange for such coupon bond or bonds, a like amount of registered bonds (without coupons), which registered bonds shall be for \$500, or such convenient multiples thereof as the Railroad Company from time to time may establish, and shall bear interest at the same rate as the coupon bonds surrendered and from the date of the last matured coupon thereof. In every such case the Trustee shall forthwith cancel the bond or bonds and coupons surrendered, and deliver the same to the Railroad Company. The interest on such registered bonds without coupons shall be paid only to the several registered holders of such bonds, or upon their written orders.

Whenever any such registered bonds shall be surrendered for transfer, the Railroad Company shall issue, and the Trustee shall certify and deliver to the transferee, a like amount of new registered bonds, upon surrender and cancellation of the bond or bonds transferred. For any such transfer of registered bonds without coupons the Railroad Company, at its option, may make a charge not exceeding one dollar for each new registered bond issued in exchange for any surrendered bond or bonds.

In case any bond issued hereunder shall become mutilated or shall be destroyed, upon the surrender of any such mutilated bond to the Trustee, or upon filing with the Trustee satisfactory evidence of such destruction, the Railroad Company upon receiving indemnity satisfactory to it, may in its discretion, issue, and the Trustee in its discretion may certify, a new bond, bearing the same serial number, in lieu, substitution or exchange for, and upon cancellation of, the bond so mutilated, or in lieu of the bond destroyed.

SEC. 15. Any act or proceeding required or provided by any term of this indenture of any bond or resolution herein recited, to be done or performed by any board or officer of the Railroad Company, shall and may, in event of any change in its existence, be done and performed with like force and effect by the like board or officer of any railroad corporation that shall at the time be lawful sole successor of the Railroad Company.

ARTICLE TWO.

SECTION 1. The Railroad Company will well and truly pay and discharge, or will acquire and pledge hereunder, all of the old bonds mentioned in Article One, Section 5, I., II. and IV., and Section 8, I. and II., at or before the several dates of maturity thereof, provided it shall then be lawfully authorized to issue bonds hereunder for that purpose as provided in Article One hereof, and it will duly, punctually and regularly pay the interest on all such old bonds until the same shall be paid and discharged or acquired and pledged hereunder, excepting, however, that the payment of the bonds of the New York and Erie Railroad Company, secured by the mortgage or charge created by the Act of the Legislature of the State of New York passed May 14, 1845, and amounting to the principal sum of \$2,482,000, may be extended or renewed by the Railroad Company at or before maturity without impairment of the lien or the security of said bonds, for any period or periods, at not over four per cent. per annum interest, principal and interest payable in gold, and that the lien hereof on the property embraced in the mortgage securing such bonds shall be subordinate to the lien of such bonds as so extended; and excepting further that neither the covenants nor restrictions of this section shall apply in respect of any bonds now or hereafter issued by the New York, Pennsylvania and Ohio Railroad Company, or of any corporation (other than the Railroad Company) successor to said Company, unless or until the railroad now of said Company, or securities of said Company or of a successor Company, shall have been acquired and subjected to the lien hereof pursuant to the provisions of Article One, Section 2, hereof.

SEC. 2. As and when, but no further than, expressly required by the terms of any of the old mortgages, the Railroad Company will from time to time cause to be issued thereunder bonds for delivery in exchange for other old bonds for which reservation is made in Article One, Section 5; but no issue shall be made thereunder that shall increase the aggregate old indebtedness of \$79,918,000, or that, except for such exchange, shall increase the indebtedness as stated in said Article One, Section 5, secured by any one or more of said old mortgages; *provided*, however, that neither the covenants nor the restrictions of this paragraph shall apply in respect of any bonds now or hereafter issued by any of the Companies enumerated in Article One,

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Section 5, III. and V., unless all the stock of any such Company shall have been duly pledged hereunder, and then only in respect of the Company of which all the capital stock shall have been so pledged.

SEC. 3. Having possession of the railroad now of the New York, Pennsylvania and Ohio Railroad as aforesaid, or securities therefor acquired and subjected to the lien hereof pursuant to the provisions of Article One, Section 2 hereof, the Railroad Company shall not and will not suffer or permit any default permitting any of the several lessors to terminate any of the existing leases of the Cleveland and Mahoning Valley Railroad, the Sharon Railroad, the Westerman Railroad or the Newcastle and Shenango Valley Railroad, or any lease hereafter made to it, or for its benefit, of any franchises or property now or hereafter belonging to any of the said Railroad Companies.

In case and whenever it shall make default in paying any sum stipulated to be paid in any such present or future lease of any of the said railroads, the Trustee, without affecting any of its rights hereunder, from time to time, in its discretion, may itself pay any sum so in default, and thereupon shall have and forthwith may assert a lien for such advances upon the premises hereby mortgaged and the proceeds thereof, which lien shall be entitled to priority in rank and payment from the income and profits of the mortgaged premises over any bonds hereby secured.

SEC. 4. The Railroad Company will (excepting as otherwise provided in its Buffalo and Southwestern Second Lien Mortgage in respect of that railroad) duly and punctually pay all lawful claims and demands not hereinbefore enumerated, which, if unpaid, might take precedence over this indenture, and each and every company (except the Buffalo Creek Railroad Company), of whose capital stock the greater part is now pledged hereunder or hereafter shall be acquired and pledged hereunder as provided in Section 9 of Article One, at all times during the continuance of such pledge, will duly and punctually pay all lawful claims and demands, which, if unpaid, might take precedence of any mortgage securing bonds of such company, or which might, in any wise, impair the value of such capital stock of such company if pledged hereunder; and the Railroad Company will enforce any and all of its claims and demands against any such company only in such manner as not to prejudice or affect the bonds secured by this indenture.

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The Railroad Company will also at all times take all such action as from time to time may be proper to preserve the corporate rights of every company of whose capital stock the greater part shall be pledged hereunder.

SEC. 5. The Railroad Company shall and will, from time to time, pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the lines of railroad and other premises hereby mortgaged, or upon any part thereof, or upon the income and profits thereof, the lien of which would be prior to the lien hereof, so that the priority of this indenture shall be fully preserved; and if any company of whose capital stock the greater part is now pledged hereunder or hereafter shall be acquired and pledged hereunder as provided in Section 9 of Article One (excepting the Buffalo Creek Railroad Company or any Coal Company in respect of lands upon which mining shall have been abandoned) shall, at any time during the continuance of any such pledge, fail to pay all such taxes, assessments and charges lawfully imposed upon the property of such company or upon the income and profits thereof, it will itself pay and discharge the same.

SEC. 6. Except as herein otherwise expressly provided, the Railroad Company will not sell any bond or share of stock now or hereafter pledged by it under this indenture nor pledge or agree to pledge or hypothecate the same, except subject to the prior lien hereof; it will not by any voluntary act part with the ownership and title of such bonds or stock, or of any part of such bonds or stock, or its equity of redemption therein or the voting power thereof; it will, subject to the lien hereof, hold all and singular such stock (other than the shares of the Buffalo Creek Railroad Company) of any company of whose capital it may control the major part, and exercise its voting power thereon in such manner that it shall retain in itself the rights and powers of a majority shareholder in the capital stock of every such company; and as such holder of such stock it will not by affirmative vote, or by abstaining from voting, sanction or permit any increase of the capital stock of any such company or the creation of any mortgage or other lien upon the railroad or property of any such company, unless effective provision be made that all bonds secured by any such additional mortgage and all additional shares of such stock (which shares shall be fully paid and non-assessable) shall, at the time of their issue,

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be delivered and pledged to the Trustee, to be by it held, subject to all the trusts of this indenture, with the same effect as if such bonds and shares had been delivered and pledged to it herein and at the time of the making hereof. This provision, however, shall not apply to any increase of stock or to the creation of mortgages or other liens by the Buffalo Creek Railroad Company. But nothing herein contained shall prevent the extension at maturity of any bonds now or hereafter pledged to or held by the Trustee under this indenture, and at the time of such pledge secured by any mortgage of any company, or prevent the issue and substitution therefor of other bonds for equivalent amount, adequately secured by similar mortgage; it being distinctly understood that the time for the payment of the principal of any bonds so pledged hereunder may, at or before their maturity, be extended by the Railroad Company (not then being in default hereunder), with the consent of the company which, at the time of such consent, shall own or control the property upon which such bonds so to be extended may be a lien, and also that other bonds for an equivalent amount, adequately secured by similar mortgages, may be issued in substitution therefor, and that in every such case such new bonds shall forthwith *ipso facto* come under the lien and grant of this indenture, and shall forthwith be delivered to the Trustee.

ARTICLE THREE.

SECTION 1. The Railroad Company shall and will well, duly and punctually pay, or cause to be paid, to every holder of any bond issued hereunder and secured hereby, the principal and interest accruing thereon, at the dates and rates and in the manner mentioned therein, or in the coupons thereto belonging, according to the true intent and meaning thereof; without deduction from either principal or interest for any tax or taxes which it may be required to pay or retain therefrom under or by reason of any present or future law; and it shall and will pay every such tax. All coupons when paid shall forthwith be canceled.

SEC. 2. All lines of railway and property of every kind, and all interest therein, when and as and to the extent hereafter acquired, as above provided, out of, or from bonds, or the proceeds of bonds, secured by this indenture, or otherwise pursuant to the provisions hereof, shall, without any further con-

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veyance or assignment, immediately upon such acquisition, and subject to the terms and conditions of such acquisition, become and be subject to the lien of this indenture as fully and completely as though now owned by the Railroad Company, and expressly and specifically conveyed by, and embraced in, the granting clauses of this indenture; and the Railroad Company at all times will execute and deliver any and all such further assurances or conveyances as the Trustee may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture.

Sec. 3. Upon demand of the Trustee from time to time the Railroad Company will grant, convey, confirm, assign, transfer and set over unto the Trustee all real and personal estate, corporate rights and franchises which in any way or manner it shall acquire as appurtenant to, or in, or for use upon, or for the business of, any railroad hereby mortgaged, or as appurtenant to, or in, or for use upon, or for the business of, any leasehold estate hereby mortgaged (including all railroads and leasehold estates which shall hereafter become subject to the lien of this mortgage), or of any railroad of which any stocks or bonds are or shall be pledged hereunder; and it shall and will also make, do, seal, execute, acknowledge and deliver, or cause to be made, done, sealed, executed, acknowledged and delivered all and every such further acts, matters, things, deeds, conveyances, bills of sale and transfers, and assurances in the law, for the better assuring, conveying and confirming unto the Trustee all and singular the hereditaments and premises, estates and property hereby conveyed, or intended so to be, or which are hereby covenanted and agreed hereafter to be conveyed to the Trustee, as it, or its counsel learned in the law, shall reasonably require for better effectuating and carrying out the provisions objects and purposes of this indenture, and for securing payment of the principal and interest of the bonds intended to be hereby secured; all which estates shall be held by the Trustee in, under and upon the trusts, and for the uses and purposes, and subject to the powers herein mentioned, declared, given, implied or expressed; and, it will endeavor to procure from all companies, of which the capital stock or bonds or any part of either is, or shall be, pledged hereunder, all conveyances or assurances in law necessary to bring under the lien of this indenture any and all property connected with or appurtenant to the

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property of any such company, that shall have been constructed or acquired with the proceeds of any of the bonds set apart by Article One, Section 3 and Section 9.

But nothing expressed or implied in this indenture is intended, or shall be construed, to limit the right or power of the Railroad Company, hereby distinctly reserved, by the use of its credit or in any manner other than by the use of such reserved bonds, to construct or acquire, other lines of railway, branches or extensions, or interests therein, free from the lien hereof.

Sec. 4. The Railroad Company shall and will, at its office or agency in the City of New York, keep a sufficient register or registers of bonds issued hereunder, which registers at all reasonable times shall be open to the inspection of the Trustee; and, upon presentation for such purpose, it will register therein any coupon bonds issued under the provisions hereof; and it shall and will register likewise all bonds without coupons issued under the provisions hereof. As to all bonds so registered, the person in whose name the same shall be registered shall for all purposes be deemed and regarded as the owner thereof, and thereafter payment of or on account of the principal sum in such bond mentioned shall be made only to such registered holder or upon his order, but such registration may be changed as hereinafter provided. All such payments so made shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

Upon presentation of any coupon bonds which shall have been registered as aforesaid, with the order or assignment of the registered holder, the same shall be transferred upon such register to the person named in such written order or assignment, and thereafter such transferee or transferees of such bond shall be held to be the owner or owners thereof with all incidental rights and powers, and from time to time such transfers may be made as the registered holder of any such bond for the time being may direct as aforesaid. The registered holder of any such coupon bond shall also have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal thereof shall be payable to any person presenting the same. Any holder of a coupon bond registered to bearer may cause such bond to be registered in the name of such holder

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with the same effect as a first registration thereof; and successive registrations as aforesaid may be made from time to time as desired. Such registration of any coupon bond shall not restrain the negotiability of any coupon thereto belonging but every such coupon shall continue to pass by delivery merely.

ARTICLE FOUR.

SECTION 1. Neither any coupon belonging to any bond hereby secured, nor any interest obligation in respect of any registered bond which in any way on or after maturity shall be transferred or pledged separate and apart from its bond, shall be entitled to any benefit of or from this indenture, except after the prior full payment of the principal of all bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

SEC. 2. Until default shall have been made in the due and punctual payment of any interest, or in the due and punctual payment of any principal sum, of any bond hereby secured, or in the due and punctual performance and observance of any covenant or condition hereof obligatory upon the Railroad Company, and, until any such default continuing beyond the period of grace, if any, herein provided in respect thereof, shall have become the subject of some action hereunder by the Trustee or by the bondholders as hereinafter authorized, or until a Receiver shall have been appointed, or until the Railroad Company voluntarily shall have surrendered possession to the Trustee as hereinafter permitted, the Railroad Company, its successors and assigns, shall be suffered and permitted in any manner, and to any extent, not affecting the lien of this indenture, to retain actual possession of all and every the premises hereby mortgaged (other than bonds and certificates of stock) and the same and every part thereof, with the rights and franchises appertaining thereto, and the tolls, income, rents, issues and profits thereof, to manage, operate, collect, receive, use and enjoy in the same manner and to the same extent as if this indenture had not been made.

SEC. 3. In case default shall be made in the payment of any interest on any Prior Lien bond or on any General Lien bond at any time issued under and secured by this indenture, or on any bond secured by any mortgage recited in Article One,

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Section 3, I., II. and IV., or in Section 8, and such default shall continue for a period of six months; or in case default shall be made in the due and punctual payment of the principal of any Prior Lien bond or of any General Lien bond secured hereby, or when and as the same shall be demanded in the due and punctual payment of the principal of any bond secured by any mortgage recited in Article One, Section 3, I., II. and IV., or in Section 8; or in case default shall be made by the Railroad Company in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the mortgaged property and premises, or the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee or from holders of five per cent. in amount of the bonds hereby secured; or in case the Railroad Company shall make default in the due observance and performance of its covenant of further assurance, or any other covenant, promise or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured; then, and in each and every such case of default (provided, however, in respect of each of the three cases so indicated that it shall have continued for six months as aforesaid), the Trustee personally, or by its agent or agents, attorney or attorneys, may enter into and upon all or any part of the railways, property and premises, lands, rights, interests and franchises hereby conveyed or intended so to be, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and having and holding the same may use, operate, manage and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys, to the best advantage, as well of the public as of the holders of the bonds hereby secured in accordance with law and with any statute relating to said railways and other premises or any part thereof, or to the operation thereof; and, upon every such entry, the Trustee, at the expense of the trust estate, from time to time, by either purchase, repairs or construction, may maintain and restore, and insure or keep insured, the rolling stock, tools and

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machinery and other property, buildings, bridges and structures erected or provided for use on connection with said railways and other premises, and whereof it shall become possessed, as aforesaid, in the same manner and to the same extent as is usual with railway companies, and likewise from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements and useful alterations, additions, betterments and improvements thereto and thereon, as well in respect of the rolling stock or equipments as in respect of the railways and appurtenances and other subject matters as to it may seem judicious; and it may collect and receive all tolls, freights, incomes, rents, issues and profits of the same and every part thereof, and also the income from stocks and bonds pledged hereunder, and after deducting the expenses of operating said railways, and other premises and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said premises and property, or any part thereof, as well as just and reasonable compensation for its own services and for all agents, clerks, servants and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

in case the principal of the Prior Lien bonds hereby secured shall not have become due, to the payment of the interest remaining in default in the order of the maturity of the installments of such interest, first, upon any and all "Prior Lien bonds," and, after satisfaction thereof, then upon any and all "General Lien bonds," and next, if the principal of the General Lien bonds shall have become due by declaration or otherwise, to the payment of the principal of all General Lien bonds; such payments in every instance to be made ratably to the persons or parties entitled thereto without discrimination or preference; but,

in case the principal of the Prior Lien bonds shall have become due by declaration or otherwise, first, to the payment of the accrued interest in the order of the maturity of the installments thereof, upon any and all Prior Lien bonds, and next to the payment of the principal of all Prior Lien bonds, and, after satisfaction thereof, to the

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payment in like manner of the interest accrued upon any and all General Lien bonds, and finally to the payment of the principal of all General Lien bonds; in every instance such payments to be made ratably to the persons or parties entitled to such payment, without any discrimination or preference;

these provisions, however, not being intended in any wise to modify the provisions of Section 1 of this Article.

Upon and during such continuance of any such default, either with or without entry, the Trustees shall have, exercise, and enjoy the right to vote on all shares of stock pledged or agreed to be pledged hereunder, and for the benefit of the holders of bonds hereby secured to receive and collect all interest moneys and dividends maturing or payable upon all pledged bonds and stocks, and as holders of such shares of stock and of such bonds pledged or agreed to be pledged in this indenture, to perform any and all acts, or to make or execute any and all requests, requisitions or other instruments.

SEC. 4. In case default shall be made by the Railroad Company in the payment of any interest on any Prior Lien Bond, and such default shall continue for a period of six months, then and in every such case of continuing default, upon the written request of the holders of twenty-five per cent. in amount of the Prior Lien Bonds hereby secured then outstanding, the Trustee shall, by notice in writing delivered to the Railroad Company, declare the principal of all Prior Lien Bonds hereby secured then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary thereof in anywise notwithstanding.

In case default shall be made by the Railroad Company in the payment of any interest on any Prior Lien Bond or any General Lien Bond hereby secured at any time issued and outstanding, and such default shall continue for a period of six months, then and in every such case of continuing default, upon the written request of the holders of twenty-five per cent. in amount of the General Lien Bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railroad Company, shall declare the principal of all General

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Lien Bonds hereby secured, then outstanding, to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary thereof in anywise notwithstanding.

Each and every provision of this section is, *however*, subject to the condition (as to each of said two issues of bonds respectively), that if at any time after the principal of either of said two issues shall have been so declared due and payable, all arrears of interest upon all bonds of such issue shall either be paid by the Railroad Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds of such issue hereby secured then outstanding, by like written notice to the Railroad Company and to the Trustee, may waive such default and its consequences as to such issue; but no such waiver shall extend to or affect any bonds of the other issue or any subsequent default as to either issue, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other lawful reason, or shall have been determined adversely to the Trustee, then and in every such case, the Railroad Company shall be restored to its former position and rights in respect of the mortgaged premises and the shares of stock and bonds, and other property, herein pledged or agreed to be pledged; and, upon the written request of the Railroad Company, the Trustee shall do, make, execute, acknowledge and deliver such acts, deeds, instruments and assurances in the law as may be required to effectuate such purpose; but, nevertheless, all rights, remedies and powers of the Trustee shall survive and continue as though no such proceedings had been taken.

SEC. 5. In case default shall be made by the Railroad Company in the payment of any interest on any Prior Lien bond or on any General Lien bond secured by this indenture, or on any bond secured by any mortgage recited in Article One, Section 5, I., II., and IV., or in Section 8, and such default shall continue for a period of six months; or in case default shall be

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made by the Railroad Company in the due and punctual payment of the principal of any Prior Lien bond or of any General Lien bond secured hereby, or when and as the same shall be demanded in the due and punctual payment of the principal of any bond secured by any mortgage recited in Article One, Section 5, I., II. and IV. or in Section 8; or in case default shall be made by the Railroad Company in the payment of any tax, assessment or other governmental charge lawfully imposed or levied upon any part of the mortgaged property and premises or the income and profits thereof, and such default shall continue for a period of six months after written notice thereof from the Trustee or from holders of five per cent. in amount of the bonds hereby secured; or in case the Railroad Company shall make default in the due observance and performance of its covenant of further assurance, or any other covenant, promise or condition herein contained, and any such default shall continue for a period of six months after written notice thereof from the Trustee or from the holders of five per cent. in amount of the bonds hereby secured; then, and in each and every such case of default (provided, however, in respect of each of the three cases so indicated, that it shall have continued for six months as aforesaid), the Trustee, with or without entry, personally or by attorney, in its discretion (a) may sell to the highest and best bidder, in one lot and as an entirety, all and singular the mortgaged property and premises, bonds and stocks, rights, franchises and interests, lands, and appurtenances, and all right, title and interest, claim and demand therein, and right of redemption thereof; which sale shall be made at public auction at such place in the City of Elmira, in the State of New York, or at such other place on the railroad hereby mortgaged, at such time and upon such terms, as may be specified in the notice of sale to be given as herein provided; or (b) may proceed to protect and enforce the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and to enforce any of its rights or duties hereunder.

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Upon either (c) the written request of the holders of twenty-five per cent. in amount of the General Lien bonds, in case of any such continuing default, or (d) the written request of the holders of twenty-five per cent. in amount of the Prior Lien bonds at the time outstanding, in case of any such continuing default other than in the payment of the principal or interest of the General Lien bonds, it shall be the duty of the Trustee upon being indemnified as hereinafter provided to take all needful steps for the protection and enforcement of its rights and the rights of the bondholders secured hereby, and to exercise the powers of entry and sale herein conferred, or both, or to take appropriate judicial proceedings according to such request, or in default of specific instructions by such bondholders to proceed by action, suit or otherwise, as the Trustee being advised by counsel learned in the law shall deem most expedient in the interest of the holders of the bonds hereby secured.

Provided, nevertheless, that no foreclosure of this mortgage or sale of the mortgaged premises pursuant to judicial proceedings or under the powers of sale conferred upon the Trustee hereunder, shall affect any right or lien of the holders of the Prior Lien bonds or accelerate or precipitate the maturity thereof, unless such foreclosure or sale be had upon the written request of the holders of twenty-five per cent. in amount of the Prior Lien bonds then outstanding; it being the intention that the lien and rights of such Prior Lien bonds shall continue unaffected by any sale or foreclosure hereunder unless made upon such request of holders of Prior Lien bonds; but that in case of any default the Trustee, in its discretion, may make, and such holders of twenty-five per cent. in amount of General Lien bonds may require, a sale or foreclosure subject to the Prior Lien bonds, and not otherwise, unless a sale or foreclosure shall have been requested by the holders of twenty-five per cent. in amount of the Prior Lien bonds as above authorized.

Notice of any sale pursuant to any provision of this indenture, shall state the time and place, when and where, and the terms upon which the same is to be made, and shall contain a brief description of the property to be sold, and shall be sufficiently given if published once in each week for six successive weeks prior to such sale in one newspaper at that time published in each of the cities of New York, N. Y.; Buffalo, N. Y.;

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Newark, N. J.; Susquehanna, Pa.; Cleveland, O.; Indianapolis, Ind.; and Chicago, Ill.

Upon the completion of any sale or sales under this indenture, the Trustee shall make, execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, of conveyance, for the property and franchises sold.

In case the mortgaged and pledged premises shall be sold upon a default hereunder and such sale shall be made not subject to the lien of the Prior Lien bonds, hereby secured, the whole of the principal sum of all the bonds of both issues hereby secured, if not previously declared due, shall at once become due and payable, anything in said bond or bonds or herein contained to the contrary notwithstanding.

In case of any sale or sales made subject to the lien of the Prior Lien bonds, the whole of the principal of all the General Lien bonds, if not previously declared due, shall at once become due and payable, anything in said bond or bonds herein contained to the contrary notwithstanding; but no such sale made subject to the lien of the Prior Lien bonds, shall in anywise affect the maturity or lien of the Prior Lien bonds or any right or remedy in respect thereof.

SEC. 6. None of the remedies provided in the preceding Sections 3 and 5 shall apply, nor shall they be enforced, by reason of any default, in respect of any of the old bonds or obligations specified in Article One, Section 5, IV., and Section 8, II., until after the Railroad Company shall have acquired, as provided in Section 2 of Article One, the New York, Pennsylvania and Ohio Railroad, or the control thereof, and shall have subjected the same to the lien of this indenture.

SEC. 7. For all purposes and within the meaning of the preceding Sections 3, 4 and 5, and also of Sections 13 and 16 of this Article, any default in payment of principal or interest of any Prior Lien bonds shall constitute a default entitling the holders of General Lien bonds to all rights and remedies hereunder as though such default were in respect of General Lien bonds.

SEC. 8. Any sale or sales completed under or by virtue of this indenture, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the

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Railroad Company of, in and to the premises hereby mortgaged, and shall be a perpetual bar both at law and in equity against the Railroad Company, its successors and assigns, and against any and all persons claiming or to claim the mortgaged premises, or any part or parcel thereof, by, from, through or under the Railroad Company, its successors and assigns, or any of them; *provided*, however, that in case of a foreclosure or sale hereunder made subject to the lien of the Prior Lien bonds, then and in such event the lien of the Prior Lien bonds shall continue unimpaired, and the holders thereof through the Trustee, or otherwise as in this indenture provided, shall have and may thereafter assert all their rights and remedies to the same extent as though there had been no foreclosure or sale hereunder.

Any sale pursuant to any provision hereof, because of any default of the Railroad Company, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or some judgment or decree of foreclosure and sale made by any Court of competent jurisdiction, shall be made subject to the lien of any mortgage or mortgages prior to this indenture upon any property hereby conveyed to the extent of such lien or liens respectively.

SEC. 9. The Trustee may, from time to time, adjourn any sale to be made by it under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and, so adjourning such sale, it may without further notice or publication make sale of the mortgaged premises at the time and place to which the same shall be so adjourned.

SEC. 10. The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of the property, sold as aforesaid, for the purchase money, and no such purchaser or purchasers, or his, their or its representatives, vendees, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

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SEC. 11. The proceeds or avails of any sale under any provision of this indenture, and the purchase money paid thereon shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made and incurred by the Trustee in managing and maintaining the property hereby conveyed or so intended to be, and of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sales shall have been made subject.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and the accrued and unpaid interest subject, however, to the provisions of Section 1 of this Article; *provided*, that the Prior Lien bonds shall be first paid in full as to both principal and interest, before any payment shall be made on the General Lien bonds, unless such sale shall have been made subject to the continuing lien and rights of the Prior Lien bonds, in which event any arrears of interest in default on the Prior Lien bonds shall first be paid under this *Second* paragraph, and with this exception the entire payment under this *Second* paragraph shall go to the holders of the "General Lien Bonds" or the coupons thereof, as above provided.

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SEC. 12. The Railroad Company shall not and will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force in any locality where the mortgaged premises, or any part thereof, may or shall be situate, nor will it claim, take or insist on, any benefit or advantage from any law now or hereafter in force, providing for the

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valuation or appraisement of the mortgaged premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute enacted by the Congress of the United States or by the Legislature of any State to redeem the property so sold, or any part thereof; and it hereby expressly waives all benefit and advantage of any such law or laws; and it agrees that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power, as though no such law or laws had been made or enacted.

SEC. 13. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture or for the execution of any trust thereof, or for the appointment of a Receiver, or for any other remedy, hereunder, without first giving to the Trustee written notice of the fact that default has occurred and continued as hereinbefore provided, nor unless also the holders of twenty-five per cent. in amount of the issue of bonds hereby secured and affected by such default and then outstanding in respect of which such holder requests action, shall have made written request of the Trustee, and shall have afforded to it reasonable opportunity either itself to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name, nor unless also they shall have offered to the Trustee adequate security and indemnity against the cost, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this indenture and to any action, or cause of action, for foreclosure or for the appointment of a Receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, but that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein

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provided and for the equal benefit of all holders of such outstanding bonds and coupons according to the tenor and terms of the two issues of bonds hereunder issued and hereby secured. A default in the payment of interest upon General Lien bonds only shall not be deemed a default affecting Prior Lien Bonds.

SEC. 14. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee or to the holders of bonds secured hereby is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.

SEC. 15. The personal property and chattels hereby conveyed, or intended so to be, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads and part thereof, and are to be used and sold therewith and not separate therefrom.

SEC. 16. Upon proper indemnity to the Trustee, the holders of a majority in amount of each of the two issues of bonds hereby secured and then outstanding (the holders of each issue being considered and counted as a separate class) in case of any subsisting default other than in the payment of the interest on or principal of the General Lien Bonds, or the holders of a majority in amount of General Lien Bonds if such default be only as to interest upon, or principal of, those bonds, anything in this indenture contained to the contrary notwithstanding, from time to time, shall have the right to direct and control any and all proceedings theretofore instituted for any sale of the premises hereby conveyed and pledged, or agreed or intended so to be, or for the foreclosure of this indenture, or for the appointment of a Receiver, or any other proceedings hereunder, and for that purpose to instruct the Trustee to continue or to discontinue any such proceedings hereunder; and no such action by the Trustee or by such majority shall extend to, or be taken to affect, any subsequent default or to impair any right resulting therefrom. But nothing herein is intended to limit any power of the Trustee to exercise any right or to apply or enforce any remedy under any of the provisions of this indenture, unless the Trustee be otherwise expressly directed, as in this section provided, by the requisite number and class of holders of bonds hereby secured.

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SEC. 17. In case of any sale hereunder, any and all purchasers in making settlement or payment, shall be entitled to turn in any bonds and any matured and unpaid coupons hereby secured, estimating the value of such bonds and coupons for that purpose at the sum payable out of the net proceeds of such sale to the holder or holders of such bonds and coupons as his or their ratable share of such net proceeds, after allowing for the proportion of the total payment required to be made in cash for the cost and expenses of the sale or otherwise; and if such share of net proceeds shall be less than the amount then due upon such bonds and coupons, such purchaser or purchasers may make such settlement by receipting on each bond the amount to be credited thereupon; and at any and every such sale any or all of the bondholders may bid for and purchase such property, and upon compliance with the terms of sale may hold and retain, and dispose of, such property without further accountability therefor.

SEC. 18. Any request in writing or other instrument required by this indenture to be signed and executed by bondholders may be in any number of concurrent instruments of similar tenor and date, and may be signed or executed by such bondholders in person or by attorney in fact. Proof of the execution of any such request or other instrument, and of the holding by any person of any of said coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, if made in the following manner:

The fact and date of the execution by any person of any such request or other instrument, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution.

The amount of coupon bonds transferable by delivery, held by any person executing any such request or other instrument as the holder of bonds, and the amounts and issue numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate in writing executed by any trust company, bank, bankers or other depository (wherever situated), whose certificate shall be deemed by the Trustee to be satisfactory, showing that such person had on

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deposit with such depository the bonds described in such certificate at the date therein mentioned. Such proof shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument.

Sec. 19. Upon filing a bill in equity, or upon commencement of any other judicial proceedings to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein and hereby conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default as herein before provided, and as a matter of right, the Trustee shall be entitled to the appointment of a Receiver or Receivers of the premises hereby mortgaged, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment shall confer.

Sec. 20. No delay or omission of the Trustee or of any holder of bonds hereby secured to exercise any right or power arising from any default continuing as aforesaid shall exhaust or impair any such right or power, or be construed to be a waiver of any such default, or an acquiescence therein.

Sec. 21. The Railroad Company at any time hereafter before full payment of the bonds secured hereby, and whenever it shall deem expedient for the better security of such bonds, although there be then no default entitling the Trustee to enter into possession, may surrender and deliver to the Trustee full possession of the whole or any part of the property, premises and interests hereby conveyed, or intended so to be, for any period fixed or indefinite. Upon such surrender and delivery the Trustee, at its option, may enter into and upon the premises so surrendered and delivered, and may take and receive possession thereof, for such period fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon and to maintain such possession, though beyond the expiration of any prescribed period. Upon any such voluntary surrender and delivery of said property and premises, or of any part thereof, the Trustee, from the time of its entry, shall and will work, use, manage, control and employ the same in accordance with the provisions of this indenture, and shall and will

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receive and apply the income and revenues thereof as provided in Section 3 of this Article. Upon application of the Trustee, and with consent of the Railroad Company, if there be then no subsisting default hereunder, and without such consent if there shall then be a subsisting default, a Receiver or Receivers may be appointed to take possession of, and to operate and manage the whole or any part of said property, with all the rights, powers and duties by this section conferred upon the Trustee, and in every case when a Receiver of the whole or any part of the said property shall be appointed under this section or otherwise, the Trustee, shall be entitled to receive all the income and profits of such property for the benefit of the holders of bonds hereby secured.

Sec. 22. In the event of any sale, pursuant to any provision hereof, whether made under the power of sale hereby granted and conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale made by any Court of competent jurisdiction, the whole of the property hereby mortgaged and pledged shall be sold in one parcel and as an entirety, including all the rights, titles, estates, railroads, equipment, franchises, leases, leasehold interests, contracts, stocks, bonds and other real and personal property of every name and nature; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be. And the Trustee and its successors are hereby appointed the true and lawful attorney or attorneys, irrevocable, of the Railroad Company, in its name and stead to make all necessary deeds and conveyances of property and all necessary transfers of the shares of stock or bonds or other obligations thus sold, and for that purpose it and they may execute all necessary acts of assignment and transfer, and may substitute one or more persons with like power, the Railroad Company hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof.

Sec. 23. Until default shall be made by the Railroad Company in the payment of either the principal or interest of the bonds hereby secured, or otherwise, as set forth in Sections 3 and 5 of this Article or either of them, and until the Trustee, as herein authorized, shall have taken some proceeding in respect thereof, or until a Receiver shall have been appointed as here-

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inbefore permitted, the Railroad Company shall be entitled to receive all interest payable, and dividends declared, in respect of any bonds or stocks by or pursuant to this Indenture pledged or transferred to the Trustee as collateral security for the payment of the bonds issued hereunder, the coupons for such interest from time to time to be delivered by the Trustee to the Railroad Company for such purpose, and immediately upon such delivery to be collected and canceled to the satisfaction of the Trustee; suitable orders, in favor of the Railroad Company, or its nominee, for the payment of such dividends from time to time to be executed and delivered by the Trustee to the Railroad Company.

Sec. 24. Until default be made as aforesaid, and some action in respect thereof shall have been taken by the Trustee, or by bondholders, as herein authorized, the Railroad Company shall have the right to vote upon all shares of stock pledged hereunder, for all purposes not inconsistent with the provisions or purposes of this indenture and with the same force and effect as though such pledge had not been made. From time to time the Trustee shall give to the Railroad Company, or its nominee, suitable proxies for such purposes.

Sec. 25. The Trustee may do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of any and all companies whose shares are pledged hereunder, and for such purposes from time to time it may sell or assign, transfer and deliver so many shares of the stocks of the several companies as may be necessary to qualify persons to act as Directors of, or in any other official relation to, said companies; provided, however, that no transfer under this provision shall be made which shall impair the Trustee's control of any corporation whose shares shall be so transferred; and subject to this limitation, the Trustee may make such other arrangements as it shall deem necessary for the protection of the trust hereunder.

Sec. 26. If at any time the obligors in any of the bonds at any time pledged hereunder shall fail to make payment of either the principal or interest thereof, according to the tenor of such bonds, then, unless the Trustee shall hold hereunder more than a majority of the stock of such obligor, (1) in any case where the Trustee holds more than eighty-five per cent. in amount of

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any one or more issues of the bonds of such obligor, and (2) in other cases according to its discretion, the Trustee, upon the written request of the Railroad Company, and not otherwise, shall cause proper and apt proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose the mortgage, or mortgages, by which such bonds shall be secured, and if the property covered by such mortgage, or mortgages, shall be sold under foreclosure, it shall, if it hold more than eighty-five per cent. in amount of the bonds thereby secured cause such property to be purchased for and in the name or in behalf of the Railroad Company, if the amount bid at such sale shall not exceed the full amount due on the entire issue of such bonds, and the cost and expenses of such suit and sale, and the Railroad Company shall furnish the necessary cash to pay such cost and expenses, any claims having priority of lien or in equity over the mortgage foreclosed and the dividends accruing from such sale on any bonds not held by the Trustee. If such property shall not be bought by the Trustee, the Trustee shall receive out of the proceeds of such sale the dividend accruing on the bonds held by it, and shall apply the same as herein provided. When any railroad or railroad property shall be purchased by the Trustee, for and in the name of the Railroad Company, as above provided, the lien of this indenture immediately and *ipso facto* shall attach to, and bind, the property so purchased.

If at any time the obligors in any of the bonds at any time pledged hereunder shall fail to make payment of either the principal or interest thereof, according to the tenor of such bonds, and by reason thereof foreclosure or other proceedings shall be taken, otherwise than at the instance of the Trustee, the Trustee shall take such steps as in its discretion shall be best calculated to protect its interests hereunder in respect of such bonds, and for this purpose it may join in any plan or agreement of reorganization, and may accept its share of new securities under such plan.

No such action of the Trustee shall relieve the Railroad Company from any liability hereunder by reason of such default, nor from any of the consequences thereof.

When the Trustee shall receive moneys arising from the foreclosure of any mortgage executed to secure the payment of bonds pledged hereunder, or from any sale of any railroad

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mortgaged to secure any such bond, it shall apply such moneys, whether principal or interest, in the manner provided in Section 29 hereof, for the application of money arising from the release of real property mortgaged hereunder.

In the event of the dissolution of any corporation of whose capital stock the greater part shall be held hereunder by the Trustee, such action may be taken and such power be exercised with reference thereto as the Trustee in its discretion shall deem most expedient for the conservation of the interest of the trust estate in such property, either through the agency of a successor corporation or otherwise.

SEC. 27. No assignment or pledge hereunder of any shares of stock of any company or companies now or hereafter deposited hereunder, shall prevent the consolidation or merger of any one or more of said companies with, or its sale to, the Railroad Company, but such consolidation, merger or sale may be made under any laws to which such companies may then be subject, anything in this indenture contained to the contrary notwithstanding: Provided, however, that such consolidation, merger or sale shall be made only upon such terms as shall be approved by the Trustee, or by the holders of a majority in interest of the bonds secured by this indenture. In the event of consolidation or merger of any one or more of the said companies with, or its sale to, the Railroad Company, this indenture immediately shall become and be a lien upon the property of the company so consolidated or merged with, or sold to, the Railroad Company, with the same force and effect as if expressly conveyed by this indenture, and the holders of the bonds hereby secured shall always have as full and complete a lien upon such property as that herein created by the pledge of the stock and bonds of such constituent companies to the Trustee hereunder.

Neither shall the assignment or pledge hereunder of any capital stock of any company or companies prevent the consolidation or merger of any such companies with each other; but such consolidation or merger may be made under any laws to which such companies may then be subject, anything in this indenture contained to the contrary notwithstanding: Provided, however, that such consolidation or merger shall be made only upon such terms as shall be approved by the Trustee or by the holders of a majority in amount of the bonds secured by this

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indenture; and that the portion of the capital stock of any such consolidated or merging company (but never less than a majority thereof), issued for and in lieu of any stock previously pledged hereunder, shall always bear to the total capital stock a proportionate relation at least as high as that borne by such previously pledged stock to the total capital stock of such constituent companies. Such portion of such stock of such consolidated or merging company shall be assigned to and deposited with the Trustee, and shall become and be subject to the lien of this indenture with the same force and effect as if expressly pledged by this indenture; and the holders of the bonds hereby secured shall always have a lien upon such portion of such stock of such consolidated or merging company as full and complete as upon the stock and bonds of such constituent companies, by reason of the pledge thereof hereunder.

The Trustee may do any and all things proper to carry into effect the purposes of this section, and in order to facilitate the merger in whole or in part, as authorized by law, of any railroad the Trustee may transfer into the name of the Railroad Company, under such restrictions as it may deem sufficient for the protection of the holders of the bonds secured hereby, the shares of any Company about to be so merged, but the certificates in the name of the Railroad Company shall be forthwith delivered to and held by the Trustee hereunder, and the Railroad Company shall simultaneously execute such irrevocable instruments as the Trustee shall deem necessary in order to enable it to transfer such shares back into its own name if at any time it shall deem such a course expedient for the protection of the holders of the bonds hereby secured.

SEC. 28. In case of any default hereunder, if in order to preserve the franchises of the Railroad Company and to avoid foreclosure and sale involving the organization of a successor Company, any plan of reorganization shall be proposed with provisions for the modification of this mortgage, so far as to authorize and require the creation of new liens upon the mortgaged premises prior and superior to the lien hereof; then and in every such case registered holders of four-fifths in amount of all outstanding bonds hereby secured, by writing may direct the Trustee in behalf of all the holders of all bonds then or

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thereafter issued hereunder, to acquiesce in the provisions of such plan: which plan also may determine and provide for the interests of other creditors and lienors and of the shareholders of the Railroad Company. This special power, however, is granted to the registered holders of four-fifths in amount of the bonds upon the express condition, that no bond hereby secured, and then outstanding, shall be changed as to amount or date of payment of principal or rate or dates of payment of interest. Thereupon, but not otherwise, the Trustee shall by writing acquiesce in such provisions of such plan, and such acquiescence by the Trustee shall constitute the irrevocable assent of all holders of bonds and coupons hereby secured to any such accepted modifications, as set forth in such plan and necessary to give effect to such provisions thereof. All such modifications so affecting this indenture and the bonds and coupons hereby secured, shall be reduced to a written agreement between the Railroad Company and the Trustee, and such agreement shall be recorded in New York County, New York; Passaic County, New Jersey; Susquehanna County, Pennsylvania; Marion County, Ohio; Huntington County, Indiana; Cook County, Illinois, and thenceforth shall be deemed to be part of this indenture, and thereafter the lien of this indenture, and of the bonds hereby secured, shall be deemed to be and shall be subordinate to such new and prior liens created pursuant to such plan, but only to the extent specified in such written agreement; *provided*, that the consent of the holders of four-fifths of the Prior Lien Bonds shall be requisite to the creation of any new lien or charge in priority to the Prior Lien Bond.

Registration for any purpose of this section shall be sufficient if then or theretofore made and then continuing in any manner permitted by Section 14 of Article One of this indenture.

Sec. 29. Provided there shall then be no continuing default in respect of which the Trustee shall have taken some proceedings herein authorized, the Trustee, upon request of the Railroad Company, at any time or times, in its discretion, may release from the lien and operation of this indenture and of the bonds hereby secured, any premises acquired, held or used by the Railroad Company for the purpose of stations, depots, shops or other buildings or erections, or for other uses not connected with the maintenance or operation of some part of the lines of railway then subject to the lien of this indenture, or any prem-

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ises which may have been acquired or held for the supply of gravel, fuel and other materials for the purposes of such lines of railway; provided that in the judgment of the Trustee, at the time of such release such premises shall no longer be requisite for the purposes for which the same shall have been so acquired or used, or necessary or expedient to be retained for use in connection with such lines of railway, and likewise it may release any parts of the line of track or roadway, or of the depot grounds, buildings or accommodations connected therewith, which at the time of such release, may have been thrown out of use and have ceased to form part of such lines of railway by reason of the straightening, alteration or abandonment of such part of the lines of railway; but the power of release given by this article is to be exercised only in case the Railroad Company shall sell or contract to sell the property so to be released, because no longer required for the uses or purposes of such railways, and shall require the same to be released, in order to give good title to the purchaser or purchasers thereof. The proceeds of any and all such sales shall, unless some other disposition thereof be required by some prior mortgage, be invested in the purchase of other property, real or personal, which shall be conveyed in trust by the Railroad Company to the Trustee, subject to all the trusts hereby declared, or in the purchase of bonds hereby secured (which bonds shall forthwith be canceled and delivered to the Trustee); or in betterments or improvements, or in some other way, to the benefit of the mortgaged premises, and satisfaction of the Trustee. When such released premises shall have been thrown out of use or shall have ceased to be required, by reason of changes of the line of the road, on or along the routes aforesaid, or any of them, or change of depot grounds, buildings or other accommodations, the substitutes therefor acquired by the Railroad Company, *ipso facto*, shall become and be subject to the lien of this indenture, the same as though specifically mortgaged hereby, and as a condition of such release they shall be conveyed to the Trustee by appropriate deeds upon the trusts and for the purposes of this indenture. The Railroad Company, from time to time, shall also have full power, according to its discretion, to dispose of such portion of the machinery, equipments and implements, at any time held or acquired for the use of any lines of railway, as may have become unfit for such use, replacing the same by new machinery,

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equipment or implements, which shall become subject to the operation of this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this article of this indenture be required to see to the application of the purchase money.

SEC. 30. In case at any time it shall become necessary, or in the judgment of the Trustee be for the interest of the bondholders hereby secured, or for the benefit of the mortgaged property, that the Railroad Company shall make changes or alterations in, or substitutions of, any leases, contracts or trackage rights by which the Railroad Company now secures access to any point or points, the Railroad Company, with the written consent of the Trustee, may make any such changes, alterations or substitutions.

The Railroad Company, with the written consent of the Trustee, may make, or to cause to be made, executed and delivered, all such instruments in writing as may be proper and necessary to carry out and perfect any and all changes, alterations or substitutions authorized in this section when and as the same may be made.

At the same time, ample provision shall be made by apt and sufficient instruments in writing, so that such modified, altered or substituted leases, contracts or trackage rights shall be, and forthwith become bound by, and subject to, the terms of this indenture in the same manner, as the then existing leases, contracts and trackage rights.

SEC. 31. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney be selected with reasonable care; or for anything whatever, in connection with this trust, except misconduct or gross negligence; the Trustee shall not be personally liable for any debts contracted by it or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trust hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the

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bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder or to take any action in respect thereof except after written notice of such default from one or more of the holders of the bonds hereby secured, together with tender of the indemnity aforesaid, anything herein contained to the contrary notwithstanding; neither shall the Trustee in any event be responsible for the proper recording of this indenture or for the filing of the same as a chattel mortgage.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created.

SEC. 32. The terms or words "the Trustee," "said Trustee," and "the said Trustee," or any other equivalent term, as used in this indenture (except when otherwise clearly indicated), shall be held and construed to mean the Trustee or Trustees for the time being, whether original or successor, and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number, and the term "majority" shall signify "majority in amount," whether or not so expressed.

SEC. 33. The Trustee, or any Trustee hereafter appointed, may resign and be discharged of the trusts created by this indenture by giving notice thereof to the Railroad Company and to the bondholders, by publication, at least twice a week, for six successive weeks, in one of the newspapers at that time published in each of the cities of New York, N. Y., and London, England, and by due execution of the conveyance herein required.

The Trustee may be removed at any time by an instrument in writing under the hands and seals of three-quarters in amount of the holders of the bonds secured hereby and then outstanding.

SEC. 34. In case a Trustee shall die, or shall resign or be removed as herein provided, a majority in amount of holders of the bonds then outstanding hereunder shall have the right and power by instrument in writing under their hands and seals to appoint a new Trustee to fill such vacancy, and, until such appointment be so made by a majority of the bondholders, the Board of Directors of the Railroad Company may appoint a new

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Trustee to fill such vacancy for the time being, and in every such case the new Trustee so appointed, while he or it continues as such, shall have and possess and be subject to the like rights, powers, estates and duties as though originally Trustee hereunder. Should any vacancy be filled by the Railroad Company under the foregoing provision in that behalf it shall be competent for any Judge of the United States in and for the Second Circuit, or for any Court of competent jurisdiction in the premises, upon the application of a majority in amount of the bondholders, to annul such appointment, and to appoint as Trustee the nominee of such majority.

SEC. 35. If at any time or times in order to conform to any law of any State in which the Railroad Company now holds or at any time hereafter shall hold any property, the Railroad Company shall so request, the Trustee shall unite with the Railroad Company in the execution, delivery and performance of all instruments and agreements necessary or proper to constitute an additional Trustee or Trustees to have, enjoy and exercise in association and equally with the Trustee originally named herein or its successor appointed as hereinbefore provided, any and all powers, rights and estates hereunder, excepting only those specified in Article One and in Article Four, Sections 23, 24, 25 and 27, and the custody of the securities therein mentioned, which powers, duties and estates shall be possessed and exercised, and such custody retained by said original Trustee or such successor, notwithstanding the appointment under this section of any co-Trustee or co-Trustees.

SEC. 36. Should any deed, conveyance or instrument in writing, from the Railroad Company or from any resigning or removed Trustee, be required by any new Trustee, for more fully and certainly vesting in and confirming to him or it such estate, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, be made, executed, acknowledged and delivered by the party from whom they may be required.

ARTICLE FIVE.

No recourse under any obligation, covenant or agreement of this indenture, or of any bond or coupon hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company, or of any successor corpora-

Exhibit R-118.

tion, either directly or through the Railroad Company, by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any statute or otherwise, it being expressly agreed and understood that this mortgage and the obligations hereby secured are solely corporate obligations and that no personal liability whatever shall attach to, or be incurred by the incorporators, stockholders, officers or directors of the Railroad Company, or of any successor corporation or any or either of them, under or by reason of any or either of the obligations, covenants or agreements in this indenture, or in any of the bonds or coupons hereby secured, expressed and contained or implied therefrom, and that any and all personal liability of every name and nature, either at common law or in equity, or by statute, of every such incorporator, stockholder, officer or director, is hereby expressly waived as a condition of, and consideration for, the execution and issue of this mortgage and such obligations.

ARTICLE SIX.

If the said Railroad Company shall well and truly pay, or cause to be paid, the principal and interest of all bonds hereby secured at the times and in the manner therein specified, and shall well and truly keep and perform all the things herein required to be kept and performed by it, according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or pledged shall revert to the Railroad Company, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void; otherwise, the same shall be, continue and remain in full force and virtue.

ARTICLE SEVEN.

All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railroad Company, shall bind and be binding upon its successors and assigns, whether so expressed or not.

Nothing contained in this indenture, or in any bond hereby secured, shall prevent the consolidation or merger of the Railroad Company with any other corporation; provided, however, that such consolidation or merger shall not impair the lien and security of this indenture, or any of the rights or powers of the

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Trustee, or of the bondholders hereunder, and that, upon any such consolidation or merger, the due and punctual payment of the principal and interest of all of said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the company formed by such consolidation or merger. In case the Railroad Company shall be consolidated or merged with any other corporation, the successor corporation formed by such consolidation or into which the Railroad Company shall have been merged, shall succeed to and be substituted for the Railroad Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part, and such successor corporation may cause to be signed and may issue in the name of the Erie Railroad Company any or all of such bonds as shall not theretofore have been signed by the Erie Railroad Company and delivered to the Trustee, and the Trustee shall certify and deliver, upon the order of said successor corporation and subject to all the terms, conditions and restrictions herein prescribed, any of such bonds which shall have been previously signed by the officers of the Railroad Company and delivered to the Trustee for certification, and any of such bonds as such successor corporation shall thereafter cause to be signed and delivered to the Trustee for that purpose. All the bonds so issued shall in all respects have the same legal rank and security as the bonds of like issue, viz.: Prior Lien or General Lien, as the case may be, theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof.

And it is also expressly understood and agreed that for every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms "Railroad Company" and "Erie Railroad Company" include and mean not only the New York corporation, but also any sole successor railroad corporation, formed by consolidation or otherwise under the laws of New York or of any State or States; and every such successor railroad corporation shall possess and from time to time may exercise each and every right and power hereunder of the Erie Railroad Company, in its name or otherwise.

Exhibit R-118.

ARTICLE EIGHT.

The Farmers' Loan and Trust Company, Trustee, the party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

ARTICLE NINE.

In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

In witness whereof, the Erie Railroad Company, the party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary; and the Farmers' Loan and Trust Company, the party of the second part, has caused its corporate seal to be hereunto affixed and attested by its Secretary, and these presents to be signed and acknowledged or proved by its Vice-President the day and year first above written.

ERIE RAILROAD COMPANY,

By

E. B. THOMAS,
President.

[L. S.]

Attest:

I. A. MIDDLETON,
Secretary.

THE FARMERS' LOAN AND TRUST COMPANY.

By

R. G. ROLSTON,
President.

[L. S.]

*Exhibit R-118.***Attest:**

E. S. MARSTON,
Secretary.

Signed, sealed and delivered }
in the presence of }

As to Erie Railroad Company,
EDWARD R. GREENE.
GEO. H. COREY.

Signed, sealed and delivered }
in the presence of }

As to Farmers' Loan and Trust Company,
EDWARD R. GREENE.
GEO. H. COREY.

Formal acknowledgments and certification of recording are
omitted.

Exhibit R-119.

EXHIBIT R-119.

Erie Penn.
Indenture.
Complete.

ERIE RAILROAD COMPANY

TO

THE MERCANTILE TRUST COMPANY.

PENNSYLVANIA COLLATERAL INDENTURE

Dated February 1, 1901,

SECURING

\$35,000,000,

FIFTY-YEAR 4% PENNSYLVANIA COLLATERAL GOLD BONDS.

Interest Payable February and August.

Exhibit R-119.

An Indenture, dated as of the first day of February, one thousand nine hundred and one, between

ERIE RAILROAD COMPANY (hereinafter termed the "Railroad Company"), a corporation organized and existing under the laws of the State of New York, party of the first part, and

THE MERCANTILE TRUST COMPANY, of New York (hereinafter termed the "Trustee"), a corporation organized and existing under the laws of the State of New York, party of the second part.

WHEREAS, For the purpose of making payment for shares of the capital stock of the following companies acquired or to be acquired by the Railroad Company, namely:

Pennsylvania Coal Company, a corporation organized under the laws of the State of Pennsylvania;

Eric and Wyoming Valley Railroad Company, a corporation organized under the laws of the State of Pennsylvania, and

Delaware Valley and Kingston Railroad Company, a corporation organized under the laws of the State of New York;

and for the purpose of providing means for its other corporate purposes and business, the Railroad Company desires to make and to issue a series of Fifty-Year Four Per Cent. Pennsylvania Collateral Gold Bonds, limited in amount so that the aggregate principal sum of such bonds outstanding at any one time shall never exceed \$36,000,000, all of which bonds at any time outstanding shall be equally secured as hereinafter provided; and

WHEREAS, Such bonds of the Railroad Company to be issued under and secured by this indenture, are to be coupon bonds, each for the principal sum of \$1,000, numbered consecutively from 1 upwards, and registered bonds, each bearing a distinctive number or designation, of the denomination of \$1,000 or such multiples of \$1,000 as from time to time the Railroad Company, by resolution of its Board of Directors, may authorize; and all such coupon bonds and registered bonds, from time to time, as directed by the Board of Directors of the Railroad Company, are to be executed in the name and on behalf of the Railroad Company under its corporate seal by the President or a Vice-President and the Secretary or an Assistant Secretary of the Railroad Company, and are to be substantially of the following tenor:

Exhibit R-119.

[FORM OF COUPON FOUR PER CENT. GOLD BOND.]

No.

\$1,000.

UNITED STATES OF AMERICA.

Erie Railroad Company**Pennsylvania Collateral 4% Coupon Gold Bond.**

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation, hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder of this bond, one thousand dollars, in Gold Coin of the United States of America, on the first day of February, 1951, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon at the rate of four per cent. per annum from February 1, 1901, payable semi-annually, at the said office or agency in like Gold Coin on the first day of February and the first day of August, in each and every year, until the payment of said principal sum, but only upon presentation and surrender, as severally they shall mature, of the coupons therefor annexed hereto; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed February 1, 1901.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom under any present or future law of the United States or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Thirty-six Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by a Collateral Indenture, dated February 1, 1901, executed by the Railroad Company to The Mercantile Trust Company, of New York, as Trustee, pledging all of the shares of the capital stock of the Pennsylvania Coal Company and of the Erie and Wyoming Valley Railroad Company and of the Delaware Valley and Kingston Railroad Company, now owned or hereafter acquired by the Railroad Company, and fifty-one per cent. of the capital stock of the New York, Susquehanna and Western Railroad Company, the certificates for which have been or shall be delivered to the Trustee pursuant to said Collateral Indenture, to which reference hereby is made for a statement of the property pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and of the terms and conditions upon which said bonds are secured and are to be used; the officers, directors and stockholders of the Rail-

Exhibit R-119.

road Company being expressly exempted, relieved and absolved from any and all personal liability in respect of said bonds, all such liability being hereby expressly waived.

As additional security for the retirement of every bond of this issue, at or before the stated maturity thereof, the Erie Railroad Company annually will appropriate and will pay to a sinking fund, the sum of ten cents for every ton of coal sold and delivered during the preceding year from the mines of the Pennsylvania Coal Company; and for the purposes of said sinking fund, this bond may be called in during the month of February or the month of August, in any year, at par, together with a premium of five per cent. thereof and all interest then accrued; all as is more fully stated in said Collateral Indenture.

This bond shall pass by delivery, unless registered in the owner's name on the books of the Railroad Company, at its office or agency in the City of New York, such registry being noted on the bond by the Bond Registrar of the Railroad Company. After such registration, no transfer shall be valid unless made on the Railroad Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder also, at his option, may surrender for cancellation this bond with the coupons for future interest thereon, in exchange for a registered bond without coupons, as provided in said Indenture.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon endorsed, of the Trustee under said Indenture.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, and coupons for such interest, with the engraved signature of its Treasurer, to be attached hereto, this first day of February, 1901.

ERIE RAILROAD COMPANY,

[L. S.]

By

President.

Attest:

Secretary.

Exhibit R-119.

[FORM OF REGISTERED BOND WITHOUT COUPONS.]

No.

§

UNITED STATES OF AMERICA.

Erie Railroad Company

PENNSYLVANIA COLLATERAL 4% REGISTERED GOLD BOND.

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation hereinafter called the "Railroad Company," for value received, promises to pay to
or assigns,

dollars, in the Gold Coin of the United States of America, on the first day of February, in the year 1951, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon from the first day of February, or the first day of August, as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, payable semi-annually at said office or agency, in like Gold Coin, on the first day of February and the first day of August in each year, until the payment of said principal sum; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed February 1, 1901.

Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under any present or future law of the United States, or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Thirty-six Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a Collateral Indenture, dated February 1, 1901, executed by the Railroad Company to The Mercantile Trust Company, of New York, as Trustee, pledging all of the shares of the capital stock of the Pennsylvania Coal Company, and of the Erie & Wyoming Valley Railroad Company, and of the Delaware Valley and Kingston Railroad Company, now owned or hereafter acquired by the Railroad Company, and fifty-one per cent. of the capital stock of the New York, Susquehanna and Western Railroad Company, the certificates for which have been or shall be delivered to the Trustee pursuant to said Collateral Indenture, to which reference is hereby made for a statement of the property pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and of the terms and conditions upon which said bonds are secured, and are to be used; the officers, directors and stockholders of the Railroad Company being expressly exempted, relieved and absolved from

As additional security for the retirement of every bond of this issue, at or before the stated maturity thereof, the Erie Railroad Company annually will appropriate and will pay to a sinking fund, the sum of ten cents for every ton of coal sold and delivered during the preceding year from the mines of the Pennsylvania Coal Company; and for the purposes of said sinking fund, this bond may be called in during the month of February or the month of August, in any year, at par, together with a premium of five per cent. thereof, and all interest then accrued; all as is more fully stated in said Collateral Indenture.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said Indenture.

ERIE RAILROAD COMPANY.

By

Attest:

Secretary.

AND, WHEREAS, There are to be attached to the said coupon bonds, at the time of the issue thereof, coupons representing the semi-annual instalments of interest which shall become due thereon to and including the first day of February, 1951, each of which coupons is to be substantially of the following tenor, viz. :

Exhibit R-119.

[FORM OF INTEREST COUPONS, OF WHICH THE FIRST IS TO BE
PAYABLE AUGUST 1, 1901.]

No.

\$20.00.

On the first day of Erie Railroad Company will pay to bearer, at its office or agency in the City of New York, N. Y., twenty dollars, gold coin of the standard existing February 1, 1901, without deduction for taxes, being six months' interest then due on its collateral Four Per Cent. Gold Bond No.

Treasurer.

AND, WHEREAS, There is to be endorsed on each of said coupon bonds and registered bonds without coupons, a certificate of the Trustee that it is one of the bonds issued hereunder, and no bond shall be secured by this indenture or be obligatory for any purpose unless such certificate shall have been executed by the Trustee; such Trustee's certificate to be substantially of the following tenor, viz.:

[FORM OF TRUSTEE'S CERTIFICATE.]

This bond is one of a series of bonds described in the within-mentioned Indenture, executed by Erie Railroad Company to the undersigned as Trustee.

THE MERCANTILE TRUST COMPANY,

By

AND WHEREAS, Each of the coupons to be attached to such coupon bonds is to be authenticated by the engraved fac-simile of the signature of the present Treasurer, or of any future Treasurer, of the Railroad Company, and the Railroad Company may adopt and use for that purpose the engraved signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such bonds shall actually be certified and delivered; and

WHEREAS, the execution and delivery of this indenture, and the execution and issue of said bonds, have been duly and unanimously authorized by all the stockholders and by the

Exhibit R-119.

Board of Directors of the Railroad Company, and in pursuance of such authority and of all and every legal power and authority in it vested, the Railroad Company proposes to make and execute, and from time to time to issue, the bonds secured hereby:

Now, therefore, this Indenture witnesseth:

That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture and the performance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the encasing and delivery of these presents, the receipt whereof is hereby acknowledged.

The Railroad Company, party of the first part, has sold, assigned and transferred, and by these presents does sell, assign and transfer, unto the Trustee, party of the second part, its successors and assigns forever, the following shares of stock, the certificates for which in the name of the Erie Railroad Company but by it endorsed in blank have been delivered to the Trustee, namely:

98,212 shares, of the aggregate par value of \$4,910,600 of the capital stock of the PENNSYLVANIA COAL COMPANY, out of the total outstanding capital stock of said company, consisting of 100,000 shares of the par value of \$50 each;

30,000 shares of the aggregate par value of \$1,500,000 of the capital stock of the ERIE AND WYOMING VALLEY RAILROAD COMPANY, being all the outstanding capital stock of said corporation;

2,500 shares of the aggregate par value of \$250,000 of the capital stock of the DELAWARE VALLEY AND KINGSTON RAILROAD COMPANY, being all the outstanding capital stock of said corporation;

66,300 shares of the preferred stock, and **66,300** shares of the common stock of the NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY (a corporation existing under the laws of the State of New Jersey), such shares being of the par value of \$100 each, and together constituting fifty-one per cent. of the outstanding capital stock of said company;

The Railway Company covenants and agrees that any and all additional shares of the capital stock of the said Pennsylvania Coal Company, the Erie and Wyoming Valley Railroad

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Company, or the Delaware Valley and Kingston Railroad Company, and other property of any kind or description whatsoever, which hereafter shall be acquired by the Railway Company or by the Trustee, and which by any covenant or provision of this indenture the Railway Company has subjected or has agreed to subject to the lien hereof, immediately upon such acquisition, but subject to the terms and conditions of such acquisition thereof, and without any further assignment, transfer or conveyance, shall become and be subject to the lien of this indenture as fully and completely as though expressly and specifically assigned, transferred and conveyed to the Trustee under this indenture; but the Railroad Company covenants and agrees that at any and all times it will execute, and will deliver to the Trustee any and all further assignments, transfers or conveyances and instruments of further assurance, as the Trustee may reasonably direct or require for the purpose of expressly and specifically subjecting such additional shares, bonds, certificates of indebtedness and other property to the lien of this indenture, and will deliver to the Trustee the certificates for any such shares of stock, and such bonds or certificates of indebtedness.

It is further covenanted and declared, that any other or additional property of any kind, including bonds and other securities, claims and stocks, from time to time hereafter, may be conveyed, assigned, transferred or delivered by the Railroad Company, or by any one in behalf of the Railroad Company with its written consent or approval, to the Trustee hereunder, as and for additional security for the bonds issued and to be issued hereunder, and the Trustee shall receive, hold and apply any and all such property subject to the trusts of this indenture; but any such conveyance, assignment, transfer or delivery, pursuant to the provisions of this clause, as and for additional security, may be made subject to any reservations, limitations, conditions and provisions which shall be set forth in an instrument in writing, then executed by the Trustee and by the Railroad Company, respecting the use, management and disposition of such additional property and the proceeds thereof.

But it is hereby expressly declared that there is reserved to and by the Railroad Company the right to acquire any properties (including stocks, bonds and other securities), and to hold and to dispose of the same free from the lien of this in-

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denture, provided that neither any bonds hereby secured and reserved under Section 3 of Article One hereof nor the proceeds of any such bonds so reserved, and no bonds, stocks, or other property or moneys held by the Trustee hereunder shall be used for such acquisition, or to reimburse the Railroad Company in respect thereof.

To have and to hold the said shares of stock hereby assigned and transferred, and also all additional property of any kind, including shares of stock, bonds and other securities, certificates of indebtedness and claims, which hereafter shall become subject to this indenture, unto the Trustee, its successors and assigns forever:

But in trust, nevertheless, for the equal and proportionate benefit and security of all present and future holders of the bonds and interest obligations issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations, when payable, and the performance of, and compliance with, the covenants and conditions of this indenture, without any preference, priority or distinction, as to lien or otherwise, of any one bond over any other bond by reason of priority in the issue or negotiation thereof; so that each and every bond, issued and to be issued as aforesaid, shall have the same right, lien and privilege under this indenture, and that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportionately secured hereby as if all had been made, issued and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of this indenture shall take effect from the day of the date hereof, without regard to the date of actual issue, sale or disposition of said bonds, as though, upon such day, all of said bonds were actually issued, sold and delivered to holders for value.

And it is hereby covenanted and declared, that the property subject to this indenture is to be held by the Trustee, and that all such bonds, with the coupons for interest thereon, are to be issued and received, subject to the further covenants, conditions and trusts hereinafter set forth, to wit:

ARTICLE ONE.

Section 1. From time to time, the bonds to be secured hereby, shall be executed by the Railroad Company, and by it shall be delivered for certification to the Trustee, and thereupon, as provided in this Article, and not otherwise, the Trustee shall certify and shall deliver the same at the option of the Railroad Company, from time to time.

Any of such bonds, may be executed, certified and delivered originally either as coupon bonds or as registered bonds.

The amount of bonds hereby secured which may be executed by the Railroad Company and which may be certified by the Trustee is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding thirty-six million dollars (\$36,000,000).

Before certifying or delivering any coupon bond hereby secured the Trustee shall detach and shall cancel all coupons thereof then matured; and every registered bond shall be dated on the day of the actual certification thereof.

Only such bonds as shall bear thereon a certificate, substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture, or shall be entitled to any lien or benefit hereunder. Every such certificate of the Trustee upon any bond executed by the Railroad Company, shall be the conclusive, and the only evidence that the bond so certified was duly issued hereunder and is entitled to the benefit of the trust hereby created.

Sec. 2. Of the bonds authorized to be issued under and secured by this indenture, bonds for the aggregate principal sum of \$32,000,000 shall be certified by the Trustee and returned to the Railroad Company, or upon the order of its President, immediately upon the execution of this indenture, or as soon thereafter as may be. The Railroad Company hereby covenanting that it will use and issue such \$32,000,000 bonds only in payment on account of the acquisition of shares of stock of the Pennsylvania Coal Company or of the Erie and Wyoming Valley Railroad Company or the Delaware Valley and Kingston Railroad Company all of which shares as and when acquired shall be pledged hereunder, and the certificates therefor delivered hereunder to the Trustee, which, however,

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shall not be bound to see to such application or use of such bonds.

Sec. 3. Four million dollars (\$4,000,000), par value of the bonds authorized to be issued under and secured by this indenture, shall be reserved to be executed by the Railroad Company, and to be certified and delivered by the Trustee, from time to time, for some one or more of the following purposes, but only as hereinafter provided and subject to the restrictions hereinafter stated:

I. The purposes for which such \$4,000,000 of bonds shall be executed, certified and delivered and for which such bonds or their proceeds may be used are:

(a) To make betterments or improvements of or upon any property which at the time of issuing the bonds reserved under this Section 3 shall be subject to the lien of this indenture, and to construct or acquire additional mines, collieries, coal lands or coal leases, and additional lines of railway, extensions, branches, bridges, shops, depots, terminal properties, power houses, electrical plant, rolling stock or other additional property connected with, or for use in connection with, any of the mines or collieries or lines of railway, extensions, branches, shops, depots, terminal properties, power houses, electrical plant, rolling stock, bridges or other properties which at the time of such construction or acquisition either shall be subject to the lien of this indenture, or shall belong to any company of whose capital stock at least ninety per cent. shall be held by the Trustee under this indenture; and to provide the Railroad Company with funds for expenditures by it made or incurred for any of the foregoing purposes;

(b) To furnish moneys, or to reimburse the Railroad Company for moneys furnished, to any other such company or companies of whose capital stock not less than ninety per cent. in amount shall then be held hereunder by the Trustee, to an amount not exceeding expenditures by such company or companies made or incurred for the construction or acquisition of betterments or improvements of, or additional, mines, collieries, coal lands or coal leases, or additional lines of railway, extensions, branches, bridges, shops, depots, terminal properties, power houses, electrical plant, rolling stock or other additional property connected with, or for use in connection with mines, collieries, coal lands or coal leases or any of the lines of

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railway, extensions, branches, shops, depots, terminal properties, power houses, electrical plant, rolling stock, bridges or other properties which at the time of such construction or acquisition shall belong to such other company or companies; *provided*, that in every such case the Railroad Company shall require such other company or companies to issue, and shall pledge or shall cause to be pledged with the Trustee hereunder, bonds or certificates of indebtedness or paid-up shares of the capital stock of such other company or companies of a par amount at least equal to the amount of the moneys so furnished; and,

(c) To acquire, or to reimburse the Railroad Company for the acquisition of, the shares of the capital stock, bonds and indebtedness of any company which at the time of such acquisition shall own any mine or colliery, coal lands or coal leases, or any line of railway, extension, branch, bridge, terminal property, power house, electrical plant, connected with or available for use in connection with, any mine or colliery, coal lands or coal leaseholds, or any line of railway, owned by any company of whose capital stock the greater part shall then be held by the Trustees hereunder; *provided*, that thereby not less than ninety per cent. of all the shares of the capital stock of such company shall be obtained, or previously shall have been obtained and pledged hereunder; and *provided*, further, that no shares or bonds or indebtedness issued or created by any such company after a majority in amount of the outstanding shares of the capital stock of such company shall have been pledged hereunder shall be acquired under this clause (c), but the same may be acquired under clause (b) of this section.

II. The restrictions subject to which such \$4,000,000 of reserve bonds from time to time shall be certified and delivered are as follows:

(1) Before certifying and delivering bonds under this section, there shall be delivered to the Trustee a copy of a resolution of the Board of Directors of the Railroad Company certified by its Secretary or Assistant Secretary, calling for the certification and delivery of such bonds, and directing the officers of the Railroad Company to set aside such bonds and their proceeds separate and apart from any other assets and funds of the Railroad Company, and to use the same only as authorized by this section;

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(2) From time to time when and as requested by the President of the Railroad Company, upon the presentation to the Trustee of the copy of any such resolution as above provided, there shall be so certified and delivered such amount of the bonds reserved under this section, not in any one delivery exceeding, in the aggregate, \$1,000,000 par value, as from time to time shall be called for in such resolutions. But, in every instance before certifying and delivering any of the bonds reserved under this section (except the \$1,000,000 thereof first deliverable hereunder), the Trustee shall require the Railroad Company to furnish, in addition to such resolution of its Board of Directors, the certificate or certificates of some one or more officers of the Railroad Company, stating:

(a) That all bonds, theretofore certified and delivered under this section in respect of which no such certificate previously shall have been furnished, and the proceeds of all such bonds, have been actually used for the said purposes, or for some one or more of them, or to reimburse the Railroad Company as aforesaid—indicating the particular mines, collieries, coal lands and coal leaseholds and the lines of railway, extensions, branches, bridges, shops, depots, terminal properties, rolling stock or other additional property, and the kind or class of betterments or improvements constructed, acquired or made, and the stocks, bonds or indebtedness acquired, and the sums furnished to any such other company or companies, and the amount and description of the shares of capital stock, bonds or certificates of indebtedness of such other company or companies received by the Railroad Company on account thereof;

(b) That the price paid for such construction or for such acquisition, betterments or improvements was not in excess of the fair value of the property acquired or work done, and that the bonds included in such certificate were sold, disposed of or otherwise accounted for at not less than their fair value at the time of such sale, disposition or accounting.

(c) That no part of such expenditures so certified was included in any previous certificate furnished hereunder, or was made or reimbursed out of any bonds or

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moneys received by the Railroad Company under any other provision of this indenture;

(d) That no part of the expenditures in such certificate so certified was included in the operating or maintenance expenses reported in any annual report theretofore issued by the Railroad Company.

(e) In case such certificate shall show the acquisition of new property, then such certificate also shall state whether such new property is known or is believed to be subject to any lien or charge prior to this indenture, except undetermined liens or charges incidental to construction; and such certificate shall specify the amount of any such prior lien or charge (other than as aforesaid) known or believed to exist. In case the certificate shall show the acquisition of any shares of the capital stock, bonds or other indebtedness of any other company, such certificate shall state whether the property of such other company is known or is believed to be subject to any lien or charge, and whether such company is known or is believed to have any indebtedness except ordinary operating accounts and undetermined claims, liens and charges incidental to construction, and except also indebtedness to the Railroad Company and liens, charges and indebtedness transferred to the Trustee or in respect of which bonds shall have been set apart under the following clause (3), and such certificate in each case shall specify the amount of any such lien, charge or indebtedness known or believed to exist;

(f) Any such certificate under this section may state any other facts pertaining to the right to certify and deliver bonds hereunder. The same officer or officers of the Railroad Company need not certify to all the facts required to be certified under the provisions of this section, but different officers may certify to different facts respectively.

(3) After delivery of the \$1,000,000 of bonds first deliverable hereunder, no bonds shall be certified and delivered under this section, for or in respect of the construction or acquisition of property subject to any such certified lien or charge, or for or in respect of the acquisition of shares of capi-

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tal stock, bonds or indebtedness of a company subject to indebtedness so certified, or whose property is subject to a lien or charge so certified, unless or until the Railroad Company shall have deposited with the Trustee an amount of the bonds hereby secured of a par amount equal to the aggregate amount of such certified indebtedness, liens and charges. Whenever thereafter any of such certified indebtedness, liens and charges shall be paid or satisfied, or shall be acquired and be subjected to the lien hereof, then an equal amount at par of the bonds hereby secured so deposited with the Trustee under this clause shall be redelivered by the Trustee to the Railroad Company or upon its order, so that the amount of such bonds held by the Trustee under this clause at all times shall be equal to the amount of such indebtedness, liens and charges remaining unsatisfied or not subjected to the lien hereof.

(4) The Railroad Company covenants that whenever all the bonds reserved under this section shall have been certified and delivered to, and used by, the Railroad Company, it will execute and deliver to the Trustee a similar certificate indicating the particular application of all bonds, or proceeds of bonds, in respect of which the Railroad Company shall not theretofore have furnished such certificate to the Trustee.

(5) Every such certificate furnished under this section, unless signed, *first*, by the President or a Vice-President or the General Manager or the Chief Engineer, and, *secondly*, by the Comptroller or Auditor or Treasurer of the Railroad Company, shall have endorsed thereon, or shall be accompanied by, a written statement of one of the officers first above designated, and one of the officers secondly above designated, that they believe that such certificate is true, and that such bonds have been used, and the expenditures certified have been made, only for purposes authorized by this section. A certificate signed by one of the officers first above designated and one of the officers secondly above designated or having endorsed thereon, or being accompanied by a written statement of said officers as above provided may be received by the Trustee as conclusive evidence of any facts pertaining to the right to certify and deliver bonds pursuant to this section.

Together with such statements and certificates there shall be delivered to the Trustee any such bonds so acquired, and the certificates endorsed for transfer in blank for any such

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shares of stock so acquired, and any conveyances or instruments of further assurance that may be necessary for the purpose of effectually subjecting to the lien and operation of this indenture any new property so acquired by the Railroad Company, and so far as may be, any indebtedness, liens or charges so taken up or acquired by use of said bonds, and, also, the written opinion of counsel for the Railroad Company to the effect that such conveyances or other instruments are sufficient for that purpose or that no conveyance or instrument of further assurance is necessary for the purpose aforesaid. Such resolutions, statements, certificates and opinion shall be deemed, and shall be taken to be, full authority and protection to the Trustee for its certification of such bonds under the foregoing provisions of this section.

The Railroad Company covenants that when all the bonds reserved under this Section 3 shall have been certified and delivered to and used by the Railroad Company, it will execute and deliver to the Trustee a similar certificate indicating the purposes for which the Railroad Company shall have used all bonds or the proceeds of all the bonds in respect of which the Railroad Company shall not theretofore have furnished such certificate to the Trustee.

Sec. 4. Whenever under Section 3 of this Article the Railroad Company shall be entitled to bonds hereby secured or their proceeds, the Railroad Company may take and accept such bonds at a price not less than their average market price during the previous calendar month, any bonds so taken and accepted by the Railroad Company in reimbursement for expenses therefore actually made by the Railroad Company shall be held and may be used by the Railroad Company for its general corporate purposes freed and discharged from all restrictions and provisions of said Section 3 as though such bonds had been sold at such price, and the proceeds paid over to the Railroad Company.

Sec. 5. Whenever any coupon bond or bonds, issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds without coupons, the Railroad Company shall execute, and the Trustee shall certify, and in exchange for such coupon bond or bonds shall deliver registered bonds, or one registered bond, without coupons, for the like aggre-

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gate principal sum. Such registered bonds shall bear interest at the same rate as the surrendered coupon bonds, and from the date of the last-matured coupon thereof. In every case of such exchange the Trustee forthwith shall cancel the surrendered bond or bonds and coupons, and shall deliver the same to the Railroad Company.

Whenever any registered bond without coupons shall be surrendered, transferred and cancelled, the Railroad Company shall issue, and the Trustee shall certify and deliver, to the transferee, registered bonds, or one registered bond without coupons, for a like aggregate principal sum;

Whenever any registered bond without coupons shall be surrendered for exchange for a coupon bond or bonds, then upon cancellation of such surrendered bond and payment of the charges therefor, the Railroad Company shall issue, and the Trustee shall certify and deliver, in exchange therefor, coupon bonds for the like aggregate principal sum, having attached thereto the coupons maturing on and after the date when the next semi-annual instalment of interest would have matured on such surrendered registered bond without coupons.

For any exchange of coupon bonds for registered bonds, and (2) for any transfer of registered bonds without coupons, and (3) for any exchange of registered bonds without coupons for coupon bonds, the Railroad Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge required to be paid, and also of the further sum of one dollar for each new coupon bond or registered bond without coupons issued upon any such exchange or transfer.

Sec. 6. In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated, or be destroyed, the Railroad Company, in its discretion, may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of, and substitution for, the coupon bond and its coupons, or the registered bond so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons, or of

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such registered bond, and upon receipt also of satisfactory indemnity.

Sec. 7. Nothing in this Article, or in any other Article of this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any person or corporation, other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

ARTICLE TWO.**THE RAILROAD COMPANY COVENANTS AS FOLLOWS:**

Section 1. Duly and punctually it will pay the principal and interest of every bond issued and secured hereunder at the dates and the place and in the manner mentioned in such bonds, or in the coupons thereto belonging, without deduction from either principal or interest, for any taxes imposed by the United States or any State or County or Municipality thereof, which the Railroad Company may be required to pay or to retain therefrom under or by reason of any present or future law. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be canceled. The principal of each coupon bond shall be payable only upon presentation and surrender of the bond. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof. The principal of each registered bond without coupons shall be payable to the person registered as holder of such bond at the time of payment, but only upon presentation and surrender of such bond.

At all times until the payment of the principal of the bonds secured by this indenture, the Railroad Company will keep an office or agency in the City of New York where bonds and coupons may be presented for payment, and where notices or demands in respect of said bonds and coupons may be served,

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and from time to time the Railroad Company will give written notice to the Trustee of the place of such office or agency. In case the Railroad Company shall fail to do so, presentation and demand may be made and notices served at the office of the Trustee in the City of New York.

Sec. 2. Whenever demanded by the Trustee, the Railroad Company will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the Trustee all and singular the premises and property hereby assigned, pledged, or mortgaged, or intended so to be, or which the Railroad Company herein has covenanted and agreed hereafter to assign, pledge, or mortgage, as the Trustee shall reasonably require for better accomplishing the provisions and purposes of this indenture and for securing the payment of the principal and interest of the bonds intended to be secured hereby.

Sec. 3. The Railroad Company, at an office or agency to be maintained by it in the City of New York, will keep a register or registers for the registration and transfer of bonds issued hereunder, in which it will register subject to such reasonable regulations as it may prescribe, bonds without coupons, and upon presentation thereof for such purpose any coupon bonds issued hereunder. Such register, at all reasonable times, shall be open to the inspection of the Trustee.

Upon presentation to the Railroad Company, at the place where such register shall be kept, of any such registered coupon bond, accompanied by delivery of a written instrument of transfer in a form approved by the Railroad Company, executed by the registered holder, such bond shall be transferred upon such register, and such transfer shall be noted by the Railroad Company upon such bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such coupon bond registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a

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coupon bond shall be noted by the Railroad Company on the bond.

Registration of any coupon bond, however, shall not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely, and shall remain payable to bearer.

Any registered bond without coupons may be transferred at said office or agency by surrender of such bond to the Railroad Company for cancellation, accompanied by the delivery of a written instrument of transfer in a form approved by the Railroad Company, duly executed by the registered holder for the time being, and by payment of any charge imposed under Section 5 of ARTICLE ONE hereof; and thereupon a new registered bond, or new registered bonds, for an equivalent aggregate principal sum, shall be issued to the transferee or transferees, as provided in said Section 4 of ARTICLE ONE.

Sec. 4. The Railroad Company will not voluntarily create or suffer to be created, any debt, lien or charge which would be prior to the lien of these presents upon any property which shall have become subject to this indenture, or any part thereof, or upon the income thereof; and within three months after the same shall accrue, it will pay, or will cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, laborers or others which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon such property or any part thereof, or the income thereof; and if any company (other than the New York, Susquehanna and Western Railroad Company), of whose capital stock the greater part shall have been pledged hereunder at any time while the greater part of the capital stock of such company shall be pledged hereunder, shall voluntarily create, or shall suffer to be created (except as in this indenture expressly permitted), any new lien or charge upon its property or income, or shall create, or shall suffer to be created, any new indebtedness other than indebtedness to the Railroad Company, or indebtedness for the current expenses of such company during a period not exceeding three months, then it (the Railroad Company) will acquire such lien, charge or indebtedness and cause the same to be vested in the Trustee, or will cause the same to be paid, or discharged, or will make adequate provision for the satis-

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faction or discharge thereof; *provided* that nothing in this section contained shall require the Railroad Company to acquire, or cause to be paid or discharged or make provision for, any such debt, lien or charge so long as the validity thereof in good faith shall be contested.

Sec. 5. The Railroad Company from time to time will pay and discharge all taxes, assessments and governmental charges (the lien of which would be prior to the lien hereof) lawfully imposed upon the stocks, bonds and other property pledged or mortgaged hereunder, or upon any part thereof, or upon the income and profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest under this indenture of the Trustee or of the holders of the bonds hereby secured in respect of such stocks, bonds and other property, so that the lien and priority of this indenture shall be fully preserved at the cost of the Railroad Company without expense to the Trustee or the Bondholders; and if any company of whose capital stock the greater part shall have been acquired and pledged hereunder, at any time while a greater part of the capital stock of such company shall be pledged hereunder, shall fail to pay all taxes, assessments and charges lawfully imposed upon the property of such company or upon the income and profits thereof, then it, the Railroad Company, either will pay the same, or will acquire and will transfer to the Trustee the claim therefor, or will make adequate provision for the satisfaction or discharge thereof; *provided, however*, that nothing in this section contained shall require the Railroad Company to pay, acquire or make provision for any such tax, assessment or charge so long as in good faith the Railroad Company shall contest the validity thereof.

Sec. 6. Except as in this indenture expressly authorized, the Railroad Company will not by affirmative vote or consent, or by abstaining from voting, sanction or permit any increase of the capital stock of any company of whose capital stock the greater part shall be subject to this indenture, or the issue or the guaranty of any new bonds by any such company, or the creation of any new indebtedness of any such company (except current operating accounts for a period not at any date exceeding six months prior thereto), or the creation of any new mortgage or other lien upon the railroad or property

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of any such company, unless simultaneously there shall be effective provision that such new indebtedness, and the evidences thereof and such new bonds issued or guaranteed, and such new mortgage or other lien, and all such additional stock (or such part of such additional stock as shall be proportionate to the part of such entire capital stock previously pledged hereunder) forthwith, upon the issue or creation thereof, shall be transferred to or pledged with the Trustee, by it to be held subject to all the trusts of this indenture; and all such additional stock shall be fully paid and non-assessable.

Except as in this indenture expressly authorized, the Railroad Company will not, by affirmative vote or consent, or by abstaining from voting, sanction or permit any company, of whose capital stock the greater part shall be subject to this indenture, to sell or otherwise to dispose of, any mine, colliery, railroad or bridge belonging to such company, unless the operation thereof be abandoned, or any property required for such operation, or to lease the same (unless such lease be upon the express condition that it shall terminate at the election of the Trustee in case any default shall be made and shall continue as provided in Section 2 of Article Four hereof), except to the Railroad Company or to some other company of whose capital stock not less than ninety per cent. shall then be held by the Railroad Company and be pledged with the Trustee hereunder.

Sec. 7. Any and all claims or indebtedness, which the Railroad Company hereafter may acquire against any other company, of whose capital stock the greater part shall have been pledged or assigned to the Trustee hereunder, shall (subject to the provisions in respect thereof in this indenture contained) be and become subject to the lien of this indenture, and, if when requested in writing by the Trustee, the Railroad Company will execute to the Trustee appropriate assignments thereof.

Sec. 8. The Railroad Company will not issue, negotiate, sell or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained; and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, only to and

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for the purposes herein prescribed, and to and for no other or different purpose.

Sec. 9. In each and every year after the year 1901 during the month of May the Railroad Company will deliver to the Trustee, and also to the copartnership firm of J. P. Morgan & Co., Bankers in the city of New York, as Sinking Fund Trustees hereunder, a statement in writing, under its corporate seal, showing the total amount of coal sold and delivered during the preceding calendar year from the mines of the Pennsylvania Coal Company; and simultaneously it will pay to the said copartnership firm of J. P. Morgan & Co. as Sinking Fund Trustees hereunder, a sum equal to ten cents for every ton of coal so sold and delivered. The moneys so received, together with all accumulations of interest thereon, as hereinafter provided, shall be appropriated to, and shall constitute, **a sinking fund**, as additional security for the retirement of every bond of this issue at or before the stated maturity thereof.

The moneys paid or coming into the sinking fund shall by the said firm of J. P. Morgan & Co., Sinking Fund Trustees, be held as bankers; and from time to time the said sinking fund, together with any accumulations of interest thereon, shall by them be invested in bonds hereby secured, by the purchase thereof in such manner as to them shall seem best, and at such prices as they shall deem best, not exceeding par and accrued interest, with five per cent. premium added to the principal.

To the extent that, in the opinion of the Sinking Fund Trustees, bonds hereby secured cannot be purchased on said terms, the Sinking Fund Trustees may and shall proceed to draw and to designate by lot, bonds hereby secured to an aggregate amount sufficient at the valuations above prescribed to exhaust the net moneys paid by the Railroad Company under the provisions of this section, and all accumulations of interest thereon and then in possession of the Sinking Fund Trustee and available for the redemption of the bonds so designated.

The numbers of all bonds so designated and drawn shall be published as directed by the Sinking Fund Trustees, twice in each week for three successive weeks in the month of January or the month of July, in two or more newspapers published in the City of New York, with a notice that upon presentation thereof to the Sinking Fund trustees, every such bond will be paid at par, together with a premium of five per cent. thereof

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and all interest accrued thereon upon the first day of the following month of February or of August, as the case may be; and after such day so designated no interest shall thereafter accrue or be payable upon, or in respect of, any bond so designated and notified, nor shall any coupon representing any such subsequently accruing interest be of any force or effect. But, to the extent of any moneys at any time thereafter in their possession, upon receipt of any such bond so designated and notified, and not presented before the day so designated, together with all coupons (if any) belonging thereto for interest accruing after such designated day, the Sinking Fund Trustees may receive the same, and may pay therefor a sum equal to par together with a premium of five per cent. thereof and all interest accrued thereon up to the date so designated.

All of the bonds hereby secured, which shall be called or purchased, as aforesaid, shall, as soon as received by the Sinking Fund Trustees, be conspicuously and indelibly stamped on the face thereof, as "Received for the sinking fund, and no longer negotiable or transferable," and the date of the receipt thereof by the Sinking Fund Trustees shall also be plainly noted thereon; and the coupons thereto belonging shall be defaced or canceled by perforations or punctures through the name of the Treasurer; or the Sinking Fund Trustees may exchange any coupon bond for a registered bond or bonds without coupons, for the like aggregate principal sum, as permitted by Section 5 of Article One of this indenture; and, in case of such exchange, every such registered bond so received shall be stamped "Received for the sinking fund and no longer transferable."

All coupon bonds or registered bonds so received by the Sinking Fund Trustees shall be held by them for the sinking fund. All of the bonds hereby secured, which shall come into or be received for the sinking fund, shall remain in force as valid obligations, as an investment of and for the sinking fund, but for no other purpose; and the semi-annual interest thereon, as the same shall mature, shall be payable, and shall continue to be paid by the Railroad Company to the Sinking Fund Trustees, in the same manner and at the same times as such payments of interest would be made if the said bonds were held and owned by any other corporation or person, and the amount of such interest shall be added to and deposited and

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shall be applied as a part of the sinking fund, in the manner, and with the limitations hereinbefore provided in respect of the deposit and investment of other moneys paid or coming into the sinking fund and the accumulations thereof.

When all of the bonds secured by this indenture shall have been paid, or shall have been called or designated for acquisition for the sinking fund, as hereinbefore provided, all of the said bonds that shall have been acquired or held for the sinking fund shall by the Sinking Fund Trustees be canceled and delivered to the Railroad Company, together with all coupons (if any) thereto belonging; and the Sinking Fund Trustees shall also pay over and deliver to the Railroad Company all moneys and securities for money then in or belonging to the sinking fund; but not without making ample provision, or taking adequate security, for the payment of the principal at or before the maturity of any of the said bonds that shall have been called for the sinking fund, as hereinbefore provided, and shall not have been presented and delivered in pursuance of such call.

No registered bond without coupons shall be drawn so long as any coupon bond is outstanding and unpaid.

As Sinking Fund Trustees, J. P. Morgan & Co. shall act as a copartnership. Notwithstanding any change in said firm, J. P. Morgan & Co., as from time to time constituted, shall continue to be Sinking Fund Trustees, with all the powers, right and title vested hereunder in the Sinking Fund Trustees. But in case of any change in said firm, the Railroad Company and the Trustee, by an instrument in writing under the corporate seals of the Trustee and of the Railroad Company, may appoint to be Sinking Fund Trustee in place and in lieu of J. P. Morgan & Co. some trust company in good standing, doing business in the City of New York and having a capital and surplus aggregating at least \$1,000,000. Thereupon the firm of J. P. Morgan & Co., as then constituted, shall execute and deliver an instrument transferring to such Sinking Fund Trustee all of the estates, properties, rights, powers and duties of the said J. P. Morgan & Co. as Sinking Fund Trustees, and shall duly transfer and deliver to the new Sinking Fund Trustee so appointed in their place all bonds and other property and moneys held by them as such Sinking Fund Trustees after deducting therefrom their reasonable costs and charges then

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remaining unpaid. Without any further act, deed or conveyance, such new Sinking Fund Trustee forthwith shall become and be vested with all the properties, rights, powers, trusts, duties and obligations of J. P. Morgan & Co. as Sinking Fund Trustees hereunder, with like effect as if originally named herein as Sinking Fund Trustee.

Neither J. P. Morgan & Co., nor any successor, as Sinking Fund Trustees, shall be answerable for the default or misconduct of any agent or attorney appointed by them in pursuance hereof, if such agent or attorney shall have been selected with reasonable care, or for anything whatever in connection with such sinking fund except wilfull misconduct and gross negligence. The Sinking Fund Trustees shall be entitled to a reasonable compensation payable primarily by the Railroad Company and secondarily out of the Sinking Fund.

ARTICLE THREE.

Section 1. The Trustee shall be authorized to cause to be registered in its name as Trustee hereunder any and all coupon bonds pledged with it hereunder, or which at any time hereafter may be pledged with it under any of the provisions of this indenture, or it may cause the same to be exchanged for registered bonds without coupons of any denomination, or it may cause any such bonds to be stamped "Non-negotiable. Held in trust under the Collateral Trust Indenture bearing date February 1, 1901, executed by Erie Railroad Company to The Mercantile Trust Company, as Trustee."

The Trustee shall cause to be transferred into its name, as Trustee hereunder, all registered bonds which shall have been delivered and assigned to it as security hereunder. The Trustee at any time may transfer into its name, as Trustee hereunder, all or any shares of stock, the certificates for which shall have been pledged with it hereunder.

The Trustee may do whatever may be necessary for the purpose of maintaining or preserving the corporate existence of any company the greater part of whose shares shall have been pledged hereunder, and for such purposes, from time to time, it may sell, assign, transfer and deliver so many shares of the stock of the several companies as may be necessary to qualify persons to act as directors of, or in any other official relation to, said companies; provided, however, that under

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this provision no transfer shall be made which shall so reduce the amount of stock in any company held by the Trustee as to render it less than a controlling interest in such stock; and in every case the Trustee may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Sec. 2. Unless and until there shall be some continuing default (1) in the payment of any interest on any bond or bonds secured by this indenture and such default shall have continued for a period of ninety days, or (2) in the payment of the principal of any bond hereby secured when the same shall have become payable, or (3) in the due observance or performance of any other covenant or condition in this indenture required to be kept or performed by the Railroad Company, and such last-mentioned default shall have continued for a period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company—(a) the Trustee (except upon the request or with the assent of the Railroad Company) shall not enforce the payment of, or collect, the principal or interest of any bonds or of any other claims or indebtedness now or hereafter subject to this indenture, whether at or before or after the maturity of such bonds or contract obligations or other claims or indebtedness, and shall not enforce any provision of the mortgages, trust deeds or other instruments under which such bonds or other obligations were issued or by which the same are secured; and (b) the Railroad Company shall be entitled to receive all interest paid in respect of any such bonds or obligations, and the dividends on all shares of stock which shall be subject to this indenture, although the same shall have been transferred to the Trustee; (c) from time to time (subject to the covenants in respect thereof in this section contained), upon the request of the Railroad Company on a date not more than sixty days prior to the maturity of any coupons, held by the Trustee for such interest, the Trustee shall deliver such coupons to the Railroad Company in order that the Railroad Company may receive payment thereof for its own use, or may cause the same to be canceled, and, upon request of the Railroad Company on a date not more than sixty days prior to the maturity of any interest or dividends, the Trustee shall deliver to the Railroad Company suitable orders in favor of the Railroad Company, or its nominee, for the payment of such interest and dividends

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upon any bonds or shares held by the Trustee, and the Railroad Company may collect such coupons, interest and dividends, but not by any proceeding which the Trustee shall deem to be prejudicial to the trusts hereunder, and the Trustee at once shall pay over to the Railroad Company any such interest and dividends which may be collected or be received by it; and (d) the Railroad Company, for its own use, shall be entitled to demand, collect and receive, and may release and discharge, the principal and interest of any claims and indebtedness subjected to the lien of this indenture under Section 7 of Article Two hereof, and upon request of the Railroad Company the Trustee shall execute any reassignments or releases which may be required for that purpose.

Provided, however, and hereby it is declared and agreed that, except as in this indenture otherwise expressly provided, (1) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over to the Railroad Company, any principal of any bond pledged or assigned to the Trustee hereunder; (2) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over, any interest on any such bond, or any principal or interest of any such other obligation, claim or indebtedness, which shall have been collected or paid out of the proceeds of any sale of the property covered by a mortgage securing such bonds, or out of the proceeds of the sale of any other property of the company liable upon such bonds, obligations, claims or indebtedness in case of a dissolution or liquidation of such company; it being the intention that the Railroad Company shall be entitled to receive payments made only out of the rents, revenues, income or proceeds of operation of such properties; (3) The Railroad Company shall not sell, assign or transfer any such coupon, or right to interest or dividends, delivered or assigned to it, or any other such claim or indebtedness, except subject to this indenture; (4) the Railroad Company shall not collect any such coupons or interest, or any such other claims or indebtedness, by legal proceeding or by enforcement of any security therefor, except with the assent of the Trustee, nor in any manner which the Trustee shall deem prejudicial to the trust hereunder; and, (5) until actually paid, released or discharged, every such coupon, or right to interest or dividends, and such other claims and indebtedness, shall remain subject to the lien of this indenture.

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If any such coupon, claim or indebtedness shall not be paid or satisfied within sixty days after delivery thereof to the Railroad Company hereunder, the Railroad Company shall return the same to the Trustee; and in case of the payment or satisfaction of any such coupon, claim or indebtedness delivered by the Trustee to the Railroad Company hereunder, the Railroad Company, upon demand of the Trustee, shall furnish satisfactory evidence of such payment or satisfaction.

Sec. 3. In case any sum shall be paid on account of the principal of any bonds or of any obligations held by the Trustee hereunder, or in case any sum shall be paid on account of the interest on any such bonds or obligations out of the proceeds of a sale of the property covered by a mortgage or trust deed securing such bonds or obligations, or in case, upon the dissolution or liquidation of any company, any sum shall be paid upon any shares of stock of such company pledged hereunder or upon any such claims against or indebtedness of any such company held by the Trustee, then, in any such case, any such sum, unless applied on account of the purchase price of property purchased pursuant to Section 5 of this Article, shall be received by the Trustee and shall be paid over by the Trustee to the Railroad Company to reimburse it for expenditures by it made for any one or more of the purposes for which bonds reserved under Section 4 of Article One hereof or their proceeds may be used, upon certificates of such expenditures, signed by the President or a Vice-President, and by the Comptroller, or Auditor, or Treasurer, of the Railroad Company.

Sec. 4. Unless and until there shall be some continuing default (1) in the payment of any interest on any bond or bonds secured by this indenture and such default shall have continued for a period of ninety days; or (2) in the payment of the principal of any bond hereby secured when the same shall have become payable, or (3) in the due observance or performance of any other covenant or condition in this indenture, required to be kept or performed by the Railroad Company, and such last-mentioned default shall have continued for a period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company—the Railroad Company shall have the right to vote upon all shares of stock subject to this indenture for all purposes not inconsistent with the provisions or purposes of this indenture.

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and with the same force and effect as though such shares were not subject hereto; and from time to time, upon demand of the President of the Railroad Company, the Trustee, forthwith, shall execute and deliver to the Railroad Company, or to its nominees, suitable powers of attorney or proxies to vote upon any shares of stock which shall have been transferred to the name of the Trustee.

Sec. 5. In case default shall be made in the payment of the principal or interest of any of the bonds or obligations which shall have been delivered to, and held by, the Trustee hereunder, then in any such case, if the Trustee shall hold more than ninety per cent. in amount of the entire issue of such bonds or obligations in default, upon the written request of the Railroad Company, it shall, and in other cases, upon such written request, it may, in its discretion, cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage, or trust, or charge, by which such bonds or obligations in default are secured. In case the Railroad Company shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default in the payment of interest shall have continued for a period of ninety days, then the Trustee, in its discretion, may institute such proceedings without such written request.

In case, at any time, any company of whose capital stock the greater part shall be held by the Trustee hereunder shall be dissolved or liquidated; or in case all or any of the property of any such company shall be sold upon the insolvency of such company at any judicial or other sale; or in case any property covered by a mortgage securing any bonds, or subject to any charge or trust for the payment of any other obligations held by the Trustee hereunder, shall be sold upon foreclosure of such mortgage, or by enforcement of such charge or trust; then and in every such case (if the property of such company, or the property sold, can be acquired by crediting on the bonds, obligations, claims, indebtedness or shares of stock of such company, held by the Trustee hereunder, any sum accruing or to be received thereon out of the proceeds of such property, and paying not more than ten per cent. of the price of such property in cash) the Trustee, in its discretion, may, but, if by the Railroad Company requested in writing and provided with the

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amount of cash necessary therefor (whether such amount be more or be less than ten per cent. of the price of such property), the Trustee shall purchase, or shall cause to be purchased, or shall permit the Railroad Company to purchase, such property, either in the name or on behalf of the Trustee or of the Railroad Company, or by purchasing trustees, and shall use, or shall permit the Railroad Company to use, such bonds, obligations, claims, indebtedness and stock, so far as may be, to make payment for such property. In case of such purchase the Trustee shall take such steps as it may deem proper to cause such property to be vested either in the Railroad Company, subject to the lien of this indenture, or in some other corporation organized or to be organized, with power to acquire and manage such property, provided that all the outstanding bonds and shares of capital stock of such other corporation (excepting the number of shares required to qualify Directors) shall by the Trustee be acquired on behalf of the Railroad Company and be held under this indenture.

With the consent of the Railroad Company at any time, the Trustee may take such proceedings as in its discretion it shall deem desirable to protect its interests hereunder in respect of any bonds, obligations or stock subject to the lien hereof, and for that purpose it may join in any plan of reorganization in respect of any such bonds, obligations or stocks, and may accept new securities issued in exchange therefor, under such plan. In case the Railroad Company shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default shall have continued for the period of ninety days, the Trustee shall be entitled to take such proceedings without the consent of the Railroad Company.

The Railroad Company covenants that, forthwith, on demand of the Trustee, it, the Railroad Company, will pay, or will make satisfactory provision for, all expenditures to be incurred by the Trustee under any of the provisions of this section, including all expenditures necessary to obtain and to perfect the ownership and title to any property which pursuant to the provisions of this section the Trustee shall purchase or shall cause to be purchased; and in case the Railroad Company shall fail so to do, then, without impairment of, or preju-

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dice to, any of its rights hereunder by reason of the default of the Railroad Company, the Trustee, in its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for such advances made by the Trustee, or by others at its request, with interest thereon, the Trustee shall have a lien prior to that under this indenture upon the bonds, obligations, claims, indebtedness or stock in respect of which such advances shall have been made, and upon the proceeds thereof and upon any property acquired by means of such bonds, obligations, claims, indebtedness or stock.

In case the Trustee shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds, obligations or stock, then the Trustee shall receive any portion of the proceeds of the sale accruing on the bonds, obligations and stock by it held hereunder, and from time to time such proceeds shall be paid over to the Railroad Company to reimburse it for expenditures which shall have been made by it for any purpose for which bonds or their proceeds may be used under section 3 of Article One hereof, upon certificates of such expenditures signed by the President or a Vice-President, and by the Comptroller or Auditor or Treasurer of the Railroad Company

Sec. 6. Anything in this indenture to the contrary notwithstanding, any company of whose shares of capital stock the larger part shall be held by the Trustee hereunder may be merged or consolidated with, or all or any part of the property of any such company may be sold to, the Railroad Company or with or to any other company of whose capital stock at least ninety per cent. in amount shall then be held by the Trustee hereunder;

Provided, however, (1) that in case of a merger or consolidation with, or sale or conveyance to, the Railroad Company, the property of such company, or the property sold or conveyed, shall become and be subject to the lien of this indenture, free from any prior charge except to secure bonds then held by the Trustees or by the Trust Company hereunder, and shall be vested in the Trustees; and (2) that in case of a merger or consolidation with, or sale or conveyance to, any company other than the Railroad Company, all the shares of capital

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stock (except the number of shares required to qualify directors), and all the bonded indebtedness and other obligations of such consolidated company or company into which such other company shall have been merged (except current operating liabilities), shall continue to be held by the Trustee, notwithstanding such merger, consolidation, sale or conveyance. The Trustee may make any exchange, substitution, cancellation or surrender of securities required for the purposes or in accomplishment of any such merger or consolidation; and the Trustee may receive the opinion of any counsel approved by it as to the legal effect of any such merger or consolidation, and as to the steps necessary to be taken to consummate the same, and as to any other matter under this section; and such opinion shall be full protection to the Trustee for any action by it taken pursuant thereto.

Sec. 7. At any time in its discretion, the Trustee may, and, if requested in writing by the Railroad Company, the Trustee shall, consent to the extension or renewal of any bonds or obligations now held, or which hereafter shall be held by the Trustee hereunder; *provided* that the mortgage and lien securing such bonds or obligations shall continue unimpaired notwithstanding such extension. The Trustee may receive the opinion of any counsel approved by it as conclusive evidence that any such extension is in compliance with the provisions of this section.

ARTICLE FOUR.

Section 1. Neither any coupon belonging to any bond hereby secured, nor any claim for interest on any registered bond which in any way, at or after maturity, shall have been transferred or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit, of or from, this indenture, except after the prior payment in full of the principal of the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

Sec. 2. In case (1) default shall be made in the payment of any interest on any bond or bonds secured by this indenture, and any such default shall continue for a period of ninety days, or in case (2) default shall be made in the due and punctual

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payment of the principal of any bond hereby secured, or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall continue for a period of six months after written notice thereof shall be given to the Railroad Company by the Trustee or by the holders of five per cent. in amount of the bonds hereby secured,—then and in every such case the Trustee, by any officer, attorney or agent, appointed by it therefor, shall be entitled to vote on all shares of stock then held by the Trustee hereunder, and shall be entitled to receive and collect all dividends and all interest moneys maturing or payable upon any and all stocks and bonds then held by the Trustee hereunder, and the Trustee shall be entitled, by its attorneys or agents, to enter into and upon all or any property and premises, rights and interests conveyed or mortgaged to the Trustee hereunder, and may exclude the Railroad Company, its agents and servants, wholly therefrom, and, having and holding the same, may use, operate, manage and control the same and conduct the business thereof, by its superintendents, managers, receivers, agents and servants, to the best advantage of the holders of the bonds hereby secured; and, at the expense of the trust estate, the Trustee may administer and manage the same as it may deem to the best advantage of the holders of said bonds. After deducting all expenses incurred under this section and any other expenses of the trust hereunder, the Trustee shall apply all moneys collected or received by it hereunder as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent. per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference: and

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, *first* to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of four per cent. per annum) in the order of the maturity of the installments, and *next* to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons

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entitled to such payment without any discrimination or preference.

These provisions, however, are not intended in anywise to modify the provisions of section 1 of this Article Four, but are subject thereto.

Sec. 3. In case default shall be made in the payment of any interest on any bond or bonds hereby secured, and any such default shall continue for a period of six months, then and in every case of such continuing default, the holders of a majority in amount of the bonds hereby secured then outstanding, by notice in writing delivered to the Railroad Company and to the Trustee, may declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be immediately due and payable, anything in this Indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of four per cent. per annum on overdue installments of interest, shall either be paid by the Railroad Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railroad Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to, or shall affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railroad Company and the Trustee shall be restored respectively to their several positions and rights hereunder in respect of the mortgaged premises, and the shares of stock and the bonds and other property herein pledged or agreed to be pledged; and all rights, remedies and powers of the Trustees, shall continue as though no such proceeding had been taken.

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Sec. 4. In case (1) default shall be made in the payment of any interest on any bond at any time issued under and secured by this indenture, and any such default shall continue for a period of ninety days; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall continue for a period of six months after written notice thereof from the Trustee; then, and in each and every such case of default, with or without entry, personally or by attorney, in its discretion, (a) the Trustee may sell to the highest and best bidder all and singular the stocks, bonds and other property which then shall be held by the Trustee, or in any manner shall be subject to this indenture, including any real and personal property, franchises and rights of any kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of Section 6 of this Article Four, in which case such sale may be made in parcels as in said section provided, which sale or sales shall be made at public auction at such place in the City of New York, in the State of New York, or at such other place or places, and at such time or times, and upon such terms, as the Trustee may fix and briefly specify in the notice or notices of sale to be given, as herein provided; or (b) the Trustee may proceed to protect and enforce its rights and rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

Sec. 5. Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the

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rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit, or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured; but, anything in this indenture to the contrary notwithstanding, the holders of seventy-five per cent. in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and to control the method and place of conducting any proceedings for any sale of the premises subject to the lien of this indenture, or for the foreclosure hereof, or for a receiver or any other proceedings hereunder.

Sec. 6. In the event of any sale hereunder, whether under the power of sale or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property held by the Trustee, or in any manner subject to this indenture, shall be sold in one parcel and as an entirety, unless the holders of a majority in amount of the bonds hereby secured, then outstanding, shall in writing request the Trustee to cause said premises to be sold in parcels, in which case the sale or sales shall be made in such parcels, and at such times and places, as may be specified in such request, or unless such sale as an entirety shall be impracticable by reason of some statute or other cause. This provision shall bind the parties hereto, and the holders of the bonds and the coupons hereby secured.

Sec. 7. Notice of any sale pursuant to any provision of this indenture shall state the time and place or the times and places when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be given sufficiently if published once in each week for four successive weeks prior to such sale in a newspaper published in New York, N. Y.

Sec. 8. From time to time the Trustee may adjourn any sale by it to be made under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and, in such event, without further notice or publication, the Trustee may make such sale at the time and place to which the same shall be so adjourned.

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Sec. 9. Upon the completion of any sale or sales under this indenture the Trustee shall execute and deliver to the accepted purchaser or purchasers good and sufficient assignments, transfers and conveyances of the stocks, bonds and other property sold, and shall deliver to such purchaser or purchasers all bonds and obligations and the certificates for all shares of stock by it, held hereunder, which shall have been sold to such purchaser or purchasers. The Trustee and its successors hereby are appointed the true and lawful attorney or attorneys irrevocable, of the Railroad Company, in its name and stead to make all necessary assignments, transfers and conveyances of shares of stock or bonds or other property thus sold; and for that purpose it and they may execute all necessary acts of assignment and transfer and may substitute one or more persons with like power; the Railroad Company hereby ratifying and confirming all that its said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred, or under and by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railroad Company, of, in and to the property sold, and shall be a perpetual bar both at law and in equity, against the Railroad Company, its successors and assigns, and against any and all persons claiming or to claim the premises sold, or any part thereof, from, through or under the Railroad Company, its successors or assigns.

Sec. 10. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property or any part thereof, sold as aforesaid, for the purchase money; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or shall in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or shall be bound to inquire as to the authorization, necessity, expediency or regularity of any such sales.

Sec. 11. In case of such sale, whether made under the power of sale hereby granted or pursuant to judicial proceed-

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ings, the whole of the principal sums of the bonds hereby secured, if not previously due, shall at once become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Sec. 12. The purchase money, proceeds or avails of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sum which then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee under this indenture and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sales shall have been made subject;

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent. per annum on the overdue installments of interest, and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, ratably, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, subject, however, to the provisions of Section 1 of this Article Four; and

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Sec. 13. Upon any such sale by the Trustee or pursuant to judicial proceedings, any purchaser, in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof under Section 12 of this

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article; and such purchaser thereupon shall be credited, on account of such purchase price payable by him, with the sums so applicable to the payment of, and credited on, the bonds and coupons so presented; and at any such sale, any bondholders may bid for and purchase such property, and may make payment therefor as aforesaid, and, in compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

Sec. 14. The Railroad Company covenants that (1) in case default shall be made in the payment of any interest on any bonds at any time outstanding and secured by this indenture, and such default shall continue for a period of six months, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds, or by declaration as authorized by this indenture, or upon a sale of the mortgaged premises as hereinbefore provided, then, upon demand of the Trustee, the Railroad Company will pay to the Trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount which then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of four per cent. per annum upon the overdue principal and installments of interest; and in case the Railroad Company shall fail to pay the same forthwith upon such demand, the Trustee in its own name, and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture upon the mortgaged and pledged premises, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the mortgaged premises, and of the application of the proceeds of sale to the payment of the mortgage debt, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of

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the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, no levy of any execution upon any such judgment upon property subject to the lien of this indenture, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the mortgaged premises or any part thereof, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section shall be applied by the Trustee towards payment of such amounts then due and payable upon such bonds and coupons and in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind, upon presentation of the respective bonds and coupons and stamping such payments thereon, if partly paid, or upon cancellation thereof, if paid in full.

Sec. 15. The Railroad Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension law, now or at any time hereafter in force in any locality where the mortgaged premises or pledged property, or any part of either, may or shall be situate, nor will it claim, take or insist on, any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the mortgaged premises or pledged property, or any part thereof, prior to any sale, or sales, thereof to be made pursuant to any provision herein contained, or to the decree of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right, conferred by any statute enacted by any State, or otherwise, to redeem the property so sold or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

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Sec. 16. Upon filing a bill in equity, or upon beginning any other judicial proceedings, to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry herein conferred, and also any and all other rights and powers herein conferred, and provided to be exercised by the Trustee upon the occurrence and continuance of default, as hereinbefore provided; and, as matter of right, the Trustee shall be entitled to the appointment of a receiver of the premises subject to the lien of this indenture, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment shall confer; but notwithstanding the appointment of any receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of the stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

Sec. 17. At any time hereafter before full payment of the bonds secured hereby and whenever it shall deem expedient for the better protection or security of such bonds (although then there shall be no default entitling the Trustee to exercise the rights and powers conferred by section 2 of this Article Four of this indenture) the Railroad Company, with the consent of the Trustee, may authorize the Trustee for any period, fixed or indefinite, to vote upon all the shares of stock then held by the Trustee hereunder, and to collect the dividends thereon and the interest upon any bonds or other obligations then held by the Trustee hereunder, and to enter into full possession of the whole or any part of the property and premises hereby mortgaged or conveyed or intended so to be. In such event the Trustee shall have, and may exercise, the same rights and powers, and shall apply the moneys by it collected or received, in the manner provided in said section 2 of this Article Four in case of exercise by the Trustee of the rights and powers thereby conferred upon a default continuing as therein set forth; but no action under this Section shall prejudice or impair the right of the Trustee at any time subsequently to exercise, or to continue to exercise, the rights and powers conferred by said section 2 of this Article Four, or by any other provision of this indenture, when entitled thereto.

Sec. 18. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding

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in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a Receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of such default and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee, and shall have afforded to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action, for foreclosure or for the appointment of a Receiver, or for any other remedy hereunder it: being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

Sec. 19. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Sec. 20. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default, continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee,

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or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the bondholders.

ARTICLE FIVE.

No recourse under or upon any obligation, covenant or agreement of this indenture, or of any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company, or of any successor corporation, either directly or through the Railroad Company by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly understood that this mortgage, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the Railroad Company, or of any successor corporation, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, either in common law or in equity, or by statute, of, and any all rights and claims against every such stockholder, officer or director, are hereby expressly waived as a condition of, and as a consideration for, the execution of this indenture, and the issue of such bonds and coupons.

ARTICLE SIX.

Section 1. Any request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee with regard to due action taken by it under

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such request or other instrument, if made in the following manner:

The fact and date of the execution by any person of any such request, or other instrument, or writing, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person whose name was subscribed to such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

The amount of coupon bonds transferable by delivery, held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such persons, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing therein that at the date therein mentioned such person had on deposit with such depository the bonds described in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

Sec. 2. The Railroad Company and the Trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond and coupon, as the case may be, for the purpose of receiving payment thereof and for all other purposes; and neither the Railroad Company nor the Trustee shall be affected by any notice to the contrary.

The Railroad Company and the Trustee may deem and treat the person in whose name any registered bond without coupons issued hereunder shall be registered upon the books of the Railroad Company, as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of, or on account of, the principal thereof, and for all other purposes except to receive payment of interest represented by

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outstanding coupons; and all such payments so made to any such registered holder for the time being, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

ARTICLE SEVEN.

In case any real property, rolling stock, machinery or other tangible property (but not shares of stock or certificates therefor, bonds, certificates of indebtedness or other securities) shall be conveyed or mortgaged to the Trustee hereunder, then from time to time, upon the written request of the Railroad Company approved by resolution of its Board of Directors or Executive Committee, the Trustee shall release from the lien and operation of this indenture any of such real property, rolling stock, machinery or other tangible property described in such written request; *provided*, that there shall be delivered to the Trustee together with such written request a certified copy of the resolution approving thereof, and a certificate signed by the President or a Vice-President of the Railroad Company, stating (a) that the Railroad Company has sold or exchanged, or has agreed to sell or exchange, such property, and the price or consideration to be received therefor by the Railroad Company, in cash or other property, and that such price or consideration in his opinion is equal to the full value of such property; and (b) that it is no longer necessary or expedient to retain the property described in such request for use in carrying on the business of the Railroad Company or in connection with the maintenance or operation of any mine, colliery, railway or property belonging to any of the companies of whose capital stock the greater part shall then be held by the Trustee hereunder.

The Railroad Company covenants and agrees that it will set aside, separate and apart from all other property and funds of the Railroad Company, the price or consideration by it received for any property which may be released under the provisions of this Article, and that the same shall be applied, but only with the approval of the Trustee, for some one or more of the purposes for which bonds or their proceeds reserved under section 3 of Article One of this indenture may be applied.

It is expressly understood and declared that nothing in this Article contained shall authorize or permit the release by

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the Trustee of any shares of stock or the certificates therefor, or any bonds or other evidences of indebtedness or securities which shall be held by the Trustee hereunder, but that the provisions of this Article shall apply only to real property, rolling stock, machinery or other tangible property which, pursuant to any provision of this indenture, shall have been conveyed or assigned to the Trustee by way of mortgage.

ARTICLE EIGHT.

Section 1. The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; or for anything whatever in connection with this trust, except willful misconduct or gross negligence. The Trustee shall not be personally liable for any debts contracted by it, or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts during any period wherein the Trustee shall manage the trust property or premises. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in its opinion, shall be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent. in amount of the bonds hereby secured, then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this section are intended only for the protection of the Trustee, and shall not be construed to limit or affect any discretion or power by any provision of this indenture given to the Trustee to determine whether or not it shall take action in respect of any default, or any power or discretion of the Trustee to take action in respect of any default without such notice or request from bondholders. The Trustee shall not be responsible for

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the recording of this indenture and shall not be required to file the same as a chattel mortgage.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and the Railroad Company agrees to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder.

Sec. 2. The Trustee, or any Trustees hereafter appointed, may resign, and may be discharged of the trusts created by this denture by giving notice thereof to the Railroad Company and to the bondholders, by publication, at least twice a week, for four successive weeks, in one newspaper at that time published in New York, N. Y.

The Trustee may be removed at any time by an instrument in writing under the hands of the holders of not less than two-thirds in amount of the bonds hereby secured and then outstanding.

Sec. 3. In case at any time said Trustee, The Mercantile Trust Company, or any trustee hereafter appointed, shall resign or shall be removed or otherwise shall become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys-in-fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that, in case at any time there shall be a vacancy in the office of trustee hereunder, the Railroad Company, by an instrument executed by order of its Board of Directors, may appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. Thereupon the Railroad Company shall publish notice of such appointment once a week for six successive weeks in a newspaper published in New York, N. Y., but any new trustee so appointed by the Railroad Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured prior to the expiration of one year after such publication of notice. Every such trustee appointed in place of The Mercantile Trust Company, or its successor in the trust, shall always be a trust company in good standing, doing

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business in the City of New York, and having a capital and surplus aggregating at least \$1,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms.

Any such new trustee appointed hereunder shall execute, acknowledge and deliver to the trustee last in office, and also to the Railroad Company, an instrument accepting such appointment hereunder, and thereupon such new trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder with like effect as if originally named as trustee herein; but nevertheless, on the written request of the new trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so resigning or removed, and shall duly assign, transfer and deliver all stocks, bonds or other property and moneys held by such trustee to the new trustee so appointed in its place; and, upon request of any such new trustee, the Railroad Company shall make, execute, acknowledge and deliver any and all assignments, deeds, conveyances or instruments in writing for more fully and certainly vesting in and confirming to such new trustee all such estates, properties, rights, powers and duties.

ARTICLE NINE.

Section 1. Until some default shall have been made in the due and punctual payment of the interest, or of the principal of the bonds hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railroad Company, and, until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Railroad Company voluntarily shall waive any such period of grace (such waiver by the Railroad Company being hereby expressly permitted), the Railroad Company, its successors and assigns, shall be suffered and permitted to retain actual possession of any property, other than certificates for shares of stock, bonds, certificates of indebtedness or other securities, cash or other property

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pledged or to be pledged hereunder with the Trustee, which, hereafter, may be mortgaged to the Trustee pursuant to any provision of this indenture, and to manage, operate and use such property, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the earnings, income, rents, issues and profits thereof, but not to sell or dispose of the property itself except as expressly in this indenture authorized; and to vote upon or to cause to be voted upon all the shares of stock subject to this indenture except as hereinbefore otherwise expressly provided.

Sec. 2. If, when all the bonds hereby secured shall have become due and payable, the Railroad Company well and truly shall pay, or shall cause to be paid, the whole amount of the principal moneys and interest due upon all of such bonds and coupons for interest thereon then due and unpaid, or shall provide for such payment by depositing with the Trustee hereunder, for the payment of such bonds and coupons, the entire amount then due thereon for principal and interest, and also shall pay, or shall cause to be paid, all other sums payable hereunder by the Railroad Company (including any costs and charges of the Trustee or of the Sinking Fund Trustee then remaining unpaid), and well and truly shall keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then, and in that case, all property, rights and interests hereby conveyed or pledged shall revert to the Railroad Company and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and in such case the Trustee, on demand of the Railroad Company, and at its cost and expense, shall execute proper instruments acknowledging satisfaction of and discharging this indenture; otherwise the same shall be, continue and remain in full force and virtue.

ARTICLE TEN.

Section 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railroad Company, shall bind its successors and assigns whether or not so expressed.

Sec. 2. Nothing contained in this indenture or in any bond hereby secured, shall prevent any consolidation, or merger of the Railroad Company with any other corporation or any

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conveyance and transfer subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged and pledged premises as an entirety to any other corporation; *provided, however*, that such consolidation, merger or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee, or of the bondholders hereunder, and that all stock, and the certificates therefor, and all bonds, certificates of indebtedness and other obligations then held by the Trustee shall continue to be held by the Trustee, as though such consolidation, merger or sale had not taken place, and, *provided, further*, that upon such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of the said bonds according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed by the corporation formed by such consolidation or merger, or purchasing as aforesaid.

Sec. 3. In case, pursuant to Section 2 of this Article, the Railroad Company shall be consolidated or merged with any other corporation, or shall sell, convey and transfer, subject to this indenture, all the mortgaged and pledged premises as an entirety, as aforesaid, the successor corporation formed by such consolidation, or into which the Railroad Company shall have been merged, or which shall have purchased and received a conveyance and transfer as aforesaid—upon executing, acknowledging and delivering to the Trustee an indenture satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of said bonds and the performance of all the covenants and conditions of this indenture—shall succeed to, and shall be substituted for, the Railroad Company, party of the first part hereto, with the same effect as though it had been named herein as such party of the first part; and thereupon such successor corporation may cause to be signed, and may issue, either in its own name or in name of the Railroad Company, any or all of such bonds which theretofore shall not have been signed by the Railroad Company and delivered to the Trustee; and, upon the order of said successor corporation, in lieu of the Railroad Company, and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and shall deliver any of such bonds, which previously

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shall have been signed and delivered by the officers of the Railroad Company to the Trustee for certification, and any of such bonds which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the bonds so issued shall, in all respects, have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this Indenture, as though all of said bonds had been issued at the date of the execution hereof.

Sec. 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the words "Railroad Company" include and mean, not only the party of the first part hereto, but also any such successor corporation. Every such successor corporation shall possess, and from time to time may exercise, each and every right and power hereunder of the Railroad Company in its name or otherwise.

Sec. 5. Any act or proceeding, by any provision of this indenture required to be done or performed by any board or officer of the Railroad Company, shall and may be done and performed with like force and effect by the like Board or officer of any corporation that shall at the time be such lawful sole successor of the Railroad Company.

Sec. 6. Nevertheless, before the exercise of the powers conferred by this Article, the Railroad Company, by instrument in writing executed by authority of two-thirds of its Board of Directors and delivered to the Trustee, may surrender any of the powers reserved to the Railroad Company or to such successor corporation under this Article; and thereupon such power so surrendered shall terminate.

The Mercantile Trust Company, Trustee, party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

Except when otherwise indicated, the words "the Trustee," or "said Trustee," or any other equivalent term, as used in this indenture shall be held and construed to mean the Trustee or Trustees, for the time being, whether original or successor, and the words "Trustee," "bond," "bondholder," "coupon" and "holder" shall include the plural as well as the singular num-

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ber, and the term "majority" shall signify "majority in amount," whether or not so expressed.

The internal revenue stamps required by law are to be affixed to this indenture from time to time when and as the bonds thereby secured shall be issued.

In witness whereof, **ERIE RAILROAD COMPANY**, the party hereto of the first part, has caused this indenture to be signed by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary, and the due execution of these presents to be proved, and **THE MERCANTILE TRUST COMPANY**, the party hereto of the second part, has caused its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary, and the due execution of these presents to be proved, and these presents to be signed by its Vice-President.

ERIE RAILROAD COMPANY,

By

E. B. THOMAS

President.

Signed, sealed and delivered }
in the presence of }
WM. H. BRUDER.

Attest:

J. A. MIDDLETON

(SEAL)

Secretary.

THE MERCANTILE TRUST COMPANY,

By

H. C. DEMING

Vice-President.

Signed, sealed and delivered }
in the presence of }
WM. H. BRUDER.

Attest:

E. R. ADEE,

(SEAL)

Secretary.

On page 35, line 13, the words
"President of the" inter-
lined before execution.

WM. H. BRUDER.

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STATE OF NEW YORK, }
County of New York } ss.:

On the 14th day of March, in the year one thousand nine hundred and one, before me personally came Eben B. Thomas, to me known, who being by me duly sworn, did depose and say that he resided in the City of New York; that he is the President of Erie Railroad Company, the corporation described in and which executed the above instrument as party of the first part therein; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

WM. H. BRIDGER

Notary Public. [SEAL]

New York Co.

STATE OF NEW YORK, }
County of New York, } ss.:

On the 14th day of March, in the year one thousand nine hundred and one, before me personally came Henry C. Deming, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he is the Vice-President of The Mercantile Trust Company, the corporation described in and which executed the above instrument as party of the second part therein; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

I. MICHAELS

Notary Public. [SEAL]

New York County, N. Y.

No. 65.

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EXHIBIT R-120.

GENERAL MORTGAGE

SECURING

**FOUR PER CENT. CONVERTIBLE FIFTY YEAR GOLD
BONDS.**

Interest Payable April 1 and October 1.

ERIE RAILROAD COMPANY

TO

THE STANDARD TRUST COMPANY OF NEW YORK,

TRUSTEE.

Dated April 1, 1903.

STETSON, JENNINGS & RUSSELL,

GENERAL COUNSEL,

15 Broad Street, New York.

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This Indenture. Made this first day of April, in the year one thousand nine hundred and three, between

ERIE RAILROAD COMPANY, a corporation created by and existing under the laws of the State of New York, hereinafter called the "Railroad Company," party of the first part, and

THE STANDARD TRUST COMPANY OF NEW YORK, a corporation created by and existing under the laws of the State of New York, hereinafter called the "Trustee," party of the second part.

WHEREAS, At the 43rd meeting of the Board of Directors of the Railroad Company, duly held, pursuant to due notice, at the office of the Company, in the City of New York, on the 11th day of February, 1903, a quorum being present, resolutions were duly adopted, including the following, that is to say:

Whereas, Upon the report of the President this day made, the Board of Directors of the Erie Railroad Company has determined that it is desirable now to make comprehensive provision for the progressive improvement of the line and terminals of its railroad, during a series of years, to an extent involving the probable expenditure of \$50,000,000 for such purpose and for the acquisition of equipment and the funding or consolidating of existing obligations, which sum can best be provided through an issue of Four Per Cent. Convertible Fifty Year Bonds, such bonds to be dated April 1, 1903, and to be convertible into the common stock of the Company (stock trust certificates), at a price not less than the market value thereof at the date when the stockholders of the company shall have given their consent to such bonds; such bonds to be issued either in a single series or in successive series, and such price of conversion to be fixed from time to time by the Board of Directors when authorizing the issue of the several series, and to be specified in every bond of the several series when and as issued;

Now therefore be it

Resolved, That for the purpose of completing and finishing or operating and improving its railroad, or for any other of its lawful purposes, including the acquisition of equipment or the funding or consolidation of existing obligations, the Erie Railroad Company do borrow the sum of \$50,000,000, and do issue and dispose of its bonds for such amount so borrowed, and do mortgage its property and franchises to secure the payment of the said bonds; and, accordingly, that the President or any Vice-President, and the Secretary or any Assistant Secretary, of the Erie Railroad Company, be, and hereby they are, authorized to execute and to issue and deliver bonds of the Erie Railroad Company for the aggregate principle sum of \$50,000,000 dated

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April 1, 1903, and payable April 1, 1953, with interest thereon at the rate of four per cent. per annum, payable semi-annually on the first day of April and the first day of October in each and every year until the principal shall be fully paid; both the principal and the interest to be payable in gold coin of the United States of the present standard of weight and fineness, at the office or agency of the Erie Railroad Company in the City of New York, without deduction for any tax or taxes which the Railroad Company or the trustee may be required to pay or to retain therefrom, under or by reason of any present or future law of the United States or of any State, County or municipality therein; such bonds to be coupon bonds each for the principal sum of \$1,000, giving to the holder the right to register the principal thereof and the right to convert the same into registered bonds without coupons; and also registered bonds without coupons, each for the principal sum of \$500, of \$1,000, or of such multiples of \$1,000 as from time to time may be prescribed by the Railroad Company by resolution of its Board of Directors; the bonds to be substantially in the form now submitted to this meeting, of which copies are annexed to the minutes thereof; interim or temporary bonds to be issued and to be exchangeable for permanent bonds pursuant to like resolution.

Resolved. That at any time after April 1, 1905, and before April 1, 1915, the holder of any such bonds shall have the right to convert the principal thereof at par into common stock (stock trust certificates) of the Erie Railroad Company at a price not less than the market value thereof at the date when the stockholders of this Company shall have given their consent to such bonds; such bonds to be issued either in a single series, or in successive series, and such prices of conversion to be fixed from time to time by the Board of Directors when authorizing the issue of the several series, and to be specified in every bond of the several series when and as issued.

Resolved. That the President or any Vice-President, and the Secretary or any Assistant Secretary, of the Erie Railroad Company, be, and hereby they are, authorized in the name and behalf of the Erie Railroad Company, and under its corporate seal, to execute and acknowledge, and to deliver to The Standard Trust Company of New York, a corporation of the State of New York, as Trustee, a mortgage or deed of trust to be dated April 1, 1903, mortgaging and pledging any and all of the railroads, franchises, income and property, now owned or hereafter acquired by the Erie Railroad Company, as security for the said issue of bonds for the aggregate principal sum not exceeding \$50,000,000, authorized by the foregoing resolutions; such mortgage or deed of trust to be in form generally similar to the First Consolidated Mortgage or Deed of Trust of the Erie Railroad Company dated December 10, 1895, and to be prepared and approved by the General Counsel of this Company.

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Resolved, That the coupons attached to the said coupon bonds to be issued under these resolutions, may be authenticated by the engraved fac-simile signature of the present Treasurer, or of any future Treasurer of the Erie Railroad Company, it being hereby intended that the Railroad Company may adopt, and may use for that purpose, the engraved signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer, at the time when such bonds shall actually be certified and delivered.

Resolved, That the first \$10,000,000 bonds of such \$50,000,000 bonds shall be convertible at par into common stock at \$50 per share, and from time to time, when and as it shall become necessary for the conversion of any of said \$50,000,000 bonds the common stock be increased to the required amount, and that whenever so requested by the Voting Trustees such increased stock be issued to them in exchange for such bonds, that they may issue their common stock trust certificates in respect thereof.

Resolved, That the President or any Vice-President and the Secretary or any Assistant Secretary be, and hereby they are, authorized, in behalf of the Erie Railroad Company, to take all such action as from time to time may become necessary or proper to carry these resolutions into effect.

Resolved, That the execution and delivery of the bonds hereby authorized, and of the mortgage or deed of trust securing the same, shall take place when and not before consent thereto shall have given by stockholders owning at least two-thirds of the stock of the Erie Railroad Company, which consent shall be given and certified, and shall be filed and recorded in the office of the Clerk or Register of the County of New York, as provided in Section 2 of the Stock Corporation Law, and consent to such mortgage shall have been given also by the Board of Railroad Commissioners.

AND WHEREAS, Prior to the execution and delivery of the bonds and of the mortgage or deed of trust securing the same, as authorized by the said resolutions, consent in due form to the execution and issue of such convertible bonds conferring upon the holder thereof the right to convert the principal thereof into common stock (stock trust certificates) of the Erie Railroad Company as therein provided, was duly given upon February 11, 1903, by stockholders owning at least two-thirds of the stock of the Erie Railroad Company, which consent, prior to the execution and delivery of this indenture and of the bonds therein mentioned, as thus duly given and certified, was duly filed and recorded in the office of the Clerk or Register of the County of New York as provided in Section 2 of the Stock Cor-

Exhibit R-120.

poration Law, and consent to the execution of such mortgage has been duly given or authorized by stockholders, and has been duly given also by the Board of Railroad Commissioners of the State of New York; and

WHEREAS, At the 44th meeting of the Board of Directors of the Erie Railroad Company held upon the 21st day of April, 1903, the draft of a mortgage or deed of trust of the form and tenor and date of this indenture, was submitted and read, and resolutions authorizing the execution and delivery thereof were duly and unanimously adopted by said Board; and

WHEREAS, The bonds to be secured by this indenture may be issued in series, and are to be coupon bonds of the denomination of \$1,000, numbered consecutively from 1 upwards, giving to the holder the right to register the principal thereof and the right to convert the same into registered bonds without coupons; and also registered bonds without coupons, each for the principal sum of \$500, or of \$1,000, or of such multiples of \$1,000 as from time to time may be prescribed by the Railroad Company by resolution of its Board of Directors; every series of such bonds to have a distinctive serial letter and every such bond to bear a distinctive number or designation; and all such bonds from time to time, as directed by the Board of Directors of the Railroad Company, to be executed in the name and behalf of the corporation and under its corporate seal, by the President or any Vice-President, and by the Secretary or any Assistant Secretary, of the Railroad Company, and to be substantially of the following tenor—the letter of the series, the number of the bond, the rate at which shares of common stock will be issued in conversion of the bond, and the principal sum of each registered bond without coupons, and the date from which interest thereon is to accrue, having been inserted in the respective blanks therefor:

Exhibit R-120.

[FORM OF COUPON FOUR PER CENT. GOLD BOND.]

No.

SERIES

\$1,000

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

4% CONVERTIBLE 50-YEAR COUPON GOLD BOND.

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation, hereinafter called the "Railroad Company," for value received, promises to pay to the bearer, or, if registered, to the registered holder of this bond, one thousand dollars in Gold Coin of the United States of America, on the first day of April, 1953, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon at the rate of four per cent. per annum from April 1, 1903, payable semi-annually at the said office or agency, in like Gold Coin, on the first day of April and the first day of October in each and every year until the payment of said principal sum, but only upon presentation and surrender, as severally they shall mature, of the coupons therefor annexed hereto; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed April 1, 1903.

Both the principal and the interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under any present or future law of the United States, or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Convertible 50-year Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Fifty Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed of trust dated April 1, 1903, duly executed by the Railroad Company to The Standard Trust Company of New York, as Trustee, of the property and franchises mentioned in said mortgage or deed of trust, to which reference hereby is made for a description of the property and franchises mortgaged and pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are secured and are to be used; the officers, directors and stockholders of the Railroad Company being expressly exempted, relieved and absolved from any and all personal liability in respect of said bonds, all such liability being hereby expressly waived.

This bond shall pass by delivery, unless registered in the owner's name on the books of the Railroad Company, at its office or agency in the City of New York, such registry being

Exhibit R-120.

noted on the bond by the Bond Registrar of the Railroad Company. After such registration, no transfer shall be valid unless made on the Railroad Company's books by the registered owner, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder, also, at his option, may surrender for cancellation this bond with the coupons for future interest thereon, in exchange for a registered bond without coupons, as provided in said Indenture.

As duly authorized by the consent of stockholders, the Board of Directors has conferred upon the holder of this bond the right to convert the principal thereof at par at any time after April 1, 1905, and before April 1, 1915, into the fully paid common stock of the Erie Railroad Company of the par value of \$100, at the price of \$ for each and every share; and if such common stock shall not be sufficient to meet the conversion when made, the Board of Directors will authorize an increase sufficient for that purpose. Accordingly this bond is convertible, at the option of the holder thereof, at any time after April 1, 1905, and prior to April 1, 1915, as provided in said mortgage or deed of trust, into shares of the common capital stock of the Railroad Company as such stock shall be constituted at the time of such conversion, with an adjustment of current or accrued interest and dividends as between this bond and the stock into which the same may be converted, with the right on the part of the Railroad Company during the continuance of the Voting Trust Agreement of January 1, 1896, in said indenture described, to deliver in lieu of certificates of common stock, voting trust certificates therefor.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said Indenture.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, and coupons for such interest, with the engraved fac-simile signature of its Treasurer, to be attached hereto, this first day of April, 1903.

ERIE RAILROAD COMPANY,

[L. S.]

By

President.

Attest:

Secretary.

Exhibit R-120.

[FORM OF REGISTERED FOUR PER CENT. GOLD BOND.]

No.

SERIES

§

UNITED STATES OF AMERICA.

ERIE RAILROAD COMPANY.

4% CONVERTIBLE 50-YEAR REGISTERED GOLD BOND.

KNOW ALL MEN BY THESE PRESENTS, That the Erie Railroad Company, a corporation, hereinafter called the "Railroad Company," for value received, promises to pay to or assigns _____ dollars, in the Gold Coin of the United States of America, on the first day of April, 1953, at the office or agency of the Railroad Company in the City of New York, N. Y., and to pay interest thereon from the first day of _____, 19____, at the rate of four per cent. per annum, payable semi-annually at said office or agency, in like Gold Coin, on the first day of April and the first day of October in each and every year until the payment of said principal sum; such United States Gold Coin in every case to be of the standard of weight and fineness as it existed April 1, 1903.

Both the principal and the interest of this bond are payable without deduction for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under any present or future law of the United States, or of any State or County or municipality therein.

This bond is one of a series of Four Per Cent. Convertible 50-year Gold Bonds (coupon and registered) of the Railroad Company, issued and to be issued, for an aggregate principal sum not exceeding Fifty Million Dollars at any one time outstanding, under and in pursuance of, and all equally secured by, a mortgage or deed or trust dated April 1, 1903, duly executed by the Railroad Company to The Standard Trust Company of New York, as Trustee, of the property and franchises mentioned in said mortgage or deed of trust, to which reference hereby is made for a description of the property and franchises mortgaged and pledged, the nature and extent of the security, the rights of the holders of said bonds under the same, and the terms and conditions upon which said bonds are secured and are to be used; the officers, directors and stockholders of the Railroad Company being expressly exempted, relieved and absolved from any and all personal liability in respect of said bonds, all such liability being hereby expressly waived.

This bond is transferable by the registered holder hereof, in person or by attorney duly authorized, on the books of the Railroad Company, at its office or agency in the City of New York, upon surrender and cancellation of this bond; and there-

Exhibit R-120.

upon a new registered bond will be issued to the transferee in exchange therefor, as provided in said Indenture, and on payment, if the Railroad Company shall so require, of the charge therein provided for. This bond, also, in the manner prescribed in said Indenture, and upon payment of the charge therein provided for, is exchangeable for coupon bonds for the same aggregate principal sum.

As duly authorized by the consent of stockholders, the Board of Directors has conferred upon the holder of this bond, the right to convert the principal thereof at par at any time after April 1, 1905, and before April 1, 1915, into the fully paid common stock of the Erie Railroad Company of the par value of \$100, at the price of \$ for each and every share; and if such common stock shall not be sufficient to meet the conversion when made, the Board of Directors will authorize an increase sufficient for that purpose. Accordingly this bond is convertible, at the option of the holder hereof, at any time after April 1, 1905, and prior to April 1, 1915, as provided in said mortgage or deed of trust, into shares of the common capital stock of the Railroad Company as such stock shall be constituted at the time of such conversion, with an adjustment of current or accrued interest and dividends as between this bond and the stock into which the same may be converted, with the right on the part of the Railroad Company, during the continuance of the Voting Trust Agreement of January 1, 1896, in said indenture described, to deliver in lieu of certificates of common stock, voting trust certificates therefor.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said Indenture.

IN WITNESS WHEREOF, the Erie Railroad Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, this first day of April, 1903.

ERIE RAILROAD COMPANY,

[L. s.]

By

President.

Attest:

Secretary.

AND WHEREAS, There are to be attached to the said coupon bonds, at the time of the issue thereof, coupons representing the semi-annual installments of interest which are to become due thereon, each of which coupons is to be substantially of the following tenor, to wit:

Exhibit R-120.

[FORM OF INTEREST COUPON, OF WHICH THE FIRST IS TO BE PAY-
ABLE OCTOBER 1, 1903.]

No. \$20.00

On the first day of Erie Railroad
Company will pay to bearer, at its office or agency in the City
of New York, N. Y., Twenty Dollars, United States Gold Coin
of the standard existing April 1, 1903, without deduction for
taxes, being six months' interest then due on its Four Per Cent.
Convertible 50-Year Gold Bonds, series , No. , subject to
the terms and conditions stated in said bond and in the inden-
ture dated April 1, 1903, therein mentioned.

Treasurer.

AND WHEREAS, On each of said coupon bonds, and on each
of said registered bonds without coupons, there is to be endorsed
a certificate of the Trustee, or its successor appointed hereunder,
that it is one of a series of bonds described in this indenture, and
no bond shall be secured by this indenture or shall be obligatory
for any purpose unless such certificate shall have been executed
by the said Trustee or its successor appointed hereunder; said
certificate to be substantially of the following tenor, to wit:

[FORM OF TRUSTEE'S CERTIFICATE.]

This bond is one of a series of bonds described in the within
mentioned Indenture.

THE STANDARD TRUST COMPANY OF NEW YORK,

Trustee.

By

AND WHEREAS, Each of the coupons to be attached to said
coupon bonds is to be authenticated by the engraved fac-simile
signature of the present Treasurer or of any future Treasurer
of the Railroad Company, and the Railroad Company may adopt
and may use for that purpose the engraved fac-simile signature
of any person who shall have been such Treasurer, notwith-
standing the fact that he may have ceased to be such Treasurer
at the time when any such coupon bond shall be actually certi-
fied and delivered, and such coupons shall be attached to the
bond; and

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WHEREAS, This indenture is of the tenor of the draft thereof submitted to and duly approved by the Railroad Company; and

WHEREAS, All acts and things prescribed by law and by the by-laws of the Railroad Company have been duly complied with, and the Railroad Company has executed this indenture, and proposes to issue the bonds hereby secured, in the exercise of each and every legal right and power in it vested:

Now, Therefore, This Indenture Witnesseth:

That in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at or before the encasing and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor and effect, and the performance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which such bonds shall be issued and received:

THE RAILROAD COMPANY, party of the first part hereto, has executed and delivered these presents, and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over, unto

THE TRUSTEE, party of the second part, its successors and assigns forever:

ALL THE ESTATE, RIGHT, TITLE, INTEREST AND PROPERTY NOW belonging to the Railroad Company, or that hereafter may be acquired by the Railroad Company, of, in and to

ALL AND SINGULAR the railway of the Railroad Company, from and including Piermont, on the Hudson River, in the State of New York, to and including the terminus of the said railway on Lake Erie at or near Dunkirk, in said State, and the railway known at the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway extending from Hornellsville to Attica, in the State of New York, also that part of the railway known as the Newburgh and New York Railroad, extending from Turners on the main line to Vail's Gate on the Newburgh branch; also the railway formerly belonging to the

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Lockport and Buffalo Railroad Company and extending from Lockport to North Tonawanda (subject to the lease thereof to the International Railway Company), both in the State of New York; also the railway formerly belonging to the Erie International Railway Company, and extending from a point of connection with the road formerly known as the Suspension Bridge and Erie Junction Railroad in Erie County, to International Bridge in Erie County, both in the State of New York; also the railway formerly known as the Suspension Bridge and Erie Junction Railroad, extending from East Buffalo, in Erie County, to Suspension Bridge, in Niagara County, with the passenger branch extending from the main line near Eleventh Street, in the City of Niagara Falls, Niagara County, to the passenger station at the corner of Fourth and Niagara Streets, in said city, all in the State of New York; also the railway formerly known as the Buffalo, New York and Erie Railroad, extending from Painted Post, Steuben County, to the City of Buffalo, Erie County, both in the State of New York; also all the railroad formerly of the Buffalo and Southwestern Railroad Company, extending from Jamestown, in Chautauqua County, to Buffalo, in Erie County, both in the State of New York; and also all other railways now belonging to the Railroad Company in the States of New York, Pennsylvania and New Jersey, or any of them;

Also all the estate, right, title and interest, terms and remainder of terms, franchises, privileges and rights of action of whatsoever name or nature in law or in equity, conveyed or assigned to the New York and Erie Railroad Company, or to the Erie Railway Company, or to the New York, Lake Erie and Western Railroad Company, or to the Erie Railroad Company, by the Union Railroad Company, a corporation existing under the laws of the State of New York; by the Bergen County Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Buffalo, Bradford and Pittsburg Railroad Company, a corporation existing under the laws of the States of New York and Pennsylvania; by the Rochester and Genesee Valley Railroad Company, a corporation existing under the laws of the State of New York; by the Long Dock Company, a corporation existing under the laws of the State of New Jersey; by the Goshen and Deckertown Railroad Company, a corporation existing under the laws of the State of New York; by

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the Hoboken Land and Improvement Company, a corporation existing under the laws of the State of New Jersey, by the New York and Fort Lee Railroad Company, a corporation existing under the laws of the State of New Jersey, and the New Jersey Junction Railroad Company, a corporation existing under the laws of the State of New Jersey; by the Jefferson Railroad Company, a corporation existing under the laws of the State of Pennsylvania; by the Montgomery and Erie Railroad Company, a corporation existing under the laws of the State of New York; by the New York, Lake Erie and Western Docks and Improvement Company, a corporation existing under the laws of the State of New Jersey; by the Middletown and Crawford Railroad Company, a corporation existing under the laws of the State of New York; by the New York, Lake Erie and Western Coal and Railroad Company, a corporation existing under the laws of the State of Pennsylvania; by the Northern Railroad Company of New Jersey, a corporation existing under the laws of the State of New Jersey; by the New York and Greenwood Lake Railway Company, a corporation existing under the laws of the State of New Jersey; by the Avon, Genesee and Mount Morris Railroad Company, a corporation existing under the laws of the State of New York; by the Tioga Railroad Company, a corporation existing under the laws of the State of Pennsylvania; or by the Newark and Hudson Railroad Company, a corporation existing under the laws of the State of New Jersey.

AND ALSO all the estate, right, title and interest of the Railroad Company in and to certain real estate situate in Hudson County, in the State of New Jersey, known as the Penhorn property; and also in and to a certain parcel of land lying west of the Bergen Tunnel, in Hudson County, State of New Jersey, known as the Laundry property; and also in and to all other real estate of the Railroad Company, situate in the State of New Jersey, of every kind and description, and wherever in the said State the same may be situate.

AND ALSO all the estate, right title and interest of the Railroad Company of, in and to certain piers, bulkheads and water fronts in the said City of New York—that is to say: Piers 20 and 21, North River, with slips and appurtenances; also 260 feet of bulkhead extending northerly from the northerly line of Pier 19, with certain wharf surface, together with ferry near foot of Chambers Street, and rights and franchises appurtenant

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thereto; also bulkhead, slip and ferry at the foot of West Twenty-third street, and that portion of the bulkhead between Twenty-second and Twenty-third streets abutting on the ferry; together with ferry rights and franchises appurtenant thereto; also pier at foot of West Forty-ninth Street, and slips in connection therewith, together with certain water front south of the pier, and also Pier 7, East River, and slips connected therewith and appurtenant thereto.

AND ALSO all tracts of land or interest therein of the Railroad Company lying and being in the following states and counties—namely, counties of Rockland, Orange, Sullivan, Delaware, Broome, Tioga, Chemung, Steuben, Alleghany, Livingston, Wyoming, Genesee, Erie, Niagara, Cattaraugus, Chautauqua and Monroe, in the State of New York; counties of Hudson, Essex, Bergen and Passaic in the State of New Jersey, counties of Susquehanna, Jefferson, Elk, Pike, McKean, Wayne and Lackawanna, in the State of Pennsylvania.

ALSO all and singular the railroad, property and franchises of The Nypano Railroad Company demised and leased to the Erie Railroad Company by the Indenture made the 17th day of March, 1896, by and between said The Nypano Railroad Company, a corporation of the States of Ohio and Pennsylvania, as party of the first part thereto, and the Erie Railroad Company, as party of the second part thereto, and all rights of the Erie Railroad Company of every name and nature in and to such railroad, property and franchises leased as aforesaid; *subject, however*, to the conditions, reservations and provisos set forth in a certain indenture of pledge, dated July 6, 1896, by the Erie Railroad Company to The Farmers' Loan and Trust Company, as trustee, wherein the said leasehold estate and interest was assigned to the said trustee as security under the First Consolidated Mortgage Deed, dated December 10, 1895, made by the Erie Railroad Company to said The Farmers' Loan and Trust Company; and also any and all other right, title and interest of every name and nature now possessed or hereafter acquired by the Railroad Company in or to the property, railroad and franchises of said The Nypano Railroad Company, or of any branch, extension or leased or operated line thereof, or in or to any stocks, bonds or other obligations of said The Nypano Railroad Company, or of any successor company or

Exhibit R-129.

companies, subject to the terms upon which any such acquisition may have been made.

Also all the right, title, estate, interest and property of the Railroad Company, of, in and to any and all other lines of railway, extensions and branches, now owned, leased or held by the Railroad Company or in which it has any interest whatever (excepting its leasehold interest in the Buffalo Creek Railroad, and excepting also all shares of capital stock not herein expressly described and made subject hereto), wherever located, including the franchises appurtenant thereto, notwithstanding the same may not be particularly set forth or described in this indenture.

Also all the estate, right, title, interest and property of the Railroad Company of, in and to any and all lines of railway, extensions and branches, including the franchises appurtenant thereto, and any and all ferry-houses, ferry-boats, shops, depots, terminal properties, rolling stock and other equipment, and other acquisitions, additions, improvements and betterments, and any and all bonds, stocks and other property of every kind or description (notwithstanding that the same are not now particularly set forth in this indenture), which, from time to time, in the manner hereinafter provided, shall be purchased, acquired, or constructed by the use of any of the bonds secured by this indenture.

Including in the railroads, franchises and properties subject to this indenture, any and all roadbed, superstructure, rights of way, rails, tracks, sidetracks, bridges, viaducts, buildings, depots, stations, warehouses, car-houses, engine-houses, freight-houses, machine shops and other shops, turn-tables, water-stations, fences, docks, structures, erections and fixtures, and all other things of whatever kind in anywise or at any time belonging or appertaining to any and every line of railway at any time subject to this indenture, or to any branch thereof, or provided for use thereon, or in connection therewith; and any and all lands designed for depots, warehouses or other structures at any terminus, or on or along such lines of railway, or upon or along any such branch; and any and all locomotives, engines, cars and other rolling stock, equipment, machinery, instruments, tools, implements, materials, furniture and other chattels now or hereafter acquired or provided for use upon such lines of railway or branches, or upon any other line or

Exhibit R-120.

branch; and any and all property, real or personal, of every kind and description, now or hereafter acquired for use upon, or in connection with, or for the purpose of, such lines of railway, or any such branch; and any and all corporate rights, privileges and franchises which the Railroad Company now has, or hereafter can or shall acquire, possess or exercise in, to, upon, or in any respect of such lines of railway or branches or any part thereof, necessary for, or appertaining to, the construction, maintenance or operation of such lines of railway or any such branch, or any part thereof; and any and all the rents, issue, profits, tolls and other income of such lines of railway, and of any and all branches; and also any and all the rights, privileges, franchises, properties, real or personal, rights and things, which the Railroad Company may or shall hereafter possess, or become entitled to possess, for the purposes of or in connection with, such lines of railway or any such branch.

TOGETHER with all and singular the franchises, rights and privileges now or hereafter appurtenant to or used in connection with the lines of railway above mentioned or any branch thereof.

ALSO ALL THE RIGHT, TITLE AND INTEREST of the Railroad Company in and to the following shares of stock heretofore transferred to, and now held by, The Farmers' Loan and Trust Company, as Trustee under the said First Consolidated Mortgage Deed, dated December 10, 1895:

Exhibit R-120.

Name of Company.	Par value per share.	Number of shares.
Buffalo, New York and Erie Railroad Company	\$100	8,938
Jefferson Railroad Company.....	50	41,909
Buffalo, Bradford and Pittsburgh Railroad Company	100	22,049
Bergen County Railroad Company.....	100	2,000
Middletown and Crawford Railroad Company	50	2,413
Newark and Hudson Railroad Company.....	100	2,500
Paterson, Newark and New York Railroad Company	50	5,000
Bergen and Dundee Railroad Company.....	100	400
Long Dock Company.....	100	8,000
New York, Lake Erie and Western Docks and Improvement Company	100	6,040
Suspension Bridge and Erie Junction Rail- road Company	100	5,000
Buffalo Creek Railroad Company.....	100	1,250
Chicago and Erie Railroad Company.....	100	1,000
Pavonia Ferry Company.....	100	1,000
Hillside Coal and Iron Company.....	100	10,000
Northwestern Mining and Exchange Company	100	5,000
Blossburg Coal Company.....	100	10,000
Tioga Railroad Company, Preferred Stock...	50	3,794
Tioga Railroad Company, Common Stock....	50	7,818
Elmira State Line Railroad Company.....	100	692
Arnot and Pine Creek Railroad Company....	100	2,550
Union Steamboat Company.....	100	10,000
Union Dry Dock Company.....	500	300
Conesus Lake Railroad Company.....	50	375
The Nypano Railroad Company.....	100	199,991

Also all the right, title and interest of the Railroad Company in and to the following bonds, heretofore delivered to and now held by the said Trustee under the said First Consolidated Mortgage Deed dated December 10, 1895:

\$580,000 bonds of the Buffalo, Bradford and Pittsburgh Railroad Company, secured by its mortgage dated January 1st, 1865, to Dorman B. Eaton, as Trustee.

\$57,200 bonds of the Middletown and Crawford Railroad Company, secured by its mortgage dated April 1st, 1871, to Jonathan M. Matthews, Ambrose S. Murray and Alexander Crawford, as Trustees.

\$250,000 bonds of the Newark and Hudson Railroad Company, secured by its mortgage dated September 20th, 1871, to H. N. Otis, as Trustee.

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\$499,000 bonds of the Paterson, Newark and New York Railroad Company, secured by its mortgage dated January 1st, 1868, to W. C. Rushmore and C. Walsh, as Trustees.

\$604,000 bonds of the New York, Lake Erie and Western Docks and Improvement Company, secured by its mortgage dated June 1st, 1883, to The Farmers' Loan and Trust Company, as Trustee, as modified by the supplemental contract dated February 8, 1890.

\$1,900,000 bonds of the New York, Lake Erie and Western Coal and Railroad Company, secured by its mortgage dated May 15th, 1882, to the Metropolitan Trust Company of the City of New York and J. Lowber Welsh, of the City of Philadelphia, as Trustees.

\$1,000,000 bonds of the Suspension Bridge and Erie Junction Railroad Company, secured by its mortgage, dated June 1st, 1870, to Horatio N. Otis, as Trustee.

\$9,899,000 Income bonds of the Chicago and Erie Railroad Company, secured by its mortgage dated August 21st, 1890, to New York Security and Trust Company and John B. Elam, as Trustees.

\$125,000 bonds of the Tioga Railroad Company, secured by its mortgage dated November 1, 1876, to Myron P. Bush, as Trustee.

\$140,000 bonds of the Lockport and Buffalo Railroad Company, secured by its mortgage dated October 1, 1877, to Mathias H. Arnot, as Trustee.

\$20,000,000 bonds of The Nypano Railroad Company, secured by its mortgage dated March 17, 1896, to The Farmers' Loan and Trust Company, as Trustee.

ALSO all the right, title and interest of the Railroad Company in and to shares of stock of the following corporations, for which the certificates have been delivered to and are now held by The Mercantile Trust Company, as Trustee under the Pennsylvania Collateral Indenture of the Railroad Company dated February 1, 1901, viz.: The Pennsylvania Coal Company, the Erie and Wyoming Valley Railroad Company, the Delaware Valley and Kingston Railroad Company, and fifty-one per cent. of the capital stock of the New York, Susquehanna and Western Railroad Company.

ALSO the right, title and interest of the Railroad Company in and to sixty shares, of the aggregate par value of \$6,000, of the capital stock of the Penhorn Creek Railroad Company, being all the outstanding capital stock of said corporation.

But nothing in this indenture is intended or shall be construed to prevent or limit the powers in respect of any bonds

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and stocks, subject to this indenture conferred upon the Trustee under said First Consolidated Mortgage Deed dated December 10, 1895, or upon the Trustee under the said Indenture dated February 1, 1901.

Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company or any one in its behalf to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of the bonds issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

It being intended to include within the grant of this indenture all the right, title and interest of the Railroad Company of, in and to all lines of railway, extensions, branches, real estate and railroad property, and all stocks and bonds and other securities now or hereafter described or embraced, in the two several indentures heretofore executed and delivered by the Railroad Company, viz.: (1) The First Consolidated Mortgage Deed to the Farmers' Loan and Trust Company, as Trustee, dated December 10, 1895, and (2) the Pennsylvania Collateral Indenture to The Mercantile Trust Company, as Trustee, dated February 1, 1901; and of, in and to the properties severally and respectively mentioned in and subject to the lien of said several indentures; and also all the right, title and interest of the Railroad Company of, in and to any and all other property herein conveyed, or agreed to be conveyed, to the Trustee hereunder.

To have and to hold, the premises, railroads, properties, real or personal, rights, franchises, estates, appurtenances, stocks and bonds hereby conveyed and assigned, or intended to be conveyed or assigned, unto the Trustee, its successor or successors and assigns, forever:

Subject, however, to the two indentures last above mentioned, and to the existing liens of the several mortgages or charges underlying either of the said indentures, and to all other existing liens and charges, upon and against the railroads, properties and franchises, and stocks, bonds and other obligations, hereby or in and by said indentures, mortgages or charges.

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severally and respectively, conveyed, assigned, mortgaged or pledged, or so intended to be:

But in trust, nevertheless, for the equal, proper and proportionate benefit and security, severally and respectively, of all and every the present and future holders of any and every bond and interest obligation issued under and secured by this indenture, as well all those now issued as all hereafter issued in addition thereto or by way of substitution or exchange, in accordance with the terms of this indenture, and for enforcing the payment thereof when payable, in accordance with the true intent and meaning of the stipulations of this indenture and of the said bonds and interest obligations respectively, without preference, priority or distinction, as to lien or otherwise, of any one bond over any other bond, by reason of priority in the execution, delivery or negotiation thereof, and so that each and every bond, issued and to be issued as aforesaid, shall have, under and by this indenture, the same right, lien and privilege as every other bond of the issue; and so that the principal and interest of every such bond shall, subject to the terms hereof, be secured hereby equally and proportionately with every other bond, as though all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture; it being intended that the lien and security of all such bonds shall take effect from the day of the date of this indenture, without regard to the date of actual issue, sale or disposition thereof; and so that the lien and security of this indenture, and of all bonds issued hereunder, shall take effect from the day of the date hereof, as though upon such day all such bonds shall have been actually issued, sold and delivered to, and in the hands of, innocent holders for value.

And it is hereby expressly covenanted, that all such bonds, and the coupons for interest thereon, are to be issued, certified, delivered, received and negotiated, and that the mortgaged and pledged properties and franchises are to be held by the Trustee, subject to the following further covenants, conditions and provisions, viz.:

ARTICLE ONE.

SECTION 1. From time to time the bonds to be secured hereby shall be executed by the Railroad Company and by it shall be delivered for certification to the Trustee; and thereupon as provided in this Article, and not otherwise, the Trustee shall certify and shall deliver the same. At the option of the Railroad Company, from time to time, any of such bonds may be executed, certified and delivered originally either as coupon bonds or as registered bonds.

The amount of bonds hereby secured which may be executed by the Railroad Company, and which may be certified by the Trustee, is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding **\$50,000,000**. All of such bonds shall be dated April 1, 1903; but in no instance shall the interest upon any such bond begin to accrue from a date earlier than the first day of April or the first day of October, as the case may be, next preceding the day of the certification thereof. The Trustee shall not certify or deliver any coupon bond hereby secured, until all coupons thereof then matured shall have been detached and shall have been canceled. The Trustee shall not certify or deliver any registered bond without coupons until there shall have been inserted therein the date from which interest is to accrue, which date shall be the first day of April or the first day of October, as the case may be, next preceding the day of the certification thereof, except as provided in Section 6 of this Article One.

Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture, or shall be entitled to any lien or benefit hereunder. No such bond nor any coupon thereunto attached shall be valid for any purpose until such certificate shall have been duly endorsed on such bond. Every such certificate of the Trustee upon any bond executed by the Railroad Company shall be the conclusive and the only evidence that the bond so certified was duly issued hereunder, and is entitled to the benefit of the trust hereby created.

On request of the Railroad Company, but within the limitations hereinafter prescribed, bonds shall be certified and be delivered hereunder in advance of registration or recording of this

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indenture; but the Railroad Company with all convenient speed shall cause this indenture to be recorded as a mortgage upon railways.

Whenever, from time to time, any bonds certified by the Trustee, shall be deliverable by it according to the terms of this indenture (excepting the \$10,000,000 bonds, for the immediate delivery whereof provision is hereinafter made in Section 2 of this Article), such bonds shall be delivered by the Trustee as may be directed by resolution of the Board of Directors of the Railroad Company or of the Executive Committee thereof. A copy of any such resolution, certified by the Secretary under the corporate seal, shall be full authority to the Trustee for the certification and delivery of such bonds.

SEC. 2. Of the bonds authorized to be issued under and secured by this indenture, bonds for the aggregate principal sum of ten million dollars (**\$10,000,000**), convertible at par into common stock of the Railroad Company at fifty per cent. of the par value of such stock, shall be executed by the Railroad Company and be delivered to the Trustee for certification, and as soon as may be after the execution of this indenture, and without any further action on the part of the Railroad Company, shall by the Trustee be certified and be delivered to the Railroad Company from time to time upon the written order of the Railroad Company signed by its President and its Treasurer under the corporate seal.

SEC. 3. The remaining forty million dollars (**\$40,000,000**), par value, of the bonds authorized to be issued under and secured by this indenture, shall be reserved to be executed by the Railroad Company and to be certified and delivered by the Trustee from time to time after December 31, 1903, for some one or more of the purposes specified in this section, but only as herein provided, and subject to the restrictions herein stated.

Such reserved bonds may be issued in one or more series. The Board of Directors of the Railroad Company from time to time shall determine the amount of bonds to be issued in any series, and shall fix the price or rate at which shares of the common stock of the Railroad Company will be issued in and upon conversion of the bonds of such series, when the right to demand such conversion shall be exercised by the holder of any such bond; but in no instance shall such price or rate be less than

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the market price of such shares on February 11, 1903. The price or rate of conversion, as so fixed by the Board of Directors, shall be stated in every bond issued hereunder, and shall be alike in every bond of the same series.

A. The purposes for which such **\$40,000,000** of reserved bonds from time to time shall be executed, certified and delivered, and for which such bonds or their proceeds may be used, are:

(a) The construction or acquisition after December 31, 1903, of branch or connecting lines of railroad and extensions; and of ferry houses, ferry boats, shops, depots, terminal properties, rolling stock and other equipment, and other acquisitions, additions, improvements and betterments, upon, along or appertaining to, or for use in connection with, any lines of railway, branches or terminal properties, which at the time of such construction or acquisition, shall belong to the Railroad Company and be subject to the lien of this indenture, or shall belong to any other company of whose capital stock at least ninety per cent. in amount shall then be subject to this indenture (whether or not subject to the prior lien of the said First Consolidated Mortgage Deed dated December 14, 1895, or of the said Indenture dated February 1, 1901), or upon, along, or appertaining to, or for the use in connection with, the lines of railway of the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company, the Union Railroad Company, The New York and Greenwood Lake Railway Company, the Northern Railroad Company of New Jersey, The Cleveland and Mahoning Valley Railroad Company, The Sharon Railway, the Westerman Railroad or the Elmira State Line Railroad Company; and to reimburse the Railroad Company for sums expended by it, or by any such other company, after December 31, 1903, for any of the foregoing purposes.

(b) The acquisition after December 31, 1903, of shares of the capital stock, bonds or other indebtedness of any company owning any branch or connecting lines of railroad or extensions; or any ferry houses, ferry boats, shops, depots or terminal properties such as are specified in the foregoing clause (a), *provided* that no bonds or their proceeds shall be used for the acquisition of any shares of the capital stock, bonds or other indebtedness, for the purchase or acquisition of which any bonds have been reserved under the provisions of said First Consoli-

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dated Mortgage Deed of December 10, 1895; and *provided, further*, that no bonds shall be used for the purchase of shares of the capital stock, bonds or other indebtedness of any company unless or until the greater part of the entire capital stock of such company shall be acquired or shall have been acquired, and that all the shares, bonds and other indebtedness so acquired shall become and shall be subject to the lien of this indenture, whether or not also subject to the prior lien of said First Consolidated Mortgage Deed dated December 10, 1895, or of said Indenture of February 1, 1901; and *provided, further*, that no shares, bonds or other indebtedness issued or created by any such company after such ninety per cent. of the capital stock thereof shall have become subject to this indenture, shall be acquired under this clause (b); but bonds may be certified and delivered under the foregoing clause (a) in respect of any construction or acquisition such as is specified in said clause, by any such company, and to reimburse the Railroad Company for sums expended by it after December 31, 1903, for any such acquisition.

B. The restrictions subject to which such **\$40,000,000** of reserved bonds from time to time shall be certified and delivered, are as follows, viz.:

(1) Before certifying and delivering bonds under this section, there shall be delivered to the Trustee a copy of a resolution of the Board of Directors of the Railroad Company, certified by its Secretary or an Assistant Secretary, calling for the certification and delivery of a specified amount of such bonds, and directing the officers of the Railroad Company to set aside such amount of bonds or their proceeds separate and apart from any other assets and funds of the Railroad Company, and to use the same only for purposes authorized by this section.

(2) In each calendar year after December 31, 1903, there shall be so certified and delivered out of such **\$40,000,000** of bonds, such amount not in the aggregate exceeding ten million dollars (\$10,000,000) par value in any calendar year, as from time to time shall be called for in such resolutions; but in every instance except the first, before certifying or delivering any of the bonds reserved under this section, the Trustee shall require the Railroad Company to furnish, in addition to such resolution

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of its Board of Directors, the certificate or certificates of some officer or officers of the Railroad Company, stating:

(a) That all bonds certified and delivered under this section in respect of which no such certificate previously shall have been furnished, and the proceeds of all such bonds, have been actually used, or actually appropriated and set aside for liabilities actually incurred, for said purposes or for some one or more of them, or to reimburse the Railroad Company as aforesaid—indicating the particular branches, extensions, terminal properties, rolling stock or other property, acquired or constructed or contracted for, or the stock, bonds or other indebtedness of any other company acquired, and the kind or class of betterments or improvements made or contracted for, and the amount of bonds or proceeds of bonds or other cash, used or applied or actually appropriated and set aside for each such purpose;

(b) That the price paid or liability incurred for such construction, or for such acquisition, betterments or improvements, was not in excess of the fair value of such property or of such work, and that the bonds included in such certificate were sold, disposed of or otherwise accounted for, at not less than their fair market value at the time of such sale, disposition or accounting;

(c) That no part of such certified expenditures or liabilities was included in any previous certificate furnished hereunder, or was made or reimbursed or provided for out of any bonds or moneys received by the Railroad Company under any other provision of this indenture, or under any provision of the First Consolidated Mortgage Deed dated December 10, 1895, or of said Indenture dated February 1, 1901;

(d) That no part of the expenditures certified in such certificate was included in the operating or maintenance expenses reported in any annual report theretofore issued by the Railroad Company;

(e) In case such certificate shall show the acquisition of, or any contract for, new property, then such certificate also shall state whether such new property is known or believed to be, or that when acquired such new property will be, subject to any lien or charge prior to this indenture, except prior liens and charges to which the grant of

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this indenture is made subject, and undetermined liens or ordinary operating accounts or charges incidental to construction, and such certificate shall specify the amount of any such prior lien or charge (other than as aforesaid) known or believed to exist or intended or expected to be created;

(f) Any such certificate under this section may state any other facts pertaining to the right to certify and deliver bonds hereunder. The same officer or officers of the Railroad Company need not certify to all the facts required to be certified under the provisions of this section, but different officers may certify to different facts respectively.

(3) None of the \$40,000,000 of reserved bonds deliverable after December 31, 1903, pursuant to this Section 3, shall be certified and delivered for or in respect of the construction or acquisition of property subject to any lien or charge so certified, unless or until the Railroad Company shall have deposited with the Trustee, an amount of bonds hereby secured equal at par to the aggregate amount of such certified indebtedness, liens and charges. Whenever thereafter any of such certified indebtedness, liens and charges shall be paid or be satisfied, or shall be acquired and be subjected to the lien hereof, then an equal amount at par of the bonds hereby secured so deposited with Trustee under this clause shall be redelivered by the Trustee to the Railroad Company or upon its order, so that the amount of such bonds held by the Trustee under this clause at all times shall be equal to the amount of such indebtedness, liens and charges remaining unsatisfied or not subjected to the lien thereof.

(4) The Railroad Company covenants that whenever all the bonds reserved under this section shall have been certified and delivered to, and used by, the Railroad Company, it will execute and deliver to the Trustee a similar certificate indicating the particular application of all such bonds, or proceeds of such bonds, in respect of which the Railroad Company shall not theretofore have furnished such certificate to the Trustee.

(5) Every such certificate furnished under this section, unless signed, *first*, by the President or a Vice-President or the General Manager or the Chief Engineer, and, *secondly*, by the Comptroller or Auditor or Treasurer, of the Railroad Company, shall have endorsed thereon, or shall be accompanied by, a writ-

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ten statement of one of the officers first above designated, and one of the officers secondly above designated, that they believe that such certificate is true, and that such bonds or their proceeds have been used, and the expenditures certified have been made, only for purposes authorized by this section. A certificate signed by one of the officers first above designated and one of the officers secondly above designated, or a certificate having endorsed thereon or annexed thereto a written statement of such officers in the form in this paragraph specified, shall be received by the Trustee as conclusive evidence of any facts pertaining to the right to certify and deliver bonds pursuant to this section.

Unless the bonds or the certificates for shares of stock or the other indebtedness acquired under the provisions of this section, shall be deliverable and shall have been delivered to the Trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or to the Trustee under the said Indenture dated February 1, 1901, such bonds, and such certificates of stock, endorsed for transfer in blank, and the assignments of such other indebtedness, shall be delivered to the Trustee hereunder, together with the said statements and certificates, and the Railroad Company shall execute or shall cause to be executed any conveyances or instruments of further assurance that may be necessary for the purpose of subjecting to the lien and operation of this indenture any new property so acquired by the Railroad Company, and, so far as may be, any indebtedness, liens or charges so taken up or acquired by use of said bonds, and, also, in the case of any construction upon or acquisition for any of the railroads specifically referred to in part A of this section 3, the Railroad Company shall execute or cause to be executed such instruments as may be necessary to subject the same to the leases, if any, under which such railroads are held: and, also shall furnish the written opinion of counsel for the Railroad Company to the effect that such conveyances or other instruments are sufficient for that purpose or that no conveyance or instrument of further assurance is necessary for the purpose aforesaid. Such resolutions, statements, certificates and opinion shall be deemed, and shall be taken to be, full authority and protection to the Trustee for its certification of such bonds under the foregoing provisions of this section.

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Sec. 4. Whenever, under section 3 of this Article, the Railroad Company shall be entitled to reimbursement out of bonds of any series hereby secured or their proceeds, the Railroad Company may take and accept such bonds at prices to be fixed by the resolution of the Board of Directors, but not in any case less than the average market prices for bonds of the same series at the New York Stock Exchange during the previous calendar month (if there be any such market price for such bonds) in settlement and discharge of its claim to be reimbursed; and the bonds so taken and accepted by the Railroad Company shall be held and may be used by it for its general corporate purposes, freed and discharged from all restrictions and provisions of said Section 3 as though such bonds had been sold at such price and the proceeds paid over to the Railroad Company.

Sec. 5. Whenever any coupon bond or bonds, issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for a registered bond or registered bonds without coupons, the Railroad Company shall execute, and the Trustee shall certify, and in exchange for such coupon bond or bonds shall deliver, registered bonds, or one registered bond, without coupons, for the like aggregate principal sum. The registered bond or bonds without coupons so delivered in exchange, shall be of the same series as the surrendered coupon bond or bonds, and shall bear interest from the date of the last-matured coupon thereof.

Whenever any registered bond without coupons shall be surrendered, transferred and canceled, as provided in Section 3 of Article Two hereof, the Railroad Company, upon request therefor, shall issue to the transferee, and the Trustee shall certify and shall deliver, registered bonds, or one registered bond without coupons, of the same series, for the like aggregate principal sum.

Whenever any registered bond or bonds without coupons, for the principal sum of one thousand dollars or some even multiple of one thousand dollars, shall be surrendered for exchange for a coupon bond or bonds, the Railroad Company shall issue, and the Trustee shall certify, and, in exchange for such registered bond or bonds without coupons, shall deliver, a coupon bond or coupon bonds, of the same series, for the like aggregate principal sum, with the coupons maturing on and after the

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date when the next semi-annual installment of interest would have been payable on such surrendered bond or bonds.

In every case of any such exchange, the Trustee forthwith shall cancel the surrendered bond or bonds and coupons and shall deliver the same to the Railroad Company.

For (1) any exchange of coupon bonds for registered bonds, and for (2) any transfer of registered bonds without coupons, and for (3) any exchange of registered bonds without coupons for coupon bonds,—the Railroad Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge, and in addition thereto, such further sum as may be necessary to meet other expense connected therewith; such further sum, however, not to exceed one dollar for each new coupon bond or registered bond without coupons issued upon such exchange or transfer.

Sec. 6. In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railroad Company, in its discretion, may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond without coupons, or in lieu of and substitution for the coupon bond and its coupons or the registered bond without coupons so destroyed, upon receipt of satisfactory evidence of the destruction of such coupon bond and its coupons, or of such registered bond without coupons, and upon receipt also of satisfactory indemnity.

Sec. 7. Until the bonds to be issued under and secured by this indenture can be engraved and printed, the Railroad Company may execute, and, upon its request, the Trustee shall certify and deliver, in lieu of such engraved bonds and subject to the same provisions, limitations and conditions, temporary bonds of any denomination, substantially of the tenor of the bonds to be issued as hereinbefore provided. Upon surrender of such temporary bonds for exchange, the Railroad Company at its own expense shall issue, and upon cancellation of such surrendered bonds the Trustee shall certify and deliver, in

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exchange therefor, engraved coupon bonds or registered bonds without coupons of the denominations hereinbefore provided, for the same aggregate principal sum as the temporary bonds surrendered; and, until so exchanged, the temporary bonds shall be entitled to the same security as the engraved bonds issued hereunder.

SEC. 8. Nothing in this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any person or corporation other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders of the bonds hereby secured.

ARTICLE TWO.

THE RAILROAD COMPANY COVENANTS AS FOLLOWS:

SECTION 1. Duly and punctually it will pay the principal and the interest of every bond issued under this indenture, at the dates and the place and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes which the Railroad Company or the Trustee may be required to pay or to retain therefrom, under or by reason of any present or future law of the United States, or of any state or county or municipality therein. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they respectively mature, and when paid such coupons shall forthwith be canceled. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof.

Duly and punctually the Railroad Company will also pay the principal and the interest of every bond issued under the said First Consolidated Mortgage Deed dated December 16, 1905, and of every bond issued under the said Indenture dated February 1, 1901, according to the terms of said bonds and

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coupons and of said indentures securing the same, severally and respectively.

SEC. 2. All railways, franchises and other property of every kind, in respect of the acquisition or construction whereof bonds under this indenture hereafter shall be certified and be issued as hereinbefore provided, and all franchises and other property of every kind, as described and to the extent provided in the granting clauses of this indenture, which hereafter may be acquired by the Railroad Company, immediately upon the acquisition thereof by the Railroad Company, and without any further conveyance or assignment, shall become and shall be subject to the lien of this indenture as fully and completely as though now owned by the Railroad Company, and specifically described in the granting clauses hereof; but at any and all times the Railroad Company will execute and deliver any and all such further assurances or conveyances or assignments thereof as the Trustee may reasonably direct or require, for the purpose of expressly and specifically subjecting the same to the lien of this indenture; and also it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered all and every such further acts, deeds, conveyances and transfers and assurances in the law, for the better assuring, conveying, assigning and confirming unto the Trustee, all and singular the hereditaments and premises, estates and property hereby conveyed or assigned, or intended so to be, or which the Railroad Company may hereafter become bound to convey or assign to the Trustee, as the Trustee shall reasonably require.

But nothing expressed or implied in this indenture is intended, or shall be construed, to limit the right or power of the Railroad Company, hereby distinctly reserved, by the use of its credit or in any manner other than by the use of the bonds hereby secured, or their proceeds, to construct or acquire other lines of railway, branches or extensions, or interests therein, or other property, free from the lien hereof.

SEC. 3. The Railroad Company, at an office or agency to be maintained by it in the City of New York, will keep a register or registers for the registration and transfer of bonds issued hereunder, in which it will register, subject to such reasonable regulations as it may prescribe, all such bonds without

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coupons, and, upon presentation thereof for such purpose, any such coupon bonds; and such register or registers at all reasonable times shall be open to the inspection of the Trustee.

Upon presentation to the bond registrar of the Railroad Company, at the place where such register shall be kept, of any such registered coupon bond, accompanied by delivery of a written instrument of transfer in a form approved by the Railroad Company, executed by the registered holder, such bond shall be transferred upon such register by the registered holder, in person or by attorney, and such transfer shall be noted by such bond registrar upon the bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such coupon bonds registered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a coupon bond shall be noted by the bond registrar on the bond.

Registration of any coupon bond, however, shall not affect the transferability of any coupon thereto belonging, by delivery merely, and payment to the bearer of any such coupon shall discharge the Railroad Company in respect of the interest therein mentioned, whether or not the bond shall have been registered.

Any registered bond without coupons may be transferred upon such register at such office or agency by the registered holder, in person or by attorney, upon surrender of such bond to such bond registrar for cancellation, accompanied by delivery of a written instrument of transfer in a form approved of by the Railroad Company, duly executed by the registered holder of the bond; and thereupon a new registered bond, or new registered bonds, for an equivalent principal sum shall be issued to the transferee or transferees as provided in Section 5 of Article One hereof.

SEC. 4. The Railroad Company shall not and will not suffer or permit any default wherefor any of the several lessors may terminate any of the existing leases of the Cleveland and Mahoning Valley Railroad, the Sharon Railroad or the Wes-

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terman Railroad, or any lease hereafter made to it, or for its benefit, of any franchises or property now or hereafter belonging to any of the said railroad companies. In case and whenever it shall make default in paying any sum stipulated to be paid in any such present or future lease of any of the said railroads, the Trustee, without affecting any of its rights hereunder, from time to time, in its discretion, may itself pay any sum so in default, and thereupon shall have and forthwith may assert a lien for such advances upon the premises hereby mortgaged, and the proceeds thereof, which lien shall be entitled to priority in rank and payment from the income and profits of the mortgaged premises over any bonds hereby secured.

The Railroad Company will not voluntarily create, or suffer to be created, any debt, lien or charge (except as permitted or required under the said First Consolidated Mortgage Deed dated December 10, 1895, or under the said Indenture dated February 1, 1901, severally and respectively) which would be prior to the lien of these presents upon the mortgaged or pledged premises and property or any part thereof, or upon the income thereof; and within three months after the same shall accrue, it will pay, or will cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, laborers and others, which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof, or the income thereof; and if any company, of whose capital stock the greater part, pursuant to the provisions of Article One or to the provisions of Sections 5 and 6 of Article Three of this indenture, shall have been pledged hereunder, at any time while the greater part of the capital stock of such company shall be pledged hereunder (excepting the New York, Susquehanna and Western Railroad Company, or the Buffalo Creek Railroad Company, or the Blossburg Coal Company, or the Conesus Lake Railroad Company), shall create or shall suffer to be created (except as permitted or required under the two indentures above mentioned, or under this indenture, or as required by any existing obligation), any lien or charge upon its property or income, or any indebtedness other than indebtedness to the Railroad Company, or for the current operating expenses of such company during a period not exceeding three months, then it (the Railroad Company) will cause the same to be paid or discharged, or

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will make adequate provision for the satisfaction or discharge thereof; provided, however, that the Railroad Company shall have the right to contest by legal proceeding any such debt, lien or charge, and pending such contest may delay or defer the payment or discharge thereof.

SEC. 5. The Railroad Company from time to time will pay and discharge all taxes, assessments and governmental charges (the lien whereof would be prior to the lien hereof) lawfully imposed upon the premises or property subject to this indenture, or upon any part thereof, or upon the income and profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustee in respect of such premises or property, so that the lien and priority of this indenture shall be fully preserved at the cost of the Railroad Company without expense to the Trustee or the bondholders; and if any company of whose capital stock the greater part pursuant to Article One or Article Three of this indenture shall have been pledged hereunder, at any time while the greater part of the capital stock of such company shall be pledged hereunder (except the Buffalo Creek Railroad Company, or any Coal Company, in respect of lands upon which mining shall have been abandoned), shall fail to pay all such taxes, assessments and charges lawfully imposed upon the property of such company or upon the income and profits thereof, then the Railroad Company itself will pay the same or make adequate provision for the satisfaction or discharge thereof; provided, however, that the Railroad Company shall have the right to contest by legal proceeding any such tax, assessment or charge, and pending such contest may delay or defer the payment thereof.

SEC. 6. Except in the cases of this indenture expressly authorized, the Railroad Company will not, by affirmative vote or by abstaining from voting, sanction or permit any increase of the capital stock of any company of whose capital stock the greater part shall be subject to this indenture, or the issue or guaranty of any bonds by any such company, or the creation of any mortgage or other lien upon the railroad or property of any such company, unless simultaneously there shall be made effective provision that such indebtedness and the evidences thereof, and such bonds issued or guaranteed, and such mort-

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gage or other lien, and all such additional stock (or such part of such additional stock as shall be proportionate to the part of such entire capital stock previously subject to this indenture), forthwith, upon the issue or creation thereof, shall be delivered to, and be pledged with, the Trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or with the Trustee under the said Indenture dated February 1, 1901, if required by said instruments, severally and respectively, or with the Trustee hereunder, and shall be subject to all the trusts of this indenture; and all such additional stock shall be fully paid and non-assessable. Nothing herein, however, shall be construed to prohibit any increase of stock of, or the creation of mortgages or other liens by, the Buffalo Creek Railroad Company or the New York, Susquehanna and Western Railroad Company.

Except as herein otherwise expressly provided, the Railroad Company will not, by affirmative vote or by abstaining from voting, sanction or permit any railroad or ferry or terminal company, of whose capital stock the greater part shall be owned by the Railroad Company and be subject to this indenture, to sell or otherwise to dispose of its railroad or any part thereof, or any ferry or terminal, or to lease the same (unless such lease be upon the condition that it shall terminate, at the election of the Trustee, by entry or otherwise, in case default shall be made and shall continue as provided in Section 2 of Article Four hereof, or, at the election of the purchaser, in case of a sale of the property subject to this indenture, under this indenture or under either of said two former indentures, dated respectively December 10, 1895, and February 1, 1901), except to the Railroad Company or to some other company of whose capital stock not less than ninety per cent. shall then be held by the Railroad Company and be subject to this indenture.

SEC. 7. Any and all claims and indebtedness, which the Railroad Company now has or hereafter may acquire against any other company, of whose capital stock the greater part shall have become subject to this indenture, shall (subject to the provisions in respect thereof in this indenture contained), be and become subject to this indenture, and if and when requested in writing by the Trustee, the Railroad Company will execute to the Trustee appropriate assignments thereof: subject, however, to any prior rights of the Trustee under the said

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First Consolidated Mortgage Deed dated December 10, 1895, or of the Trustee under the said Indenture dated February 1, 1901.

SEC. 8. The Railroad Company will not issue, negotiate, sell or dispose of any bonds hereby secured in any manner other than in accordance with the provisions of this indenture and the agreements in that behalf herein contained; and in issuing, selling, negotiating or otherwise disposing of such bonds, from time to time, it will well and truly apply, or cause to be applied, the same, or the proceeds thereof, to and for the purposes herein prescribed, and to and for no other or different purpose.

SEC. 9. Prior to the first day of April, 1905, the Railroad Company will authorize the increase of its common capital stock to such amount as may be necessary to provide for the conversion thereof into of all of the bonds issued hereunder in accordance with the terms thereof; and, when and as demand therefor after April 1, 1905, and before April 1, 1915, shall be made by the holder of any such bond, it will as soon as practicable issue certificates for such shares of common stock as the same shall then be constituted, in exchange for, and in conversion of, such bond at the rate stipulated therein, but never at a rate less than the market price of such common stock on February 11, 1903; *provided, however*, that in case the voting trust of the stock of the Railroad Company under a certain agreement dated January 1, 1896, between Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, of the one part, and J. Pierrepont Morgan, Louis Fitzgerald and Sir Charles Tennant, Bart., Voting Trustees, of the other part, or any extension or renewal of said agreement, shall exist at the time of any such conversion, common stock voting trust certificates shall be deliverable in lieu of common stock certificates; and *provided further*, that scrip may be delivered for any fraction of a share of common stock, which scrip shall be exchangeable for common stock certificates, or common stock voting trust certificates, as the case may be, when presented in amounts aggregating \$100 or some even multiple thereof, but which, until so exchanged, shall not confer on the holder the right to receive any dividends declared on such common stock, or any right whatever other than such right of exchange.

Demand by the holders of bonds for the conversion thereof into common stock shall be made by writings addressed to the

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Railroad Company, which shall be delivered, together with the bonds to be converted, to the bond registrar of the Railroad Company. If the bond so surrendered be a registered bond without coupons, all rights to interest subsequently payable shall cease and determine. If the bond so surrendered be a coupon bond, the holder shall also surrender all unmatured coupons thereof. All registered bonds (with or without coupons) shall bear a written assignment in blank in a form satisfactory to the Railroad Company.

Upon the conversion and exchange of any such surrendered bond as above provided, the Railroad Company forthwith will cancel such surrendered bond (and also all unmatured coupons thereof if it be a coupon bond), and will exhibit the same to the Trustee; and thereupon the said bond shall be deemed to be and shall be satisfied and discharged, and no bond in place thereof shall be issued by the Railroad Company or be certified or be delivered by the Trustee.

ARTICLE THREE.

SECTION 1. It is hereby declared and covenanted that until the final satisfaction or release of the said First Consolidated Mortgage Deed dated December 10, 1895, and of the said Indenture dated February 1, 1901, all the bonds, stocks and other property covered by said indentures, severally and respectively, shall be and shall remain subject to the prior and superior lien thereof, and shall be held as provided in said indentures severally and respectively, with all the powers, rights and discretions, and subject to all the provisions, set forth in said indentures severally and respectively; and neither the execution of this indenture, nor any action hereunder, shall in any manner affect said indentures or either of them, or any rights of the holders of the bonds thereby secured, or any rights or duties of the Trustee under either of said indentures.

Whenever said Indenture dated February 1, 1901, shall have been satisfied or released, the Trustee hereunder shall be entitled to receive, to take possession of, and to hold, as Trustee under this indenture, all the bonds, shares of stock and other property (including cash), then held by the Trustee under said Indenture dated February 1, 1901; and the Railroad Company covenants that it will execute and will deliver to the Trustee hereunder, such assignments, transfers, powers of attorney

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and other instruments, as the Trustee may reasonably require in order to vest in the Trustee hereunder, or in order to enable the Trustee hereunder to acquire, the title and possession of all such bonds, shares of stock and other property; and the Trustee thereupon shall hold under this indenture all such bonds, shares of stock and other property, **including cash.**

The Railroad Company covenants that forthwith upon the execution hereof, it will cause due notice of the execution of this indenture to be given to each corporation or association which issued any of the shares of stock or any of the bonds now held by the Trustee under either of said two former indentures; and from time to time, upon the delivery to the Trustee under either of said indentures, of stocks, bonds or other obligations of any other corporation or association, it will give similar notice to such other corporation.

The Trustee shall be authorized (1) to cause to be registered in its name as Trustee, any and all coupon bonds pledged with and delivered to it hereunder, or which at any time hereafter may be received by it under any of the provisions of this indenture, or (2) to cause the same to be exchanged for registered bonds without coupons of any denomination, or (3) to cause any such bonds to be stamped—"Not negotiable. Held by The Standard Trust Company of New York, as Trustee under the General Mortgage of Erie Railroad Company, dated April 1, 1903."

The Trustee shall cause to be transferred into its name, as Trustee hereunder, all registered bonds which shall have been delivered and assigned to it hereunder. The Trustee at any time may transfer into its name, as Trustee hereunder, all or any shares of stock, the certificates for which shall have been pledged with and delivered to it hereunder, or in its discretion it may hold such certificates in the name of the registered holder thereof at the time of such pledge, provided that the same be endorsed in blank for transfer.

The Trustee may do whatever may be necessary for the purpose of maintaining, preserving, renewing or extending the corporate existence of any company the greater part of whose shares shall then be held by the Trustee hereunder, and for such purposes, from time to time, it may sell, assign, transfer and deliver so many shares of the stock of the several companies as may be necessary to qualify persons to act as directors

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of, or in any other official relation to, said companies. Whenever requested in writing by the Railroad Company, the Trustee shall assign and transfer to persons designated by the Railroad Company a sufficient number of any shares that then shall be held by the Trustee hereunder, to qualify such persons to act as directors of, or in any official relation to, the several companies which issued such shares; *provided, however*, that under this provision no transfer shall be made which shall reduce the amount of stock in any company held by the Trustee, so as to render it less than a controlling interest in such stock; and in every case the Trustee may make such arrangements as it shall deem necessary for the protection of the trust hereunder.

Until the final satisfaction or release of said indentures dated December 10, 1895, and February 1, 1901, severally and respectively, unless the Railroad Company either (1) shall be in default in the payment of any interest upon any bond or bonds hereby secured and then outstanding, and such default shall have continued for a period of six months, or (2) shall be in default in the payment of the principal of any bond hereby secured; or (3) shall be in default in the payment of the principal of any of the bonds secured by the said Indenture dated February 1, 1901; or (4) shall be in default in the due observance or performance of some other covenant or condition in this indenture required to be kept or performed by the Railroad Company, and such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company,—all stocks, bonds, coupons, claims and other property that shall be subject to either of said indentures, dated December 10, 1895, and February 1, 1901, severally and respectively, except as herein expressly otherwise provided, may be used, held, dealt with and disposed of under and in accordance with the provisions of Article Four of said indenture dated December 10, 1895, and of Article Three of said indenture dated February 1, 1901, severally and respectively, as well by the Railroad Company as by the several trustees under said indentures, respectively, as though this indenture had not been made. None of the particular provisions hereinafter contained shall be construed as limiting the general provision contained in this section.

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Sec. 2. Unless and until a Receiver shall have entered into possession of the railroad hereby mortgaged and conveyed; or unless the Trustee shall have entered into possession of the mortgaged premises or part thereof under the power herein granted; or unless and until there shall be a default (1) in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture and such default shall have continued for the period of six months; or (2) in the payment of the principal of any bond hereby secured; or (3) in the payment of the principal of any of the bonds secured by the said Indenture dated February 1, 1901; or (4) in the due observance or performance of any other covenant or condition in this indenture required to be kept or performed by the Railroad Company and such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company, —(a) the Trustee shall not (except with the assent of the Railroad Company) collect, or be entitled to collect, the principal or interest of any bonds or of any other claims or indebtedness now or hereafter subject to this indenture, whether at, or before, or after, the maturity of such bonds or contract obligations or other claims or indebtedness, and shall not enforce any provisions of the mortgages, trust deeds or other instruments under which such bonds or other obligations were issued, or by which the same are secured; (b) the Railroad Company shall be entitled to receive all interest paid in respect of any such bonds or obligations, and the dividends on all shares of stock, which shall be subject to this indenture although the same may have been transferred to the Trustee; (c) from time to time (subject to the covenants in respect thereof in this section contained), upon the request of the Railroad Company, the Trustee shall deliver to it any coupons for such interest then in the possession of the Trustee, in order that the Railroad Company may receive payment thereof for its own use or may cause the same to be canceled, and the Trustee shall deliver to the Railroad Company suitable orders in favor of the Railroad Company, or its nominee, for the payment of such interest and dividends, and the Railroad Company may collect such coupons, interest and dividends (but not by any proceeding which the Trustee shall deem to be prejudicial to the trusts hereunder), and the Trustee at once shall pay over to the Railroad Company any

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such interest and dividends which may be collected or be received by it; and (d) the Railroad Company, for its own use, shall be entitled to demand, receive and collect, and may release and discharge, the principal and interest of any such claims and indebtedness subjected to the lien of this indenture under Section 7 of Article Two hereof, and upon request of the Railroad Company the Trustee shall execute any re-assignments or releases which may be required for that purpose:

Provided, however, and hereby it is declared and agreed that, except as in this indenture otherwise expressly provided, (1) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over to the Railroad Company, the principal of any bond subject to this indenture; (2) the Railroad Company shall not be entitled to receive, and the Trustee shall not pay over, any interest on any such bond, or the principal of or any interest on any such other obligations, claims or indebtedness, which shall have been collected or paid out of the proceeds of any sale or condemnation of the property covered by a mortgage securing such bonds, or out of the proceeds of the sale of any other property of the company liable upon such bonds, obligations, claims or indebtedness, in case of a dissolution or liquidation of such company, it being the intention that the Railroad Company shall be entitled to receive only payments made out of the rents, revenues, income or proceeds of operation of such property; (3) the Railroad Company shall not sell, assign or transfer any such coupon, or right to interest or dividends, delivered or assigned to it, or any other such claim or indebtedness, except subject to this indenture; (4) the Railroad Company shall not collect any such coupons or interest, or any such other claims or indebtedness, by legal proceedings or by enforcement of any security therefor, except with the assent of the Trustee, nor in any manner which the Trustee shall deem prejudicial to the trust hereunder; and (5) until actually paid, released or discharged, every such coupon, or right to interest or dividends, and all such other claims and indebtedness, shall remain subject to this indenture.

If any such coupons, or if any evidence of any such claim or indebtedness, delivered to the Railroad Company hereunder, shall not, as aforesaid, forthwith be paid or canceled, the Railroad Company shall return the same to the Trustee, and in case

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of the payment of any such coupon, claim or indebtedness, shall, upon the demand of the Trustee, furnish satisfactory evidence of the cancellation and extinguishment thereof.

SEC. 3. In case any sum shall be paid on account of the principal of any bonds or of any obligations subject to this indenture, or in case any sum shall be paid on account of the interest on any such bonds or obligations, out of the proceeds of property covered by a mortgage or trust deed securing such bonds or obligations, or in case, upon the dissolution or liquidation of any company, any sum shall be paid upon any bonds or any shares of stock or any claims against or indebtedness of such company, subject to this indenture, then, in any such case, any such sum, unless received by the trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or by the trustee under the said Indenture dated February 1, 1901, upon the trusts thereof, severally and respectively, or unless applied on account of the purchase price of property purchased pursuant to Section 5 of this Article, shall be received by the Trustee and shall be paid over by the Trustee to the Railroad Company to reimburse it for expenditures by it made for any of the purposes for which bonds or their proceeds may be used under section 3 of Article One hereof, upon certificates of such expenditures, signed by the President or a Vice-President or the General Manager or Chief Engineer, and by the Comptroller or Auditor or Treasurer of the Railroad Company.

SEC. 4. Unless and until a Receiver shall have entered into possession of the railroad hereby mortgaged and conveyed; or unless the Trustee shall have entered into possession of the mortgaged premises or part thereof under the power herein granted; or unless and until there shall be a default (1) in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture and such default shall have continued for the period of six months; or (2) in the payment of the principal of any bond hereby secured; or (3) in the payment of the principal of any of the bonds secured by the said indenture dated February 1, 1901; or (4) in the due observance or performance of some other covenant or condition in this indenture required to be kept or performed by the Railroad Company and such last-mentioned default shall have con-

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tinned for the period of six months after written notice thereof shall have been given by the Trustee to the Railroad Company, —the Railroad Company shall have the right to vote upon all shares of stock subject to this indenture, for all purposes not inconsistent with the provisions or purposes of this indenture and with the same force and effect as though such shares were not subject to this indenture; and from time to time, upon demand of the Railroad Company, the Trustee forthwith shall execute and deliver, or shall cause to be executed and delivered, to the Railroad Company, or to its nominees, suitable powers of attorney or proxies to vote upon any shares of stock which shall have been transferred to the Trustee.

SEC. 5. In case default shall be made in the payment of the principal or interest of any of the bonds or obligations which shall have been delivered to, and shall be held by the Trustee hereunder, or of any other bonds then secured by the same mortgage or deed of trust as such bonds held by the Trustee, then in any such case, if the Trustee shall hold more than ninety per cent. in amount of the entire issue of such bonds or obligations in default, it shall, upon the written request of the Railroad Company, and in other cases, upon such written request, it may, in its discretion, cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose or enforce the mortgage, or trust, or charge, by which such bonds or obligations in default are secured. In case the Railroad Company shall be in default in the payment of the principal of any of the bonds hereby secured, or in case the Railroad Company shall be in default in the payment of the interest on any of such bonds, and such default in the payment of interest shall have continued for the period of six months, or in case a receiver of the mortgaged premises shall have been appointed, or in case the Trustee shall have entered or shall have elected to enter into possession of the mortgaged premises, either under the power herein conferred or by the voluntary action of the Railroad Company, then and in any such case the Trustee, in its discretion, may institute such proceedings without such written request.

In case (1) any company of whose capital stock the greater part shall be held by the Trustee subject to this indenture as a first lien thereon, shall be dissolved or liquidated, or in case (2) all or any of the property of any such company shall be sold

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upon the insolvency of such company at any judicial or other sale, or in case (3) any property, covered by a mortgage securing any bonds, or subject to any charge or trust for the payment of any other obligations, held by the Trustee subject to this indenture as a first lien thereon, shall be sold upon foreclosure of such mortgage, or by enforcement of such charge or trust,—then in any such event, if the property of such dissolved or liquidated company, or the property sold, can be acquired by crediting on the bonds, obligations, claims, indebtedness or stock, held by the Trustee hereunder, any sum accruing or to be received thereon out of the proceeds of such property, and by paying not more than ten per cent. of the price of such property in cash (or more than ten per cent., if the holders of a majority in amount of the bonds hereby secured shall so request), the Trustee in its discretion may, but, if requested in writing by the Railroad Company or by the holders of a majority in amount of the bonds hereby secured, and provided with the amount of cash necessary therefor (whether such amount be more or less than ten per cent. of the price of such property), the Trustee in every case shall, purchase or cause to be purchased, or permit the Railroad Company to purchase, such property, either in the name or on behalf of the Trustee or of the Railroad Company, or by purchasing trustees, and shall use, or permit the Railroad Company to use, such bonds, obligations, claims, indebtedness and stock, so far as may be, to make payment for such property; and in case of any such purchase the Trustee shall take such steps as it may deem proper to cause such property to be vested either in the Railroad Company, subject to this indenture, or in some other corporation organized or to be organized, with power to acquire and manage such property, provided that all the bonds and other indebtedness and capital stock thereof (excepting the number of shares required to qualify directors), shall be received by the Trustee and shall be held for the benefit of the Railroad Company, or its assigns, subject to this indenture.

With the written consent of the Railroad Company, the Trustee at any time may vote upon any shares of stock that shall be held by it hereunder, and may take such other action as in its discretion it shall deem advisable to protect its interests and the interests of the bondholders hereunder, in respect of any bonds, obligations or stocks subject to the lien hereof, and

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with such consent of the Railroad Company, the Trustee may join in any plan of reorganization in respect of any such bonds or stocks and may accept new securities issued in exchange therefor under such plan. In case the Railroad Company shall be in default in the payment of any interest or the principal of any of the bonds hereby secured and such default shall have continued for the period of six months, the Trustee shall be entitled to take such steps without the consent of the Railroad Company.

The Railroad Company covenants that, on demand of the Trustee, it, the Railroad Company, forthwith will pay, or will satisfactorily provide for, all expenditures incurred by the Trustee under any of the provisions of this section, including all sums required to obtain and perfect the ownership and title to any property which the Trustee shall purchase or shall cause to be purchased pursuant to the provisions of this section; and in case the Railroad Company shall fail so to do, then, without impairment of, or prejudice to, any of its rights hereunder by reason of the default of the Railroad Company, the Trustee, in its discretion, may advance all such expenses and other moneys required, or may procure such advances to be made by others, and for such advances made by the Trustee, or by others at its request, with interest thereon, the Trustee shall have a lien prior to these presents upon all the stocks, bonds, claims and indebtedness in respect of which such advances shall have been made, and the proceeds thereof and any property acquired by means thereof.

In case the Trustee shall not purchase or cause to be purchased the property sold at any such sale, and shall not join in a plan of reorganization as aforesaid in respect of such bonds or stocks, then the Trustee shall receive any portion of the proceeds of the sale accruing on the securities by it held hereunder, and such proceeds, from time to time, shall be paid over to the Railroad Company to reimburse it for expenditures by it made for any of the purposes for which bonds or their proceeds may be used under section 3 of Article One hereof, upon certificates of such expenditures signed by the President or a Vice-President or the General Manager or Chief Engineer, and by the Comptroller or Auditor or Treasurer, of the Railroad Company.

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SEC. 6. Anything in this indenture to the contrary notwithstanding, any company all or part of whose capital stock shall be subject to this indenture, may be merged or consolidated with, or all or any part of its property may be sold or conveyed to, the Railroad Company. In the event of such consolidation or merger or sale, this indenture shall become and be a lien upon the property of the company so consolidated or merged with, or the property so sold or conveyed to, the Railroad Company, with the same force and effect as if expressly conveyed by this indenture, and the holders of the bonds hereby secured shall always have as full and complete a lien upon such property as that herein created by the pledge of the stock and bonds of such constituent companies or of such selling company, to the Trustee hereunder.

Anything in this indenture to the contrary, notwithstanding, any company, all or part of whose capital stock shall be subject to this indenture, may be merged or be consolidated with, or all of its property may be sold or conveyed to, any other company, all or part of whose capital stock shall be subject to this indenture: *provided, however*, that the portion of the capital stock of any such consolidated or merging company (but never less than a majority thereof) issued for and in lieu of any stock previously pledged hereunder, shall always bear to the total capital stock a proportionate relation at least as high as that borne by such previously pledged stock to the total capital stock of such constituent companies; and *provided further*, that in the case of any such sale by any such company of all its property, the portion of the capital stock of the purchasing company (but never less than a majority thereof) subject to this indenture, shall always bear to the total capital stock of such purchasing company a proportionate relation at least as high as that borne by the previously pledged stock of the selling company to the total capital stock of such selling company. Such portion of such stock of such consolidated or merging company shall then become and be subject to this indenture, and shall be held by the Trustee hereunder pursuant to the provisions hereof, or by the Trustee under the First Consolidated Mortgage Deed, dated December 10, 1895, or by the Trustee under the Indenture dated February 1, 1901, pursuant to the provisions thereof, severally and respectively, and the holders of the bonds hereby secured

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shall always, subject to the lien of said two former indentures last above mentioned, have a lien upon such portion of such stock of such consolidated or merging company as full and complete as upon the stock of such constituent companies, by reason of the pledge hereunder.

The trustee holding the same may make any exchange, substitution, cancellation or surrender of securities required for the purposes or in accomplishment of any such merger or consolidation; and the Trustee hereunder may receive the opinion of any counsel approved by it as to the legal effect of any such merger or consolidation, and as to the steps necessary to be taken to consummate the same, and as to any other matter under this section; and such opinion shall be full protection to the Trustee for any action by it taken pursuant thereto.

SEC. 7. Nothing in this indenture contained shall prevent (1) the renewal or extension, if without impairment of lien or security, at the same or lower rate of interest, (a) by the Railroad Company of any bond or obligation secured by a mortgage or charge underlying the lien of the said First Consolidated Mortgage Deed dated December 10, 1895, or of the said Indenture dated February 1, 1901, or secured by a mortgage or lien permitted to be created under the provisions of either of said indentures; or (b) by any company any of the shares of whose capital stock shall be subject to this indenture, of any bond or obligation secured by mortgage upon its property; or (c) by any company of any of its bonds or obligations which shall be subject to this indenture; or (2) the issue in place of and in substitution for any such bonds or obligations of the Railroad Company or of any such other company, of other bonds or obligations for equivalent amounts, bearing the same or a lower rate of interest, adequately secured by a similar mortgage or lien upon the same property; *provided, however*, that in case any bonds or obligations subject to this indenture shall be so renewed or extended, such bonds or obligations as so renewed or extended shall continue subject to this indenture to the same extent, and shall be lodged and held in the same manner as theretofore; and that in case any bonds or obligations subject to this indenture shall be exchanged for bonds or obligations substituted as aforesaid, the substituted bonds or obligations shall *ipso facto* forthwith become subject to this indenture to

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the same extent, and shall be lodged and held in the same manner as those for which they are substituted.

At any time, in its discretion, the Trustee may, and, if requested in writing by the Railroad Company, it shall, consent to any such renewal, extension or substitution. The Trustee may receive the opinion of any counsel approved by it as conclusive evidence that any such renewal, extension or substitution is in compliance with the provisions of this section.

ARTICLE FOUR.

SECTION 1. Neither any coupon belonging to any bond hereby secured, nor any claim for interest on any registered bond, which in any way at or after maturity shall have been transferred or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of or from this indenture, except after the prior payment in full of the principal of the bonds issued hereunder, and of all coupons and interest obligations not so transferred or pledged.

SEC. 2. In case (1) default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of six months, or in case (2) default shall be made in the payment of the principal of any bond hereby secured, or in case (3) default shall be made in the payment of the principal of any of the bonds secured by the said Indenture dated February 1, 1901; or (4) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given to the Railroad Company by the Trustee or by the holders of five per cent. in amount of the bonds hereby secured,—then and in each and every such case the Trustee personally, or by its agents or attorneys, may enter into and upon all or any part of the railways, rolling stock, property and premises, lands, rights, interests and franchises, hereby conveyed or intended so to be, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom; and having and holding the same,

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may use, operate, manage and control said railways and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, receivers, agents and servants or attorneys, to the best advantage of the holders of the bonds hereby secured; and upon every such entry, the Trustee, at the expense of the trust estate, from time to time, either by purchase, repairs or construction, may maintain and restore, and may insure or keep insured, the rolling stock, tools and machinery and other property, buildings, bridges and structures, erected or provided for use in connection with said railways and other premises whereof it shall have become possessed as aforesaid, in the same manner and to the same extent as is usual with railway companies; and likewise, from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to it may seem judicious; and in such case the Trustee shall have the right to manage the mortgaged premises and to carry on the business and exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise, as the Trustee shall deem best; and it shall be entitled to collect and receive all tolls, earnings, income, rents, issues and profits of the same and every part thereof, and also the income from stocks and bonds subject to this indenture; and after deducting the expenses of operating said railways and other pretaises, and of conducting the business thereof, and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance, and prior or other proper charges upon the said premises and property, or any part thereof, as well as just and reasonable compensation for its own services and for all agents, clerks, servants and other employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest on the overdue installments at the rate of four per cent. per annum; such payments to

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be made ratably to the persons entitled thereto, without discrimination or preference.

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of four per cent. per annum) in the order of the maturity of the installments, and next to the payment of the principal of all bonds hereby secured; in every instance such payments to be made ratably to the persons entitled to such payment without discrimination or preference.

These provisions, however, are not intended in anywise to modify the provisions of section 1 of this Article Four, but are subject thereto.

SEC. 3. In case the Trustee shall have entered, or shall have elected to enter, as aforesaid, or in case a Receiver shall have entered into possession of the railroad hereby mortgaged and conveyed, or in case default shall be made and shall continue as specified in the preceding section 2 of this Article, the Trustee shall be entitled (subject to any prior rights of the trustee under the said First Consolidated Mortgage Deed dated December 10, 1895, or of the trustee under the said Indenture dated February 1, 1901, severally and respectively, in respect of the stocks and bonds pledged thereunder) to vote on all shares of stock then subject to this indenture, and, for the benefit of the holders of the bonds hereby secured, shall be entitled to collect and receive all dividends on the shares of stock that shall then be subject to this indenture, and all sums payable for principal, interest or otherwise upon any bonds or obligations that shall then be subject to this indenture, and to apply as hereinbefore provided the net moneys received; and, as holder of any such shares of stock and of any such bonds, to perform any and all acts, or to make or execute any and all transfers, requests, requisitions of other instruments, for the purpose of carrying out the provisions of this section; but in the event that a receiver of any railway upon which this indenture is a first lien shall have been appointed and shall be in possession thereof, the Trustee from time to time, in its discretion may, and if requested by the holders of a majority in amount of the bonds hereby secured, it shall, turn over any part or all of the interest moneys and dividends, so collected

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by it, to such receiver, and may co-operate with such receiver in managing and operating the entire system of the Railroad Company in such manner as the Trustee shall deem for the best interests of the holders of the bonds hereby secured.

In aid of the powers in this section to it granted, the Trustee hereunder in case of and during any entry or receivership or default as herein contemplated, shall possess and may exercise, to the exclusion of the Railroad Company, any and all of the rights reserved to the Railroad Company under the said First Consolidated Mortgage Deed of December 10, 1895, and the Indenture of February 1, 1901, in respect of the stocks, bonds or other obligations held by the trustee of either of said indentures, respectively, and subject to this indenture, including the right to demand and to receive from either of said trustees, suitable proxies, orders or other instruments to enable it or its nominee to vote and to collect dividends and interest upon any of such stocks, bonds or other obligations.

Sec. 4. In case a default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of six months,—then and in every case of such continuing default, upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railroad Company, shall declare the principal of all bonds hereby secured and then outstanding to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, anything in this indenture or in said bonds to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of said bonds shall have been so declared due and payable, and before any sale of the mortgaged premises shall have been made, all arrears of interest upon all the bonds secured hereby, with interest at the rate of four per cent. per annum on overdue installments of interest, shall either be paid by the Railroad Company or be collected out of the mortgaged premises, and all defaults as aforesaid shall have been made good, then and in such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railroad Company and to the Trustee may waive such default and its consequences;

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but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have determined adversely to the Trustee, then and in every such case, the Railroad Company and the Trustee shall be restored to their former position and rights hereunder in respect of the mortgaged premises, and the shares of stock and the bonds and other property subject or to be subject to this indenture, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

SEC. 5. In case (1) default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and any such default shall have continued for the period of six months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall have continued for the period of six months after written notice thereof shall have been given to the Railroad Company by the Trustee, or by the holders of five per cent. in amount of the bonds hereby secured,—then, and in each and every such case of default, the Trustee, with or without entry, personally or by attorney, in its discretion either

(a) may sell, subject to the liens thereon which then shall be prior and superior to the lien of this indenture, to the highest and best bidder, all and singular the property and premises covered by this indenture, including bonds and stocks, rights, franchises and interests, and appurtenances, and other real and personal property of every kind, and all right, title and interest, claim and demand therein, and right of redemption thereof, in one lot and as an entirety, unless a sale in parcels shall be required under the provisions of section 7 of this Article Four, in which case such sale shall be made in parcels, as in said section provided; which sale or sales shall be made at public auction at such place in the City of Elmira, in the State of New York, or at such other place, and at such time and upon such

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terms, as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; or

(b) may proceed to protect and to enforce its rights and the rights of bondholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

Sec. 6. Upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured, in case of any continuing default as specified in Section 5 of this Article Four, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, and to exercise the powers of entry or sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured; but anything in this indenture to the contrary notwithstanding, the holders of seventy-five per cent. in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and to control the action of the Trustee, and the method and the place of conducting any and all proceedings for any sale of the premises and property subject to this indenture, or for the foreclosure of this indenture or for the appointment of a receiver, or any other proceedings hereunder.

Sec. 7. In the event of any sale, whether made under the power of sale herein granted or conferred, or under or by virtue of judicial proceedings, or of some judgment or decree of foreclosure and sale, the whole of the property subject to this indenture shall be sold in one parcel and as an entirety, including all the rights, titles, estates, railroads, equipment, franchises, leases, leasehold interests, contracts, stocks, bonds and other real and personal property of every name and nature, unless

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such sale as an entirety is impracticable by reason of same statute or other cause, or unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustee to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request; and this provision shall bind the parties hereto, and each and every of the holders of the bonds and coupons hereby secured, or intended so to be.

Sec. 8. Notice of any such sale pursuant to any provision of this indenture, shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week for four successive weeks prior to such sale in a newspaper published in New York, N. Y., and in a newspaper published in Chicago, Illinois.

Sec. 9. The Trustee may adjourn from time to time any sale by it to be made under the provisions of this indenture by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

Sec. 10. Upon the completion of any sale or sales under this indenture, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, and other instruments, conveying, assigning and transferring the properties and franchises sold, subject severally and respectively to the liens thereon which then shall be prior and superior to the lien of this indenture. The Trustee and its successors hereby are appointed the true and lawful attorneys irrevocable of the Railroad Company, in its name and stead to make all necessary conveyances and assignments of property and all necessary transfers of shares of stock or bonds or other obligations thus sold; and for that purpose it and they may execute all necessary deeds and instruments of assignment and transfer, and may substitute one or more persons with like power; the Railroad Company hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof.

Any such sale or sales made under or by virtue of this indenture, whether under the power of sale herein granted and

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conferred, or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railroad Company, of, in and to the premises and property so sold, and shall be a perpetual bar both at law and in equity, against the Railroad Company, its successors and assigns, and against any and all persons claiming or to claim the premises or property sold, or any part thereof, from, through or under the Railroad Company, its successors or assigns.

The personal property and chattels conveyed or intended to be conveyed by or pursuant to this indenture, other than stocks, bonds and other securities and claims, shall be real estate for all the purposes of this indenture, and shall be held and taken to be fixtures and appurtenances of the said railroads and part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SEC. 11. The receipt of the Trustee for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property or any part thereof, sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SEC. 12. In case of such sale under the foregoing provisions of this Article, whether made under the power of sale herein granted or pursuant to judicial proceedings, or in case of a sale upon foreclosure of the said First Consolidated Mortgage Deed dated December 10, 1893, or of the said Indenture dated February 1, 1901, by reason of a default of the Railroad Company thereunder, the principal sums of the bonds hereby secured, if not previously due, shall immediately thereupon become due and payable, anything in said bonds or in this indenture to the contrary notwithstanding.

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Sec. 13. The purchase money, proceeds or avails of any such sale, whether under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except the superior liens and any taxes, assessments or other charges subject to which the property shall have been sold.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent. per annum on the overdue installments of interest, and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably, to the aggregate of such principal and the accrued and unpaid interest, subject, however, to the provisions of section 1 of this Article Four.

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

Sec. 14. Upon any such sale by the Trustee or pursuant to judicial proceedings, any purchaser, for or in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale to the owner of such bonds and coupons, as his ratable share of such net proceeds, after the deduction of costs, expenses, compensations and other charges; and thereupon such purchaser shall be credited, on account of such purchase

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price payable by him, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the bonds and coupons so presented; and, at any such sale, any bondholders may bid for and purchase, such property and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

Sec. 15. The Railroad Company covenants that (1) in case default shall be made in the payment of any interest on any bond or bonds at any time outstanding and secured by this indenture, and such default shall have continued for the period of six months, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether upon the maturity of said bonds, or upon declaration as authorized by this indenture, or upon a sale as set forth in Section 12 of this Article Four,—then, upon demand of the Trustee, the Railroad Company will pay to the Trustee, for the benefit of the holders of the bonds and coupons hereby secured, then outstanding, the whole amount that then shall have become due and payable on all such bonds and coupons then outstanding, for interest or principal, or both, as the case may be, with interest at the rate of four per cent. per annum upon the overdue principal and installments of interest; and in case the Railroad Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture or the foreclosure of the lien thereof; and in case of a sale of the property subject to this indenture, and of the application of the proceeds of sale to the payment of the debt hereby secured, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof.

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and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution upon any such judgment upon property subject to this indenture, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the property or any part of the property subject to this indenture, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustee under this section shall be applied by the Trustee towards payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 1 of this Article Four), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Sec. 16. The Railroad Company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law, now or at any time hereafter in force, nor will it claim, take or insist upon, any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the property or any part of the property subject to this indenture, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right under any statute enacted by any State, or otherwise, to redeem the property so sold or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

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SEC. 17. Upon filing a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trustee or of the bondholders under this indenture, the Trustee shall be entitled to exercise the right of entry, and also any and all other rights and powers, herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default, as hereinbefore provided; and, as matter of right, the Trustee shall be entitled to the appointment of a receiver of the premises and property subject to this indenture, and of the earnings, income, revenue, rents, issues or profits thereof, with such powers as the Court making such appointment shall confer; but notwithstanding the appointment of any receiver, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of any stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

SEC. 18. At any time hereafter before full payment of the bonds secured hereby, and when ever it shall deem expedient for the better protection or security of such bonds (although then there shall be no default entitling the Trustee to exercise the rights and powers conferred by Sections 2 and 3 of this Article Four), the Railroad Company, with the consent of the Trustee, may surrender and may deliver to the Trustee full possession of the whole or of any part of the property, premises and interests hereby conveyed or assigned, or intended so to be, and may authorize the Trustee to collect the dividends and interest on all shares of stock, bonds and other obligations subject to this indenture, and to vote upon all such shares of stock, bonds and other obligations subject to this indenture, and to vote upon all such shares of stock, for any period fixed or indefinite. In such event the Trustee shall enter into and upon the premises and property so surrendered and delivered, and shall take and receive possession thereof, for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon maintaining and to maintain such possession though beyond the expiration of any such prescribed period, and the Trustee, from the time of its entry upon such premises and property, shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this indenture, and shall receive and apply the income and

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revenues thereof as provided in Section 2 of this Article Four. Upon application of the Trustee, and with the consent of the Railroad Company, if then there be no subsisting default such as is specified in said Section 2 of this Article Four, and without such consent if then there shall be such a subsisting default, a receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of the property subject to this indenture, and the Railroad Company shall transfer and deliver to such receiver all such property, wheresoever the same may be situated; and in every case, when a receiver of the whole or of any part of said property shall be appointed under this section, or otherwise, the net income and profits of such property shall be paid over to, and shall be received by, the Trustee, for the benefit of the holders of the bonds hereby secured; *provided, however*, that notwithstanding the appointment of any such receiver, the Trustee, as pledgee, shall be entitled to retain possession and control of any stocks, bonds, cash and other property pledged or to be pledged with the Trustee hereunder.

SEC. 19. In case of any default hereunder, if, in order to preserve the franchises of the Railroad Company and to avoid foreclosure and sale involving the organization of a successor company, any plan of reorganization shall be proposed with provisions for the modification of this indenture, as far as to authorize and require the creation of new liens upon the property subject to this indenture, prior and superior to the lien hereof, then, and in every such case, registered holders of four-fifths in amount of all of the bonds hereby secured then outstanding, by writing, may direct the Trustee, in behalf of all the holders of all bonds then or thereafter issued hereunder, to acquiesce in the provisions of such plan, which plan also may determine and provide for the interests of other creditors and lienors and of the shareholders of the Railroad Company. This special power, however, is granted to the registered holders of four-fifths in amount of the bonds upon the express condition that no bond hereby secured and then outstanding shall be changed as to the amount of principal or the date of payment thereof, or as to the rate or dates of payment of interest, or as to the price or rate at which shares of common stock will be issued in conversion of any such bond according to the terms thereof, as herein contemplated. Thereupon, but not otherwise,

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the Trustee shall, by writing, acquiesce in such provisions of such plan, and such acquiescence by the Trustee shall constitute the irrevocable assent of all holders of bonds and coupons hereby secured to any such accepted modifications, as set forth in such plan and necessary to give effect to such provisions thereof. All such modifications so affecting this indenture and the bonds and coupons hereby secured, shall be reduced to a written agreement between the Railroad Company and the Trustee, and such agreement shall be recorded in New York County, New York; Passaic County, New Jersey; Susquehanna County, Pennsylvania; Marion County, Ohio; Huntington County, Indiana, and Cook County, Illinois; and, thenceforth, shall be deemed to be part of this indenture, and thereafter the lien of this indenture, and of the bonds hereby secured, shall be deemed to be, and shall be, subordinate to such new and prior liens created pursuant to such plan, but only to the extent specified in such written agreement.

Registration for any purpose of this section shall be sufficient if then or theretofore made and then continuing in any manner permitted by Section 3 of Article Two of this indenture.

SEC. 20. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust hereunder, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of such default, and of the continuance thereof, as hereinbefore provided; nor unless, also, the holders of twenty-five per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee, and shall have afforded to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; nor, unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver or for any

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other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien of this indenture, or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and coupons.

SEC. 21. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SEC. 22. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee, or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the bondholders.

ARTICLE FIVE.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company, or of any successor corporation, either directly or through the Railroad Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise; it being expressly agreed and understood that this indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors of the Railroad Company or of any successor cor-

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poration, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against, every such stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this indenture and the issue of the bonds and interest obligations secured hereby.

ARTICLE SIX.

SECTION 1. Any demand, request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such agent, and of the ownership by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee or of the Railroad Company with regard to due action taken by it under such instrument, if such proof be made in the following manner:

The fact and date of the execution by any person of any such demand, request, or other instrument or writing, may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in New York, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

The fact of the holding by any bondholder of coupon bonds transferable by delivery, and the amounts and issue numbers and serial letter of such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depository the bonds described

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in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

SEC. 2. The Railroad Company and the Trustee may deem and may treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of converting the bond, or of receiving payment of any bond or coupon, and for all other purposes, and neither the Railroad Company nor the Trustee shall be affected by any notice to the contrary.

The Railroad Company and the Trustee may deem and treat the person in whose name any registered bond without coupons, issued hereunder, shall be registered upon the books of the Railroad Company as hereinbefore provided, as the absolute owner of such bond, for the purpose of converting the bond, or of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof, for the purpose of converting the bond, or of receiving payment of or on account of, the principal thereof, and for all other purposes, except to receive payment of interest represented by outstanding coupons; and all such conversions or payments so made to any such registered holder for the time being, or upon his order, shall be valid, and effectual to satisfy and discharge the obligation to convert such bonds, and to the extent of the sum or sums so paid the liability for moneys payable upon any such bonds.

ARTICLE SEVEN.

SECTION 1. Upon the written request of the President or of a Vice-President of the Railroad Company, approved of or authorized by resolution of its Board of Directors or Executive Committee, from time to time, while the Railroad Company is in possession of any of the property subject to this indenture, but subject to the conditions and limitations in this section prescribed, and not otherwise, the Trustee shall release from the lien and operation of this indenture any part of the railways, lands and other property then subject thereto, except

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stocks, bonds and other securities; *provided* (1) that no part of the lines of track or of the rights of way shall be released unless the use thereof no longer shall be necessary or advantageous in the operation of any of the lines of railway subject to this indenture, and no part of such lines of track or rights of way shall so be released if thereby the continuity of the lines of railway of the Railroad Company shall be broken; and (2) that no part of the railways or other property subject to this indenture shall be released hereunder, unless at the time of such release it no longer shall be necessary or advantageous to retain the same for the operation, maintenance or use of such lines of railway, or for use in the business of the Railroad Company, and no such release shall be made unless the Railroad Company shall have sold, or shall have contracted to exchange for other property or to sell, the property so to be released.

The proceeds of any and all such sales, and all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain (unless applied in accordance with the requirements of the said indentures dated December 10, 1895, and February 1, 1901, severally and respectively) shall be set apart and applied, with the approval of the Trustee, to the purchase of other property, real or personal, or for betterments of or improvements upon any part of the mortgaged premises. Any new property acquired by the Railroad Company to take the place of any property released hereunder, *ipso facto*, shall become and be subject to this indenture, as fully as if specifically mortgaged or assigned hereby, but, if requested by the Trustee, the Railroad Company will convey and assign the same to the Trustee by appropriate deeds or other instruments upon the trusts and for the purposes of this indenture.

The Railroad Company, from time to time, while in possession of any of the property subject to this indenture, also shall have full power, in its discretion, to dispose of any portion of the machinery, equipment and implements, at any time subject to the lien hereof, which may have become unfit for such use, replacing the same by new machinery, equipment or implements, which shall become subject to this indenture.

In no event shall any purchaser or purchasers of any property sold or disposed of under any provision of this Article be required to see to the application of the purchase money.

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Sec. 2. Upon the written request of the President or of a Vice-President of the Railroad Company, authorized or approved by resolution of the Board of Directors or of the Executive Committee of the Railroad Company, the Trustee, from time to time, shall execute such releases or other instruments as may be required to release from the lien and operation of this indenture, the leasehold interest, or the term of the lessee or lessees and assigns, under any lease or sub-lease, which may be executed by the Railroad Company or by any lessor Company of any land subject to this indenture or embraced in any lease pledged or assigned under this indenture, which is not embraced in the right of way of the mortgaged railroad or of any leased railroad and is not used for the purpose of stations, yards, round-houses, freight houses, machine shops, docks or gravel-beds, or other purposes connected with the maintenance or operation of the railroad, and thereupon such leasehold interest or term shall be free from the lien and operation of this indenture. The reversion under any such lease shall be and shall remain subject to this indenture.

Sec. 3. In case any of the property subject to this indenture shall be in the possession of a receiver lawfully appointed, the powers in and by this Article conferred upon the Railroad Company may be exercised by such receiver with the approval of the Trustee; and if the Trustee shall be in possession of any of such property under any provision of this indenture, then all the powers of this Article conferred upon the Railroad Company may be exercised by the Trustee in its discretion.

Sec. 4. The Railroad Company from time to time may make changes or alterations in, or substitutions of, any leases, trackage rights or contracts that are subject to this indenture; provided that in case of any changes or alterations in, or any substitutions of, any leases, contracts or trackage rights, by which the Railroad Company now secures access to any point or points, the written consent of the trustee under the said First Consolidated Mortgage Deed, dated December 10, 1895, shall first be obtained so far as concerns any such leases, contracts of trackage rights subject to said indenture, and the written consent of the Trustee hereunder shall first be obtained so far as concerns any such leases, contracts or trackage rights, subject to this indenture and not subject to said First Consoli-

Exhibit R-120.

dated Mortgage Deed. In any such event, any modified, altered or substituted leases, contracts or trackage rights forthwith shall become bound by and be subject to the terms of this indenture, in the same manner as those previously existing.

SEC. 5. A certificate signed by the President or any Vice-President, or the Chief Engineer of the Railroad Company, may be received by the Trustee as conclusive evidence of any of the facts mentioned in this Article, and shall be full warrant to the Trustee for its action on the faith thereof.

ARTICLE EIGHT.

SECTION 1. The Trustee, shall not be answerable for the default or the misconduct of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor shall any trustee be responsible for the acts or defaults of any other trustee or trustees, or for anything whatever in connection with this trust, except each for its or his willful misconduct or gross negligence. The Trustee shall be protected in acting upon any notice, request, consent, certificate, bond or other paper or document, believed by it to be genuine and to have been signed by the proper party. The Trustee shall not be personally liable for any debts duly contracted by it, or for damages to persons or property carried or injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. Neither shall the Trustee be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in the opinion of the Trustee, shall be likely to involve expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent. in amount of the bonds hereby secured, then outstanding, and tendered reasonable indemnity

Exhibit R-120.

as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this section are intended only for the protection of the Trustee and shall not be construed to affect any discretion or power by any provision of this indenture given to the Trustee, to determine whether or not it shall take action in respect of any default without such notice or request from bondholders, or to affect any other decision or power given to the Trustee. The Trustee shall not be responsible for the recording of this indenture and shall not be required to file the same as a chattel mortgage.

The Trustee shall be reimbursed for, and be indemnified against, any liability or damages which may be sustained by it in the premises. The Trustee shall have, secured hereby upon the property covered by this indenture, a lien prior to that of any bond issued under this indenture, for its compensation and expenses, and also for any liability or damage by it sustained in the premises.

The Trustee shall not be responsible in any manner whatsoever for the validity hereof, or for the amount or the extent of the security afforded by the property covered hereby, or for the recitals herein or in said bonds contained, all such recitals being and to be taken as the statements of the Railroad Company; nor shall it be accountable for the use of any bonds certified and delivered by the Trustee hereunder or for the application of the proceeds of such bonds.

The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and the Railroad Company agrees to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder.

SEC. 2. The Trustee, or any trustee or trustees hereafter appointed, may resign and be discharged from the trusts created by this indenture by giving to the Railroad Company and to the bondholders, notice by publication of such resignation, specifying a date when such resignation shall take effect, which notice shall be published at least once a day not less than thirty days nor more than sixty days prior to the date so specified, in a newspaper at that time published in New York, N. Y., and in a newspaper published in Chicago, Illinois. Such resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall have been appointed as here-

Exhibit R-120.

inafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee or trustees hereunder may be removed at any time by an instrument in writing under the hands of the holders of one-half in amount of the bonds hereby secured and then outstanding.

Sec. 3. In case at any time the Trustee, or any successor trustee, shall resign or shall be removed or otherwise shall become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or instruments signed by such bondholders or their attorneys-in-fact duly authorized; but until a new trustee shall be appointed by the bondholders as herein authorized, the Railroad Company, by an instrument executed by order of its board of directors, may appoint a trustee to fill such vacancy; *provided, however,* that every such trustee shall be a trust company in the City of New York, having a capital and surplus aggregating at least \$2,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms. After any such appointment by the Railroad Company, it shall publish notice of such appointment once in each of four successive weeks in a newspaper published in New York, N. Y., and a newspaper published in Chicago, Illinois; and any new trustee so appointed by the Railroad Company shall immediately and without further act be superseded by a new trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured, if such appointment by such bondholders be made prior to the expiration of six months after such publication of notice.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Railroad Company, an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named as trustee herein; but nevertheless, on the written request of the Railroad Company or of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument trans-

transferring to such successor trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so ceasing to act, and shall duly assign, transfer and deliver its interest in any stocks, bonds or other property and moneys subject to this indenture to the successor trustee so appointed in its place; and, upon request of any such successor trustee, the Railroad Company shall make, execute, acknowledge and deliver any and all deeds, conveyances or other instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such estates, properties, rights, powers and duties.

If at any time or times, in order to conform to any law of any State in which the Railroad Company may hold property, the Railroad Company shall so request, the Railroad Company and the Trustee shall unite in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint another trust company or one or more persons approved by the Trustee, to act either as co-trustee or as co-trustees, for any purpose of this indenture, of all or any of the property subject to this indenture jointly with the Trustee originally named herein or its successors, or to act as separate trustee or trustees of any of such property.

ARTICLE NINE.

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds at any time outstanding and hereby secured, or of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railroad Company, and, until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, or until the Railroad Company voluntarily shall have surrendered possession to the Trustee as herein permitted, the Railroad Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property subject to this indenture (other than bonds, certificates of stock, cash and other property pledged or to be pledged hereunder with the Trustee), and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits thereof.

Exhibit B-129.

Sec. 2. If, when the bonds hereby secured shall have become due and payable, the Railroad Company shall well and truly pay, or cause to be paid, the whole amount of the principal and interest due upon all of the bonds and coupons hereby secured, then outstanding, or shall provide for the payment of such bonds and coupons by depositing with the Trustee hereunder the entire amount due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable hereunder by the Railroad Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this indenture, then and in that case all property, rights and interests hereby conveyed or assigned or pledged shall revert to the Railroad Company, and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void; and the Trustee in such case, on demand of the Railroad Company, and at its cost and expense, shall enter satisfaction of this indenture upon the record; otherwise the same shall be, continue and remain in full force and virtue.

ARTICLE TEN.

SECTION 1. All the covenants, stipulations, promises and agreements in this indenture contained, by or in behalf of the Railroad Company, shall bind its successors and assigns, whether so expressed or not.

Sec. 2. Nothing contained in this indenture or in any bond hereby secured, shall prevent any consolidation or merger of the Railroad Company with any other corporation, or any conveyance and transfer (subject to the continuing lien of this indenture and to all provisions thereof), of all the property subject to this indenture as an entirety to a railroad corporation at that time existing under and by virtue of the laws of any State or States, and empowered to acquire the same; provided, however, that such consolidation, merger or sale shall not impair the lien and security of this indenture, or any of the rights or powers of the Trustee or of the bondholders hereunder, and that upon such consolidation, merger or sale, the due and punctual payment of the principal and interest of all of the bonds hereby secured, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of this indenture, shall be assumed

Exhibit R-129.

by the corporation formed by such consolidation or merger, or purchasing as aforesaid.

SEC. 3. In case, pursuant to Section 2 of this Article, the Railroad Company shall be consolidated or merged with any other corporation, or shall sell, convey and transfer (subject to this indenture), all the property covered by this indenture, as an entirety as aforesaid, the successor corporation formed by such consolidation, or into which the Railroad Company shall have been merged, or which shall have purchased and received a conveyance and transfer, as aforesaid—upon executing and causing to be recorded an instrument satisfactory to the Trustee, whereby such successor corporation shall assume the due and punctual payment of the principal and interest of the bonds hereby secured, and the performance of all the covenants and conditions of this indenture—shall succeed to, and be substituted for, the Railroad Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part; and such successor corporation thereupon may cause to be signed, and may issue, either in its own name or in the name of the Erie Railroad Company, any or all of such bonds which theretofore shall not have been signed by the Erie Railroad Company and delivered to the Trustee; and, upon the order of said successor corporation, in lieu of the Railroad Company, and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and shall deliver any of such bonds which previously shall have been signed and delivered by the officers of the Railroad Company to the Trustee for certification, and any of such bonds which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the bonds so issued shall, in all respects, have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this indenture, as though all of said bonds had been issued at the date of the execution hereof.

SEC. 4. For every purpose of this indenture, including the execution, issue and use of any and all bonds hereby secured, the terms "Railroad Company" and "Erie Railroad Company" include and mean not only the party of the first part hereto, but also any such successor corporation formed by consolidation

Exhibit R-120.

or otherwise under the laws of New York or of any State or States. Every such successor or purchasing corporation shall possess, and from time to time may exercise, each and every right and power hereunder of the Erie Railroad Company, in its name or otherwise.

SEC. 5. Any act or proceeding, by any provision of this indenture authorized or required to be done or performed by any board or officer of the Railroad Company, shall and may be done and performed with like force and effect by the like board or officer of any railroad corporation that shall at the time of such lawful sole successor or purchaser of the Railroad Company.

SEC. 6. Nevertheless, before the exercise of the powers conferred by this Article, the Railroad Company, by instrument in writing executed by authority of two-thirds of its board of directors and delivered to the Trustee, may surrender any of the powers reserved to the Railroad Company or to such successor corporation; and thereupon such power so surrendered shall terminate.

THE STANDARD TRUST COMPANY OF NEW YORK, Trustee, the party hereto of the second part, hereby accepts the trusts in this indenture declared and provided, and agrees to perform the same upon the terms and conditions hereinbefore set forth.

In order to facilitate the record of this indenture, the same may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original; and such counterparts shall together constitute but one and the same instrument.

The Erie Railroad Company hereby constitutes and appoints Frederick D. Underwood to be its attorney for it and in its name, and as and for its corporate act and deed, to acknowledge this mortgage deed before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

THE STANDARD TRUST COMPANY OF NEW YORK hereby constitutes and appoints William C. Lane to be its attorney for it and in its name, and as and for its corporate act and deed, to acknowledge this mortgage deed before any person having

Exhibit R-120.

authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

In witness whereof, the Erie Railroad Company, the party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its Secretary; and The Standard Trust Company of New York, the party of the second part, has caused its corporate seal to be hereunto affixed and to be attested by its Secretary, and these presents to be signed and acknowledged or proved by its President, the day and year first above written.

ERIE RAILROAD COMPANY,

By

F. D. UNDERWOOD,

President.

[L. S.]

Attest:

G. A. RICHARDSON,

Secretary.

THE STANDARD TRUST COMPANY OF NEW YORK,

By

WM. C. LANE,

President.

[L. S.]

Attest:

WM. C. COX,

Secretary.

Signed, sealed and delivered
in the presence of

}

As to Erie Railroad Company.

GEO. H. COREY,

GEORGE H. GARDINER.

Signed, sealed and delivered
in the presence of

}

As to the Standard Trust Company of New York.

GEO. H. COREY,

GEORGE H. GARDINER.

Formal acknowledgments and certification of recording are omitted.



TRANSCRIPT OF RECORD.

Supreme Court of the United States

OCTOBER TERM, 1920

No. ~~99-1000~~

33-39

PLAINTIFFS IN ERROR

ERIE RAILROAD COMPANY
(Cases 1 and 2)

DEFENDANTS IN ERROR

BOARD OF PUBLIC UTILITY COMMISSIONERS,
CITY OF PATERSON, and BOARD OF FINANCE
OF SAID CITY.

PUBLIC SERVICE RAILWAY COMPANY
PASSAIC WATER COMPANY
WESTERN UNION TELEGRAPH COMPANY
D. FULLERTON & COMPANY
JACOB MEYER, et al., PARTNERS, &c.
MORRIS & COMPANY

vs.
vs.
vs.
vs.
vs.
vs.

SAME
SAME
SAME
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SAME

In Error to the Court of Errors and Appeals of the
State of New Jersey.

VOLUME FOUR

Pleadings, Writs, Return, Reports and Order
of Board, Reasons, Proceedings on Rehearing,
Affidavits.

(Pages 1635 to 2255.)

Filed .. APR 23 1918

(Number)

COLLINS & CORBIN,
*Attorneys of Erie Railroad Company and Western
Union Telegraph Company.*

FRANK BERGEN,
Attorney of Public Service Railway Company.

HUMPHREYS & SUMNER,
Attorneys of Passaic Water Company.

HUDSON & JOELSON,
Attorneys of D. Fullerton & Co.

WILLIAM B. GOURLEY,
*Attorney of Jacob Meyer, et al., Partners, &c., and
Morris & Co.*

L. EDWARD HERRMANN,
Attorney of Board of Public Utility Commissioners.

FRANK H. SOMMER,
Of Counsel.

FRANCIS SCOTT,
*Attorney of City of Paterson and Board of Finance
of said City.*

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*Amended Petition.***Petition.**

To the Board of Public Utility Commissioners of New Jersey:

The amended petition of the Board of Finance of the City of Paterson respectfully shows unto your honorable body:

10

1. That the Board of Finance of the City of Paterson is the Board or body having charge of the finances of the municipality known as "City of Paterson"; that it heretofore under date of March 15th, 1913, filed with the Board of Public Utility Commissioners a petition for relief against the Erie Railroad Company, which maintains certain grade crossings in the City of Paterson.

2. This amended petition is filed by virtue of a resolution of the Board of Finance passed on the eleventh day of September, 1913, a copy of which resolution is hereto attached and marked Exhibit 1.

20

3. The Erie Railroad Company operates a railroad running through the City of Paterson, in the County of Passaic and State of New Jersey, entering the said city from the south at the border line of the Township of Acquackanonk, and thence running in a northwesterly direction to about Taylor street, where it assumes a northerly direction, running to about Godwin street in the said city, where it assumes a northeasterly direction, finally crossing the city line into the Borough of Hawthorne at the Passaic River.

30

4. In passing through the city said railroad crosses a great number of streets and highways at grade, and such crossing, and each of them, are dangerous to public safety, and public travel on the said streets and highways where the same are so crossed and on each of them is greatly impeded by reason of the said railroad crossing them at grade.

40

Amended Petition.

5. Your petitioner further shows that it is informed that the said Erie Railroad Company operates said railroad by virtue of a lease from two separate railroad companies.

10 6. Your petitioner is informed that the main right of way of the said railroad from a point at about Market street to the line of the Township of Acquackanonk is owned by the Paterson and Hudson River Railroad Company, which leases the said right of way to the Erie Railroad Company, which of its own right owns certain property adjacent to the said right of way and upon which are located certain side tracks and switches.

20 7. Your petitioner is informed that the main right of way of the said railroad from a point about Market street to the line of the Borough of Hawthorne is owned by the Paterson and Ramapo Railroad Company, which leases the said right of way to the Erie Railroad Company, which of its own right owns certain property adjacent to the said right of way and upon which are located certain side tracks and switches.

30 8. Your petitioner further shows that for a great many years the necessity of altering those grade crossings has been recognized by the people of the City of Paterson, and at various times the question of relief from the same has been taken up by various official and public boards or bodies of the City of Paterson.

9. That the Mayor of the City of Paterson has frequently endeavored to have the Erie Railroad Company enter into some arrangement for altering the said crossings.

40 10. That several years ago the Erie Railroad Company submitted to the Board of Trade of the City of Paterson for the consideration of the said board and the municipal authorities a plan for the abolition of

Amended Petition.

said crossings together with an estimate of the cost of said work. That the negotiations were unsuccessful because the proposition offered by the railroad company included the lending of money by the City of Paterson to the said company, which lending is forbidden by the constitution of the State of New Jersey. Your petitioner believes that the said railroad company now has on hand plans for the altering of the said crossings.

10

11. Accompanying this petition is a set of maps showing the crossings concerning which relief is sought. The first is a map entitled, "Map Showing Grade Crossings of the Erie Railroad." On the said map the crossings concerning which this petition is filed are indicated by letters of the alphabet, as follows:

- A. Madison Avenue.
- B. Clay and Straight Streets.
- C. Cedar street.
- D. Market street and Park Avenue.
- E. Ellison Street.
- F. Van Houten Street.
- G. Broadway.
- H. Fair Street.
- I. Hamilton Avenue.
- J. Lafayette Street.
- K. Franklin Street.
- L. Keen Street.
- M. Warren Street.
- N. River and Putnam Streets.

20

30

The following crossings as shown on the said map are not at grade but are carried under the said railroad: Essex street, Governor street, Fulton and Straight streets.

12. The said map referred to above shows the area which may possibly be affected by any order that may be made granting the relief sought by this petition.

40

Amended Petition.

10 The other maps accompanying this petition show more in detail each of said crossings and are lettered as shown in section 11 above. The said maps show all water or sewer pipes or other municipal pipe conduits or subways, street railways and any property or construction of any telegraph, telephone, gas, electric, lighting power, water, oil, pipe line or other public utility located within the limits of each of such crossings or within such area. They show also the elevation above sea level at the said crossings and at the nearest cross streets.

20 13. Your petitioner shows that during the months of March and April, 1913, an inspection of the said crossings was caused to be made by your petitioner for the purpose of ascertaining the frequency with which trains passed over the said crossings and the use of the same by vehicles and pedestrians. Such inspection was made at a time when a strike of textile workers was in progress in the city and most of the mills were closed so that the use of the said crossings by vehicles and pedestrians is probably greater than set forth herein and based on said inspection.

14. The following are the facts relating to each crossing:

A. Madison Avenue Crossing.**a. HOW PROTECTED.**

30 This crossing is now protected by gates and watchmen, operated part of the day.

b. OBSTRUCTIONS.

On the southwesterly side of the crossing is a large brick building owned by the American Locomotive Company, as shown on Map A.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 250 automobiles, 500 wagons and from 2,200 to 2,500 pedestrians use this crossing daily. The time table of the company shows 34 passen-

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ger trains running east and 39 running west daily. In addition a large number of freight trains and switch engines pass over this crossing. The passenger trains pass over this crossing at a high rate of speed, varying from 30 to 60 miles per hour.

d. DISTANCE TO NEAREST PASSENGER STATION.

The Lakeview station is located within 5,000 feet and the main Paterson station is about 7,000 feet from this crossing.

10

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 6,500 feet.

f. GRADE OF HIGHWAY.

The highway runs at a slight grade down from the west and to the east of the crossing is about level.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

The automobile and wagon traffic is considerably impeded at this crossing by the frequency of train service. The section near this crossing is rapidly increasing in population and will be used with greater frequency in the future. It is the main thoroughfare from the eastern section of Paterson to Passaic and points south. It connects with Main street about one thousand feet west of the crossing. The avenue is macadamized, is 80 feet wide and is about 3 miles long.

20

h. STREET RAILWAY TRACKS.

The crossing is not used by any street railway company.

30

i. PIPE CROSSING.

Public Service Gas Company maintains two mains under the crossing, one six inches, the other sixteen inches in diameter.

The Passaic Water Company maintains a sixteen-inch water main under the crossing.

j. WIRES.

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*Amended Petition.***B. Clay and Straight Streets.****a. HOW PROTECTED.**

These crossings are now protected by gates and watchmen.

b. OBSTRUCTIONS.

10 The approach of Straight street from the south is obstructed by a frame building on the west side and a stone building on the east side. Both of which are built close to the right of way. The approach on Straight street on the north is obstructed by a brick building on the west side.

The approach on Clay street from the east is obstructed by a high brick building to the north and from the west by a frame building to the south. Crossing Clay street a short distance to the west is a spur railroad operated by the D., L. & W. R. R. Company.

20 **c. VOLUME AND FREQUENCY OF TRAVEL.**

On the average about 90 automobiles, 250 wagons and from 2,500 to 3,000 pedestrians use this crossing daily. The time table of the company shows 50 passenger trains running east and 53 trains running west daily. In addition a large number of freight trains and switch engines pass over this crossing. It lies within the freight yard of the company and there are four tracks crossing this street at this point. Passenger trains are restricted in passing over this crossing
30 by an order of the Public Utility Commissioners to a speed of fifteen miles per hour.

d. DISTANCE TO NEAREST PASSENGER STATION.

These crossings are located about 3,000 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 2,500 feet.

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f. GRADE OF HIGHWAY.

The grade of both streets in the vicinity of these crossings is practically level.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

This crossing is a very dangerous one and the travel is impeded because a very high degree of care must be exercised to pass over the same in safety. There is a sharp curve immediately north of Clay street. This street crosses the freight yard of the company and there is much switching in the vicinity. There are a great many manufacturing establishments along the line of the railroad at this point. The sharp curve to the north prevents a view of the trains coming from that direction until the trains are nearly upon the crossing. The record of accidents and deaths here is a very long one.

h. STREET RAILWAY TRACKS.

The crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains two sewer pipes under Clay street crossing; a fifteen-inch pipe sewer and a forty-inch brick sewer.

The Passaic Water Company maintains a twelve-inch pipe under Clay street crossing.

The City of Paterson maintains an eighteen-inch pipe sewer under Straight street.

The Passaic Water Company maintains a six-inch water pipe under the Straight street crossing.

The Public Service Gas Company maintains a six-inch gas main under Straight street.

j. WIRE CROSSINGS.

Crossing the right of way on the northerly side of Clay street are eight wires forty-one feet high, maintained by the Public Service Electric Company.

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Crossing the right of way on the northerly side of Clay street are 33 wires 39 feet high, maintained by the New York Telephone Company.

The Erie Railroad Company also maintains wires crossing its right of way at these crossings and running to its signal towers.

10

C. Cedar Street Crossing.**a. HOW PROTECTED.**

This crossing is now protected by double set of gates and watchmen.

b. OBSTRUCTIONS.

This crossing is obstructed on both sides by large buildings located near the right of way. Ten sets of tracks cross this street and the company maintains
20 on a number of them long lines of freight cars which obstruct the view of those who use the crossing.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 25 automobiles, 300 wagons, and from 3,200 to 3,500 pedestrians pass over this crossing daily. The time-table of the company shows fifty passenger trains running east and fifty-three running west daily. There is much switching done at this point. The speed of passenger trains is regulated
30 by the order referred to above.

d. DISTANCE TO NEAREST PASSENGER STATION.

This crossing is located about 1,800 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 1,300 feet.

f. GRADE OF HIGHWAY.

The grade of the highway on both sides of this crossing is practically level.
40

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g. EXTENT TO WHICH TRAVEL IS IMPEDED.

This crossing is a very dangerous one and is the scene of many accidents. There is a sharp curve in the railroad just south of this crossing and because of the many freight cars on the tracks extreme care must be used in crossing at this point. It is especially dangerous at night when a great deal of switching is done. Much of the travel in this vicinity is to the freight yard of the company. There are many warehouses in the vicinity which require considerable trucking.

10

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The Passaic Water Company maintains an eight-inch water pipe under this crossing.

20

The Public Service Gas Company maintains a six-inch gas main under this crossing.

j. WIRE CROSSINGS.

Crossing the right of way on the northerly side of Cedar street are sixteen wires thirty-seven feet high, maintained by New York Telephone Company.

Crossing the right of way on the southerly side of Cedar street are seven wires thirty-seven feet high, maintained by the Public Service Electric Company.

30

The Erie Railroad also maintains wires crossing its right of way at this crossing and running to its signal tower.

D. Market Street.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower and by crossing watchmen.

b. OBSTRUCTIONS.

This crossing is obstructed by large buildings built near to the right of way. On the east side there is

40

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an open street between these buildings and the right of way. The view to the north on this side is obstructed further, however, by freight cars on the Susquehanna Railroad, which is about 200 feet north of this crossing at right angles to the right of way of the Erie Railroad. The Susquehanna Railroad does not cross the right of way or connect with the Erie Railroad in any way.

10

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 1,100 automobiles, 2,000 wagons and from 28,000 to 30,000 pedestrians and about 1,000 street railway cars use this crossing daily. The timetable of the company shows fifty passenger trains running east and fifty-three running west daily. The main station of the company is located at this crossing and trains all stop here, so that they do not pass over the crossing at a high rate of speed.

20

d. DISTANCE TO NEAREST PASSENGER STATION.

The main station of the company is located at this crossing.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 800 feet from this crossing.

f. GRADE OF HIGHWAY.

To the west the grade of Market street falls slightly and to the east the grade of Market street and Park avenue rises slightly.

30

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

This crossing is one most used in the City of Paterson. The business center of the city lies to the west of this crossing and a large residential section to the east. The gates of this crossing during certain periods of the day are closed from twenty to thirty minutes in the hour. The crossing is located so near to the passenger station that trains coming into the station from the south are apt to run over the crossing before

40

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stopping, thus necessitating the closing of the gates as the train comes into the station, also the closing of them as it leaves the station.

Trains from the north frequently do not clear the street, thus blocking the travel on the street while such trains remain in the station. Some of the trains carry cars for Fuller's Express Company, which are detached from the train at this point, causing two extra movements over the crossing. The Board of Railroad Commissioners three or four years ago directed the Attorney-General to proceed in the courts to have this grade crossing altered. So far as your petitioner can ascertain no action has been taken by the Attorney-General under this order. The frequent closing of the gates at this crossing interferes with the schedule of the trolley company which operates three lines of cars over this crossing. The delays caused the passengers of the street railway are very serious and annoying. The street railway is protected by a derail switch, but notwithstanding this protection several collisions have occurred between trains and street railway cars. Market street is paved with asphalt, Park avenue with wood block.

h. STREET RAILWAY TRACKS.

The Public Service Railway Company operates going east a line of street railway cars known as the PARK AVENUE LINE and going west the BROADWAY LINE, and also CEDAR LAWN LINE. These lines use two tracks crossing the railroad running east on Park avenue and west on Market street. The same company also operates a third track over this crossing running east and west on Market street, over which it operates a line of street cars known as the HALEDON LINE and also a line known as the WHITE LINE.

i. PIPE CROSSINGS.

The City of Paterson maintains under this crossing a thirty-inch brick sewer and an eighteen-inch pipe sewer.

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The Public Service Gas Company maintains under this crossing a twelve-inch gas main and two six-inch gas mains.

The Public Service Electric Company maintains under this crossing one two-inch tube, two two-inch tubes and twelve conduits.

10 The New York Telephone Company maintains under this crossing nine conduits.

The Passaic Water Company maintains under this crossing one twelve-inch water main.

j. **WIRE CROSSINGS.**

Crossing the right of way on the southerly side of Market street are four wires twenty-six feet high and maintained by the Public Service Electric Company.

The Public Service Railway Company maintains three trolley wires over this crossing.

20 **E. Ellison Street Crossing.**

a. **HOW PROTECTED.**

This crossing is now protected by gates operated from a tower.

b. **OBSTRUCTIONS.**

The view of this crossing is obstructed on all sides by large buildings built up close to the right of way.

c. **VOLUME AND FREQUENCY OF TRAVEL.**

30 On an average about 50 automobiles, 600 to 700 wagons, and from 4,000 to 5,000 pedestrians use this crossing daily. The number of passenger trains is the same as at the Market street crossing. Trains at this point from the south generally run slowly as they are approaching the passenger station at Market street and from the north are gathering headway after leaving said station.

d. **DISTANCE TO NEAREST PASSENGER STATION.**

40 This crossing is located about 1,000 feet from the main Paterson station at Market street.

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e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 1,800 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway on both sides of this crossing is practically level with the right of way.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains and by trains from the north stopping at this point until the station is cleared of trains from the south. 10

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains a thirty-six inch brick sewer and an eighteen-inch pipe sewer under this crossing. 20

The Public Service Gas Company maintains one six-inch and one four-inch gas main under this crossing.

The Public Service Electric Company maintains one tube on the north side and four conduits and two tubes on the south side under this crossing.

The Passaic Water Company maintains a six-inch water main under this crossing.

j. WIRE CROSSING.

Crossing the right of way on the southerly side are sixteen wires forty feet high maintained by the Public Service Electric Company. 30

F. Van Houten Street Crossing.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

The view at this crossing is obstructed on all sides by large buildings built up close to the right of way. 40

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c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 300 automobiles, 500 wagons and from 4,000 to 5,000 pedestrians use this crossing daily. The number of passenger trains are the same as at the Market street crossing and their speed is regulated by the order referred to above.

d. DISTANCE TO NEAREST PASSENGER STATION.

- 10 This crossing is located about 1,200 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Essex street, a distance of about 2,000 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway on both sides of this crossing is practically level with the right of way.

- 20 g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains. This street is paved for a long distance on both sides of this crossing with asphalt and is used very much by automobiles.

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

- 30 The City of Paterson maintains an eighteen-inch pipe sewer under this crossing.

The Public Service maintains two three-inch mains under this crossing.

The Public Service Electric Company maintains one tube on the northerly side and twenty conduits and two tubes on the southerly side under this crossing.

- 40 The Passaic Water Company maintains one twenty-four-inch and one six-inch water main under this crossing.

*Amended Petition.***j. WIRE CROSSINGS.**

Crossing the right of way on the southerly side are seven wires fifty-two feet high maintained by the Public Service Electric Company.

G. Broadway Crossing.**a. HOW PROTECTED.**

This crossing is now protected by gates operated from a tower and watchman. 10

b. OBSTRUCTIONS.

The view to the south is obstructed by large buildings built close to the right of way. To the north it is obstructed by two large dwellings and from the east side by a high bank. This crossing is the one referred to in the 1910 report of the Public Utility Commissioners page 226. As a result of the accident referred to in the said report a recommendation was made by the commission that the company run its trains through the City of Paterson at a rate not exceeding fifteen miles per hour. 20

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 300 to 400 automobiles, 400 to 500 wagons, 12,000 to 15,000 pedestrians use this crossing daily. The number of passenger trains is the same as at the Market street crossing. The automobile travel over this crossing is greatly increased on Saturday and Sunday because this street provides an outlet from the city to Hackensack, and New York and the east. Many of these automobilists are not familiar with the crossing and by reason of the obstructions it is particularly dangerous. The street car traffic over this crossing is heavy and the delays caused here are serious and annoying. This crossing interferes seriously with the schedule of the street railway company. 30

d. DISTANCE TO NEAREST PASSENGER STATION.

This crossing is located about 1,500 feet from the main Paterson station at Market street. 40

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e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Governor street a distance of about 1,800 feet from this crossing.

f. GRADE OF HIGHWAY.

The street crosses this railroad at a sharp grade falling from the east to the west.

10 g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains. This street is paved for a long distance on both sides of this crossing with brick. It is one of the main thoroughfares of the city providing access from the residential section on the east to the business section on the west.

h. STREET RAILWAY TRACKS.

The Public Service Railway Company maintains the following lines of street cars over this crossing:

- 20 1. Cedar Lawn line running east;
 2. Broadway line running east;
 3. Park Avenue line running west;
 4. Governor Street line running east and west;
 5. Hudson River line running east and west.

The number of cars crossing at this point average about fifty an hour. During the summer season on Saturday afternoons and Sundays the travel on the
 30 Hudson River line is greatly increased.

i. PIPE CROSSINGS.

The City of Paterson maintains a twelve-inch pipe sewer under this crossing.

The Public Service Gas Company maintains one three-inch and one four-inch gas main under this crossing.

The Public Service Electric Company maintains one two-inch tube and six conduits under this crossing.

40 The Passaic Water Company maintains one sixteen-inch water main under this crossing.

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The Paterson, Passaic and Suburban Telephone Company maintains four conduits under this crossing.

j. WIRE CROSSINGS.

Crossing the right of way diagonally from the northeast to the southwest are six wires fifty-three feet high, maintained by the Public Service Railway Company.

H. Fair Street Crossings.

10

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

The view to the north and south coming from the east is obstructed by frame buildings close to the right of way. Coming from the west the view is obstructed by frame buildings which are not built as close as those on the east side.

20

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 50 to 100 automobiles, 200 to 250 wagons, and from 2,000 to 2,500 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. DISTANCE TO NEAREST PASSENGER STATION.

This crossing is located about 2,000 feet from the main Paterson station at Market street.

30

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Governor street, a distance of about 1,500 feet from this crossing.

f. GRADE OF HIGHWAY.

The grade of the highway at this crossing falls sharply from the east to the west.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains.

40

*Amended Petition.***h. STREET RAILWAY TRACKS.**

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains one twelve-inch pipe sewer under this crossing.

10 The Passaic Water Company maintains one six-inch water main under this crossing.

j. WIRE CROSSINGS.

No wires cross the right of way at this point.

I. Hamilton Avenue Crossing.**a. HOW PROTECTED.**

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

20 From all sides the view to the crossing is obstructed by buildings built close to the right of way.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 150 to 200 automobiles, 500 to 600 wagons, and from 4,000 to 5,000 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. DISTANCE TO THE NEAREST PASSENGER STATION.

30 This crossing is located about 2,500 feet from the main Paterson station at Market street.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Governor street, a distance of about 1,000 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway at this crossing falls sharply from the east to the west.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains.

*Amended Petition.***h. STREET RAILWAY TRACKS.**

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains one twelve-inch pipe sewer under this crossing.

The Public Service Gas Company maintains one 10
four-inch gas main under this crossing.

The Passaic Water Company maintains one six-inch water main under this crossing.

j. WIRE CROSSINGS.

No wires cross the right of way at this point.

J. Lafayette Street.**a. HOW PROTECTED.**

This crossing is now protected by gates operated 20
from a tower.

b. OBSTRUCTIONS.

From all sides the view to the crossing is obstructed by buildings built up close to the right of way.

c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 50 automobiles, 400 to 500 wagons and 5,000 to 6,000 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. DISTANCE FROM NEAREST PASSENGER STATION. 30

This crossing is located about 1,500 feet from the River street station.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Fulton street, a distance of about 1,000 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway at this crossing falls gradually from east to west.

*Amended Petition.***g. EXTENT TO WHICH TRAVEL IS IMPEDED.**

Travel is impeded by the great number of trains. There are three tracks at this crossing and the River-side or West Paterson yards begin about at this point and the number of switching movements increases from at this point to the north.

10 **h. STREET RAILWAY TRACKS.**

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains one thirty-inch brick and one twelve-inch pipe sewer.

The Public Service Gas Company maintains one six-inch gas main.

20 The Passaic Water Company maintains one six-inch water main.

j. WIRE CROSSINGS.

Crossing the right of way on the northerly side are six wires forty-one feet high and on the southerly side one cable thirty feet high maintained by the Public Service Electric Company.

K. Franklin Street Crossing.**a. HOW PROTECTED.**

30 This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

At this crossing the view is obstructed by buildings built close to the right of way with the exception to the view to the south coming from the east where the nearest building is located about fifty feet from the right of way.

c. VOLUME AND FREQUENCY OF TRAVEL.

40 On an average about 25 automobiles, 100 to 200 wagons and from 1,500 to 2,000 pedestrians use this crossing daily. The number of trains is about the

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same as at the Market street crossing. The switching movements are frequent because of the vicinity of the Riverside yards.

d. DISTANCE TO THE NEAREST PASSENGER STATION.

This crossing is located about 1,250 feet from the Riverside station.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Fulton street, a distance of about 1,250 feet from this crossing.

10

f. GRADE OF HIGHWAY.

The highway at this crossing falls slightly to the east and to the west.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains. There are four tracks at this crossing.

20

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The Passaic Water Company maintains a six-inch water main.

j. WIRE CROSSINGS.

Crossing the right of way on the northerly side are twenty wires thirty-one feet high maintained by the New York Telephone Company.

30

L. Keen Street Crossing.

a. HOW PROTECTED.

This crossing is now protected by flagman and bell.

b. OBSTRUCTIONS.

At this crossing the view is obstructed on all sides by buildings built close to the right of way.

c. VOLUME AND FREQUENCY OF TRAVEL.

40

On an average about 50 to 100 automobiles, 200 to 300 wagons and 2,000 to 3,000 pedestrians use this

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crossing daily. The number of trains is about the same as at the Market street crossing. There are five tracks at this crossing. The amount of switching movements is very great.

d. DISTANCE TO THE NEAREST PASSENGER STATION.

This crossing is located about 750 feet from the
10 Riverside station.

e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING is at Fulton street a distance of about 1,750 feet from this crossing.

f. GRADE OF HIGHWAY.

The highway falls slightly to the east and west of the right of way.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

Travel is impeded by the great number of trains.
20

h. STREET RAILWAY TRACKS.

This crossing is not used by any street railway company.

i. PIPE CROSSINGS.

The City of Paterson maintains one twenty-four-inch pipe sewer under this crossing.

j. WIRE CROSSINGS.

Crossing the right of way on the northerly side are
30 eight wires forty-seven feet high maintained by the Public Service Electric Company.

M. Warren Street Crossing.

a. HOW PROTECTED.

This crossing is now protected by gates operated from a tower.

b. OBSTRUCTIONS.

At this crossing the view to the south is obstructed
40 by buildings built close to the right of way on both sides thereof. The view to the north is obstructed by

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a building built close to the right of way on the east side thereof.

c. **VOLUME AND FREQUENCY OF TRAVEL.**

On an average about 50 to 100 automobiles, 200 wagons and from 2,000 to 2,500 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing. There are two tracks at this crossing.

d. **DISTANCE TO THE NEAREST PASSENGER STATION.**

10

The crossing is located about 500 feet from the River street station.

e. **THE NEAREST OVERHEAD OR UNDERGROUND CROSSING** is at Fulton street a distance of about 2,000 feet from this crossing.

f. **GRADE OF HIGHWAY.**

The highway to the west is about level with the right of way and to the east rises slightly above the right of way.

20

g. **EXTENT TO WHICH TRAVEL IS IMPEDED.**

Travel is impeded by the great number of trains.

h. **STREET RAILWAY TRACKS.**

This crossing is not used by any street railway company.

i. **PIPE CROSSINGS.**

The City of Paterson maintains one eighteen-inch pipe sewer under this crossing.

30

The Public Service Gas Company maintains one four-inch gas main under their crossing.

The Passaic Water Company maintains two six-inch water mains.

j. **WIRE CROSSINGS.**

No wires cross the right of way at this point.

*Amended Petition.***N. River and Putnam Streets Crossing.****a. HOW PROTECTED.**

This crossing is now protected by several gates and by crossing watchmen.

b. OBSTRUCTIONS.

10 The view on Putnam street coming from the east is obstructed to the north and south by buildings built close to the right of way. The view coming from the west on Putnam street is obstructed by buildings to the south and by freight cars to the north. The view to the south coming from the west on River street is obstructed by buildings and to the north by freight cars. The view on River street coming from the east is obstructed to the north by buildings and by the depot of the company, and to the south by large brick buildings built close to the right of way. There are two tracks at this crossing.

20 c. VOLUME AND FREQUENCY OF TRAVEL.

On an average about 300 to 400 automobiles, 800 to 1,000 wagons and 12,000 to 15,000 pedestrians use this crossing daily. The number of trains is about the same as at the Market street crossing.

d. DISTANCE TO THE NEAREST PASSENGER STATION.

The River street passenger station is located at this station, as is also a freight station.

30 **e. THE NEAREST OVERHEAD OR UNDERGROUND CROSSING** is at Fulton street a distance of about 2,800 feet from this crossing.

f. GRADE OF HIGHWAY.

The grade of River street to the west is about level with the right of way and to the east rises sharply. Putnam street to the west is about level with the right of way and to the east rises gradually.

g. EXTENT TO WHICH TRAVEL IS IMPEDED.

40 This crossing is an exceedingly dangerous one because of the sharp angle at which River street crosses

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and it is very confusing to the persons who use it. There are a great number of switching movements to and from the freight yards in the vicinity. The stoppage of trains at the depot causes the gates to be lowered twice for each train from the north which stops at the River street station.

h. STREET RAILWAY TRACKS.

The Public Service Railway Company operates a street railway upon River street over this crossing and runs about 25 cars per hour.

10

i. PIPE CROSSINGS.

The City of Paterson maintains a twenty-four-inch brick sewer through River street under this crossing and an eighteen-inch pipe sewer through Putnam street and under this crossing.

The Public Service Gas Company maintains seven gas mains under this crossing.

20

The Passaic Water Company maintains a six-inch water main.

j. WIRE CROSSINGS.

Crossing the right of way are one set of wires maintained by the New York Telephone Company and one set maintained by the Public Service Electric Company.

15. Your petitioner shows that the said crossings are so located with respect to each other that any plan for altering one will necessarily involve the others so that it will be necessary and advisable to formulate some plan for the alternation of all of them.

30

16. Your petitioner further shows that by the last United States census the City of Paterson had a population of 125,600 and that it is constantly increasing; that it is the third city in size in this State and that the railway crossings in the two larger cities of Newark and Jersey City have been largely eliminated. Your petitioner shows that the crossings referred to in

40

Amended Petition.

10 this petition are the most important grade crossings in the State, that travel on these highways and especially Market street is impeded to an unusual extent. In the above tabulation your petitioner has not shown the number of persons carried over the crossings in street cars because of being unable to obtain such information; but your petitioner believes the number so carried is about equal to the number of pedestrians at the same crossings.

20 17. Your petitioner, therefore, prays that your honorable body order the said Erie Railroad Company and the Paterson and Hudson Railroad Company and the Paterson and Ramapo Railroad Company to alter such crossings according to plans to be approved by your board by substituting for each of such crossings a crossing not at the grade of such public highways either by carrying such public highways under or over such railroad or by reconstructing such railroad under or over such public highway or by vacating, relocating, changing the lines, width, direction or location of such highway and the opening of a new highway in place of the one or ones ordered vacant.

30 18. That your petitioner further shows and insists that is not practicable to change the grade of said highways or any of them so as to carry the same under or over the said railway. The said highways are all in the center of a thickly populated city and all contain large numbers of buildings which would be ruined or destroyed by any such change of grade.

19. Your petitioner insists that the said grade crossings should be altered by depressing the tracks of the said railroad so that the same will pass under the said highways or in case such a plan should be impracticable for any reason, that the said railroad should be elevated to pass over said highways.

Amended Petition.

20. Your petitioner therefore prays your honorable board to fix a time and place for a hearing before it upon this petition and shall give notice thereof to your petitioner and to the following corporations interested therein :

1. Erie Railroad Company.
 Paterson and Hudson River Railroad Com-
 pany. 10
 Paterson and Ramapo Railroad Company.
2. Public Service Railway Company.
 Public Service Gas Company.
 Public Service Electric Company.
3. Passaic Water Company.
4. New York Telephone Company.
5. Paterson, Passaic and Suburban Telephone
 Company.

BOARD OF FINANCE, CITY OF PATERSON. 20

By WM. BERDAN,
President.

Attest :

JNO. J. BROPHY,
Clerk.

Approved

ANDREW F. MCBRIDE,
Mayor. 30

Amended Petition.

EXHIBIT "I."

RESOLUTION 1003.

BE IT RESOLVED, that the petition to the Board of Public Utility Commissioners for the removal of grade crossings upon the main line of the Erie Railroad at the following streets:

- | | |
|----|---|
| 10 | Madison Avenue,
Clay and Straight Streets,
Cedar Street,
Market Street and Park Avenue,
Ellison Street,
Van Houten Street,
Broadway,
Fair Street,
Hamilton Avenue,
Lafayette Street, |
| 20 | Franklin Street,
Keen Street,
Warren Street,
River and Putnam Streets, |

and which petition was prepared by the City Council by the direction of this board, be filed as the petition of the Board of Finance of the City of Paterson, and that the Mayor and the Clerk of this Board authenticate the same.

Passed September 11th, 1913.

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WM. BERDAN,

President of Board of Finance.

Attest:

JOHN J. BURNBY,

Clerk.

Approved Sept. 12, 1913.

ANDREW E. McBRIDE,

Mayor.

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*Amendment to Petition.***Amendment to Petition.**

BE IT RESOLVED, that the petition heretofore made to the Board of Utility Commissioners by the Board of Finance of the City of Paterson be amended by adding the following paragraph:

14a. And your petitioner further shows that running along the line of the said Erie Railroad Company and situate upon the same are a number of overhead wires some of which your petitioner believes are owned and operated by the said Railroad Company and other by the Western Union Telegraph Company but that it is unable to state which of said wires are owned by the Erie Railroad Company and which by the Western Union Telegraph Company.

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Your petitioner shows that the number and height of said wires where they cross any of the streets above mentioned are shown upon the various maps accompanying the petition.

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AND BE IT FURTHER RESOLVED, that his resolution properly authenticated be filed with the Board of Public Utility Commissioners of the State of New Jersey.

Passed October 23rd, 1913.

(Signed) WILLIAM BERDAN,
President of Board of Finance.

Approved October 24th, 1913.

(Signed) ANDREW F. McBRIDE,
Mayor.

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Attest:

JNO. J. BROPHY,
Clerk of Board of Finance.

Answer of Erie Railroad Company.**STATE OF NEW JERSEY.****BEFORE THE BOARD OF PUBLIC UTILITY COMMISSIONERS**

10 **IN THE MATTER OF THE APPLICATION
OF THE CITY OF PATERSON TO AL-
TER GRADE CROSSINGS ON LINE OF
THE ERIE RAILROAD.**

The respondent, Erie Railroad Company, answers the petition herein as follows:

1. Respondent has no knowledge of the allegations in paragraph 1, but says that if such petition was filed, this respondent has never received a copy thereof, or been informed as to its contents as required by
20 law and the rules of your honorable board. Respondent admits, however, that it maintains certain grade crossings in the City of Paterson.

2. Respondent has no knowledge of the allegations in paragraph 2.

3. Respondent admits paragraph 3.

4. Respondent denies the allegations in paragraph 4, except it admits that in passing through the City of Paterson, the said railroad crosses several streets
30 and highways at grade.

5. Respondent admits the allegations in paragraphs 5, 6 and 7, except it says that the correct corporate name of the railroad described in paragraph 6 of petition as "Paterson & Hudson River Railroad Company" is "The President and Board of Directors of Paterson & Hudson River Railroad Company"; and except that it says that the said leases were not made to this respondent, but to a corporation known as Union Railroad Company under date of September

Answer of Erie Railroad Company.

10th, 1852, and that the junction between the Paterson and Hudson River Railroad and the Paterson and Ramapo Railroad is not correctly described and located in said petition, and respondent says that it acquired the right, title and interest of the Union Railroad Company in said leased property and franchises by means conveyances through the following named companies:

Union Railroad Company.

New York and Erie Railroad Company.

Erie Railway Company, and

New York, Lake Erie & Western Railroad Company.

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6. Respondent has no knowledge of the allegations in paragraph 8, but says that if the same are true, they are immaterial.

7. Respondent admits the allegations of paragraph 9; as to paragraph 10, respondent says that while it is true that the respondent has had under informal discussion at various times with various civic bodies of the City of Paterson the question of the abolition of certain grade crossings in the city, such negotiations have not as yet been consummated for the reason that the proposition suggested by said civic bodies was such, that respondent was not financially able to comply therewith. Respondent further says that its engineers have prepared studies or preliminary plans with respect to said crossings, or some of them, for the purpose of making an approximate estimate of the cost of altering the grade thereof, but it has never had prepared any comprehensive plan including all of said crossings and has no said plan on hand.

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8. Respondent admits the allegations in paragraphs 11 and 12, except that it says that said maps are not accurate or complete in that the said maps do not show all of the railroad tracks, nor any of the freight yards of this respondent, nor all sidings or

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Answer of Erie Railroad Company.

switches, or connections with the property of private individuals or corporations that rely upon this respondent for service, which would be affected by a change of grade of said railroad, nor do they show all of the grade crossings that would necessarily be affected by a change of grade of the crossings described in the petition, nor do they show any of the freight
10 or passenger stations of this respondent in the City of Paterson, nor do they show the names of the owners of the land adjoining or abutting the streets within, nor all of the areas which may possibly be affected by any order made under said petition, and in many other respects the said maps are inaccurate, incomplete and misleading. Respondent further says that if an order is made to depress its tracks as prayed for in said petition, the present undergrade crossings of Essex, Governor, Fulton and Straight streets will
20 be destroyed.

9. Respondent has no knowledge of the allegations in paragraph 13.

10. Respondent neither admits nor denies the allegations in paragraph 14, except as stated below and requires petitioner to make proof of all material facts therein contained. It says that said petition does not fully and accurately set forth the protection provided at said crossings, and respondent attaches here-
30 to a complete schedule marked Schedule "A" showing the protection actually provided therefor, and it says that the said protection is reasonable and adequate; and it denies that said crossings or any of them, are dangerous to public safety, or that public travel thereon is impeded within the meaning of the statute.

11. With respect to the allegations in paragraph 15, respondent has not at the present time sufficient information to state whether or not the alteration of one of the crossings described in the petition will
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Answer of Erie Railroad Company.

necessarily involve all of the others, or any or either of them.

12. Respondent has no knowledge of the allegations in paragraph 16, except that it denies that the travel on said streets is impeded to an unusual extent, or is impeded at all within the meaning of the statute.

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13. Further answering, respondent says that said petition is not made nor presented as required by Chapter 57 of the laws of 1913, or by the rules of this honorable board and that the Board of Public Utility Commissioners has not acquired jurisdiction to act under said law and respondent therefore objects to any further proceedings thereunder.

14. Respondent further says that the said board has no valid power or authority in law or otherwise to compel this respondent by order or otherwise to eliminate, change, or otherwise alter any of the streets or highway crossings referred to in the petition herein.

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15. Respondent further says that the Act of the Legislature of the State of New Jersey, being Chapter 57 of the Laws of 1913, is unconstitutional and void in that, if the said Board of Public Utility Commissioners complies with the request of the petition herein, said statute will operate to take the property of this respondent, which property is private property, for a private use, and will also take property of this respondent for public use without just compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey.

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16. Respondent, further answering, says that the said statute and the exercise of the power purporting to be conferred upon said board thereby, operates and will operate to take the property of this respondent, without affording to it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guarantee of enjoy-

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Answer of Erie Railroad Company.

ing, defending, possessing and protecting said property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey and in violation thereof.

17. Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1, of the Constitution of the State of New Jersey.

18. Respondent, further answering, says that the said statute is unconstitutional and void in that, contrary to Article IV, Section VII, Paragraph 4, of the Constitution of the State of New Jersey, the object of the said statute is not expressed in the title thereof and the said statute embraces more than one object.

19. Respondent further says that the said statute is unconstitutional and void under the constitution of the United States in that it operates and the requested action of the said Board of Public Utility Commissioners thereunder will operate to deprive this respondent of its property without due process of law, and denies and will deny to this respondent the equal protection of the law contrary to the XIV amendment to the Constitution of the United States.

20. Respondent, further answering, says that the said board has no valid power or authority in law or otherwise to entertain the said petition or to conduct hearings thereon or to compel this respondent by order or otherwise to eliminate, change or otherwise alter any of the streets or highway crossings referred to in the said petition, because, as respondent urges and insists, said petition is filed and this proceeding instituted, contrary to the provisions of said statute, being Chapter 57, Laws of 1913, in that more than one street

Answer of Erie Railroad Company.

or highway crossing is embraced within the said petition.

21. Respondent further says that if an order is made as requested by the petitioner, such order will require changes of grade or location, or the removal or reconstruction of the property of the following persons and corporations, all of whom have sidings, switches and other physical connections with respondent's railroad and tracks and are entitled to notice and an opportunity to be heard herein to wit:

Leslie Elliott Co.,	
Cooke Locomotive Works,	
Passaic Steel Company,	
R. H. McDonald,	
G. A. Zabriskie,	
Commercial Lumber & Mill Work Co.,	
C. Kelly,	
M. Goble,	20
National Wood Company,	
Standard Oil Company,	
John Agnew Company (two sidings),	
Saml. Smith & Son Company,	
Rogers Locomotive Works,	
James Wilson & Son,	
McNab & Harlin Mfg. Co. (two sidings),	
Jas. A. Graham Brewing Co.,	
National Biscuit Company,	
Morris & Company,	30
Paterson Vehicle Company,	
Paterson Beef Company,	
E. M. Stiles,	
Laffray & Herman Company,	
Schwarzschild & Sulzberger Company,	
David G. Rodgers Company,	
Armour & Company,	
Hinchcliffe Brewery,	
Katz Brewery,	
P. S. VanKirk Company,	40

Answer of Erie Railroad Company.

A. H. Smith,
 Myer & De Vogle,
 Armstrong Sons Company,
 A. H. Smith,
 D. Fullerton & Company,
 Atherton Grain Company,
 J. A. Lydicker,
 Public Service Gas Company (two sidings),
 J. VanDenHendel,
 Swift & Company,
 H. M. Post,
 Ashley & Esiley Company,
 National Silk Dyeing Company,
 Crasselli Chemical Company,
 Weidman Silk Dyeing Company (two sidings),
 L. Lapst,
 Sutherland & Edwards Company,
 Nicholson File Company.

22. Respondent further answering says that certain wires along the right of way of respondent in and through the City of Paterson and over and above the city streets or highways mentioned in the petition, are operated and maintained by the Western Union Telegraph Company under and by virtue of certain lease made between it and respondent under date of the 25th day of September, 1907, and that the Western Union Telegraph Company is, therefore, a necessary party to this proceeding and it is entitled to receive notice thereof and to be represented at any hearings held thereon.

23. Respondent does not own the franchise of the President and Board of Directors of Paterson & Hudson River Railroad Company and Paterson & Ramapo Railroad Company, nor the right of way of either of said companies, but is merely a tenant of them, and says that that part of the statute which imposes upon the operating company alone the obligation of paying

Answer of Erie Railroad Company.

the expense of changes of grade renders the statute unconstitutional, in that it takes the property of the Erie Railroad Company without compensation, for the benefit of the President and Board of Directors of Paterson & Hudson River Railroad Company, and Paterson & Ramapo Railroad Company.

24. Respondent further answering, says that certain of said crossings mentioned in said petition were laid out and constructed by the City of Paterson across the existing tracks and right of way of the President and Board of Directors of the Paterson & Hudson River Railroad Company, incorporated under special act approved January 21, 1831 (F. L. 1830-1, p. 24) and of the Paterson & Ramapo Railroad Company under special act approved March 10, 1841 (P. L. 1840-1, p. 97), now operated by respondent, and subsequent to the construction and commencement of operation of said railroads, and as to these crossings the said Board of Public Utility Commissioners is without jurisdiction to order respondent at its own expense to alter or change the grade thereof, or to construct another crossing in the place or stead thereof not at grade.

25. Respondent further answering, says that the cost of eliminating said grade crossings as requested in said petition would exceed the value of all the property, real and personal, of the Paterson & Ramapo Railroad Company, and the President and Board of Directors of the Paterson & Hudson River Railroad Company, or either of them, and would make the property of either or both of said corporations incapable of earning, when used for railroad purposes a fair and reasonable return upon the amount invested therein, and would result in the confiscation of their property, and of respondent's property and interest in the leases hereinbefore mentioned, and would amount to a taking of the property of the Paterson & Ramapo

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Answer of Erie Railroad Company.

Railroad Company, the President and Board of Directors of the Paterson & Hudson River Railroad Company, and of respondent, without due process of law, contrary to Articles V and XIV, amendments to the Constitution of the United States.

26. Respondent, further answering, says that the President and Board of Directors of the Paterson & Hudson River Railroad Company was incorporated, and its railroad constructed under and by virtue of the provisions of a special act of the Legislature of the State of New Jersey, approved January 21, 1831 (P. L. 1830-1, p. 24), and the various supplements and amendments thereto, and that the Paterson & Ramapo Railroad Company was incorporated and its railroad constructed under and by virtue of the provisions of a special act of the Legislature of the State of New Jersey, approved March 10, 1841 (P. L. 1840-1, p. 97), and the various supplements and amendments thereto, and that said railroads under and by virtue of the provisions of these acts were constructed across certain of the streets mentioned in the petition as they then existed, and that the respondent has succeeded to all of the rights and privileges of the President and Board of Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, in the manner described in the fifth paragraph of this answer, and that therefore the act of the Legislature, being Chapter 57 of the Laws of 1913 is inapplicable to said crossings, and if held to be applicable, is unconstitutional and void, in that, contrary to Article I, Section X, Paragraph 1, of the Constitution of the United States, it will impair the obligation of contracts.

27. Respondent further answering says that it is informed and believes that this honorable board has made a classification of all the grade crossings existing within the State of New Jersey, for the purpose

Answer of Erie Railroad Company.

of indicating in such classification the various degrees in which such crossings are dangerous to, or impede public travel, and that your honorable board has adopted a policy under which it proposes to accomplish the gradual elimination of such crossings in the order that they appear in said classification to be most dangerous; and respondent says that said petition does not show that all or any of the crossings therein mentioned are classified or considered to be among the most dangerous grade crossings in the State. Respondent further says that the crossings mentioned in the petition are not among the most dangerous existing in the State, both on account of the protection provided at each of said crossings and on account of the location of some of them and the small amount of travel on the highway at said crossings and for other reasons and respondent, therefore, says that even if the said act (being Chapter 57 of the Laws of 1913) is held to be constitutional and valid and to confer jurisdiction on the board to make an order eliminating any or all of said crossings, your honorable board should not order the elimination of the crossings mentioned in said petition.

WHEREFORE, respondent prays that the said petition be dismissed.

COLLINS & CORBIN,
Attorneys for Respondent.

*Answer of Erie Railroad Company.***Schedule "A."****ERIE RAILROAD COMPANY.**

Statement showing kind of protection.

Streets at Grade.	No. Men.	Kind of Protection.
Madison Avenue	1 gates	6:30 AM—7:30 PM Bell also
Clay & Straight Sts.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Straight St.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Cedar St.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Side tracks & yd.	1 "	6:00 AM—6:00 PM
Market St. & Park Ave.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
	1 ground	6:00 AM—6:00 PM
	1 "	6:00 PM—11:30 PM
Ellison St.	1 gates	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
VanHouten Street	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Broadway	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
	1 ground	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Fair Street	1 gates	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Hmilton Avenue	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Lafayette Street	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
Franklin Street	1 "	6:00 AM—7:00 PM
	Balance of day no protection	
Keen Street	1 ground	6:30 AM—6:30 PM
	Bell balance of time.	
Warren Street	1 gates	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
River & Putnam Sts.	1 "	6:00 AM—6:00 PM
	1 "	6:00 PM—6:00 AM
	1 "	6:00 AM—6:00 PM
(South side gates)	1 "	6:00 PM—6:00 AM

"Gates" means crossing protected by gates between the hours specified.

"Ground" means that a flagman is on the ground at the crossing between the hours specified.

*First Amendment to Answer of Erie Railroad Co.***First Amendment to Answer of Erie Railroad Co.**

The respondent, Erie Railroad Company, hereby amends its answer filed in the above entitled matter on October 31, 1913, in the following particulars:

1. At the end of paragraph 16, add the following:

"Respondent further says that said statute, being Chapter 57, Laws of 1913, is unconstitutional and void under the Constitutions of the United States and of the State of New Jersey, in that it operates, and the requested action of the Board of Public Utility Commissioners thereunder will operate to take the property of Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, and the Paterson, Passaic & Suburban Telephone Company, or of some or all of them (which property is private property) for public use without just or any compensation, contrary to and in violation of Article 1, Section 16 of the Constitution of the State of New Jersey; and the said statute and any order of the board that may be made thereunder in the present proceedings, operates and will operate to deny to them and each of them the equal protection of the law, and to deprive them and each of them of their property, without due process of law, and abridges their privileges and immunities as citizens of the United States, contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States."

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known as 17-a, to read as follows:

2. Add to paragraph 17, a new paragraph to be

"17-a. Said statute is also unconstitutional and void because it deprives and will operate to deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the respondent Erie Railroad Company, or its lessors, The President and Board of Directors of the Paterson & Hudson River Railroad Company and the Paterson & Ramapo Railroad Company, by mandamus or other appropriate proceeding to

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First Amendment to Answer of Erie Railroad Co.

perform the duties imposed by law upon this respondent or upon said The President and Board of Directors of the Paterson & Hudson River Railroad Company and Paterson & Ramapo Railroad Company, with respect to the construction and maintenance of said crossings, or some of them, contrary to the provisions of said Article 6, Section 1 of the Constitution of the State of New Jersey."

- 10 3. At the end of paragraph 21, add as part of said paragraph, the following:

 "Respondent says that said statute is unconstitutional and void under the Constitutions of the United States and of the State of New Jersey, and that it operates and the requested action of said board thereunder will operate to take the property of some or all of the above named persons or corporations (which property is private property) for public use, without just or any compensation, contrary to and in violation of Article 1, Section 16, of the Constitution of the State of New Jersey; and said statute and any order of the board that may be made thereunder in the present proceedings, operates and will operate to deny to them and each of them the equal protection of the law, and to deprive them and each of them of their property, without due process of law, and abridges their privileges and immunities as citizens of the United States, contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States."

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4. Add to paragraph 22, the following:

30 "And respondent says that said statute is unconstitutional and void under the Constitutions of the United States and of the State of New Jersey, in that it operates and the proposed action thereunder will operate to take the property of said Western Union Telegraph Company (which property is private property) for public use, without just or any compensation, contrary to and in violation of Article 1, Section 16 of the Constitution of the State of New Jersey; and said statute and any order of the board that may be made thereunder in the present proceedings, operates

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First Amendment to Answer of Erie Railroad Co.

and will operate to deny to it, the equal protection of the law, and to deprive it of its property without due process of law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States."

5. Add after paragraph 27, two new paragraphs to be called 28 and 29, as follows:

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"28. Respondent further says that any order that may be made by said board in this proceeding will require changes in and the removal of the property or constructions of telegraph, telephone, gas, electric, lighting, power and water lines, and will also require changes in and the removal of the property and constructions of various companies or corporations, co-partnerships and individuals; and that said statute in so far as it operates to require said companies or corporations, co-partnerships and individuals, at their own expense to move or change the grade or location of their property or constructions in conformity with the order of said board, is unconstitutional and void, in that it takes the private property of such companies or corporations, co-partnerships and individuals for public use without just or any compensation, contrary to and in violation of Article 1, Section 16, of the Constitution of the State of New Jersey; and said statute and any order of the board made thereunder in the present proceedings, operates and will operate to deprive said companies or corporations, co-partnerships and individuals, of their property without due process of law, and denies to them the equal protection of the law, and abridges their privileges and immunities as citizens of the United States, contrary to and in violation of the Constitution of the United States."

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"29. Said statute, in so far as it confers upon said board power to alter grade crossings according to plans to be approved by said board, whenever it appears to said board that the crossing of a public highway and a railroad at the same level

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Second Amendment to Answer of Erie Railroad Co.

is dangerous to public safety, or that the public travel on such highway is impeded thereby, is unconstitutional and void, because it establishes no reasonable nor any standard for the guidance of said board in making orders thereunder, and delegates legislative power to said board with respect to such crossings, and confers arbitrary power on said board."

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COLLINS & CORBIN,
Attorneys of Respondent.

Second Amendment to Answer of Erie Railroad Co.

The respondent, Erie Railroad Company, pursuant to request of the Board of Public Utility Commissioners of the State of New Jersey hereby amends its answer filed in the above entitled proceedings by substituting for paragraph 24 the following:

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24. Respondent further answering says that certain of said crossings mentioned in said petition, namely, Madison avenue, Cedar street and Putnam street, were laid out and constructed by the City of Paterson across the existing tracks and right of way of the President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company subsequent to the construction and commencement of operation of said railroads, and respondent further says it has no knowledge as to whether the other streets mentioned in said petition or any of them were laid out and constructed across the tracks and right of way of said Railroad Companies before or subsequent to the construction and commencement of operation of said railroads and requires from said petitioner such proof concerning the same as it may be advised shall be necessary. Respondent therefore says that as to any and all of said crossings which were created by the laying out and construction of streets across the

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Answer of Paterson & Hudson River Railroad Co.

tracks and right of way of said railroads, or either of them, subsequent to the construction and commencement of operation thereof, or of either of them, the said Board of Public Utility Commissioners is without authority or jurisdiction to order respondent, at its own expense, to alter or change the grade thereof, or to construct another crossing in the place or stead thereof not at grade.

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COLLINS & CORBIN,

Attorneys for Respondent.

Answer of Paterson & Hudson River Railroad Co.

The respondent, THE PRESIDENT AND BOARD OF DIRECTORS OF THE PATERSON AND HUDSON RIVER RAILROAD COMPANY, answers the petition herein as follows:

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1. Respondent has no knowledge of the allegations in paragraph 1 excepting the allegation that the Erie Railroad Company maintains certain grade crossings in the City of Paterson, which allegation it admits.

2. Respondent has no knowledge of the allegations in paragraph 2.

3. It admits paragraph 3.

4. It denies the allegations in paragraph 4, except that it admits that in passing through the City of Paterson said railroad crosses several streets and highways at grade.

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5. It admits the allegations in paragraph 5 but says that said leases were not made to the Erie Railroad Company but to a corporation known as Union Railroad Company and said Erie Railroad Company acquired the right, title and interest of the Union Railroad Company in said leased property and franchises by mean conveyances from the following named companies; the Union Railroad Company, New York and

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Answer of Paterson & Hudson River Railroad Co.

Erie Railroad Company, Erie Railway Company and the New York, Lake Erie and Western Railroad Company.

6. It admits paragraph 6.

7. It admits paragraph 7.

10 8. It has no knowledge of the allegations in paragraph 8, but says that if they are true they are immaterial.

9. It has no knowledge of the allegations of paragraph 9.

10. It has no knowledge of the allegations of paragraph 10.

20 11. Respondent admits the allegations in paragraphs 11 and 12 except that it says that said maps are not accurate or complete in that the said maps do not show all of the railroad tracks nor any of the freight yards of said Erie Railroad Company, nor all sidings or switches or connections with the property of private individuals or corporations that rely upon said Erie Railroad Company for service, which would be affected by a change of grade of said railroad, nor do they show all of the grade crossings that would necessarily be affected by a change of grade by the crossings described in the petition, nor do they show any of the freight or passenger stations of said Erie Railroad Company in the City of Paterson, nor do
30 they show the names of owners of the land adjoining or abutting the streets within nor all of the areas which may be possibly affected by any order made upon said petition, and in many other respects the said maps are inaccurate, incomplete and misleading. Respondent further says that if an order is made to depress the tracks operated by said Erie Railroad Company as prayed for in said petition, the present undergrade crossings of Essex, Governor, Fulton and
40 Straight streets will be destroyed.

Answer of Paterson & Hudson River Railroad Co.

12. Respondent has no knowledge of the allegations in paragraph 13.

13. Respondent has no knowledge of the allegations in paragraph 14, except as stated below and says that said petition does not fully and accurately set forth the protection provided at said crossings and begs leave to refer to Schedule A annexed to the answer of the Erie Railroad Company heretofore filed in this matter as showing the protection actually provided therefor, and it says that the said protection is reasonable and adequate; and it denies that said crossings, or any of them, are dangerous to public safety, or that public travel thereon is impeded within the meaning of the statute.

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14. It has not sufficient information at present to state whether or not the alteration in one of the crossings described in the petition will necessarily involve all of the others.

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15. It has no knowledge of the allegations in paragraph 16 except that it denies that the travel on said streets is impeded to an unusual extent, or is impeded at all within the meaning of the statute.

16. Respondent further says that the said board has no valid power or authority in law or otherwise, to compel this respondent by order or otherwise to eliminate, change or otherwise alter any of the streets or highway crossings referred to in the petition herein for the reason, among others, that this respondent is not the company operating the railroad mentioned in the said petition.

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17. Respondent further answering says that certain of said crossings mentioned in said petition were laid out and constructed by the City of Paterson across the existing tracks and right of way of this respondent, now operated by said Erie Railroad Company and subsequent to the construction and commencement of operation of said railroad by this re-

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spondent and as to these crossings the said Board of Public Utility Commissioners is without jurisdiction to order respondent at its own expense to alter or change the grade thereof, or to construct other crossings in the place or stead thereof not at grade.

10 18. Respondent further answering says that the cost of eliminating said crossings as requested in said petition would exceed the value of all the property, real and personal, of this respondent and would make its property incapable of earning when used for railroad purposes a fair and reasonable return upon the amount involved therein and would result in the confiscation of its property and amount to a taking of its property without due process of law contrary to Article V and XIV amendments to the Constitution of the United States.

20 19. Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1 of the Constitution of the State of New Jersey. Said statute is also unconstitutional and void because it deprives and will operate to deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the Erie Railroad Company, or its said lessors by mandamus or other appropriate proceedings to perform the duties imposed by law upon said Erie Railroad Company or its said lessors, with respect to the construction and maintenance of said crossings or some of them, contrary to the provisions of said Article VI, Section 1 of the Constitution of New Jersey.

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20. Respondent further says that by virtue of its act of incorporation and the various amendments thereto it constructed its said railroad across certain of the streets mentioned in the petition as they then

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Answer of Paterson & Hudson River Railroad Co.

existed and that the Erie Railroad has succeeded to all of the rights and privileges of this respondent in the manner hereinbefore described and that therefore Chapter 57 of the Laws of 1913 of the State of New Jersey is inapplicable to said crossings and if held to be applicable is unconstitutional and void in that, contrary to Article I, Section X, paragraph 1 of the Constitution of the United States it will impair the obligation of contracts.

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21. Respondent further says that the Act of the Legislature of the State of New Jersey, being Chapter 57 of the Laws of 1913, is unconstitutional and void in that, if the said Board of Public Utility Commissioners complies with the request of the petition herein, said statute will operate to take the property of this respondent, which property is private property, for a private use and will also take property of this respondent for public use without just compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey.

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22. Respondent, further answering, says that the said statute and the exercise of the power purporting to be conferred upon said board thereby, operates and will operate to take the property of this respondent, without affording to it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guarantee of enjoying, defending, possessing and protecting said property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey and in violation thereof.

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23. Respondent further says that the said statute is unconstitutional and void under the constitution of the United States in that it operates and the requested action of the said Board of Public Utility Commissioners thereunder will operate to deprive this respondent of its property without due process of law,

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Answer of Paterson & Ramapo Railroad Co.

and denies and will deny to this respondent the equal protection of the law contrary to the XIV amendment to the Constitution of the United States.

WILLIAM E. LEWIS,
Attorney of Respondent.

10 **Answer of Paterson & Ramapo Railroad Co.**

The respondent, THE PATERSON & RAMAPO RAILROAD COMPANY, answers the petition herein as follows:

1. Respondent has no knowledge of the allegations in paragraph 1 excepting the allegation that the Erie Railroad Company maintains certain grade crossings in the City of Paterson, which allegation it admits.

20 2. Respondent has no knowledge of the allegations in paragraph 2.

3. It admits paragraph 3.

4. It denies the allegations in paragraph 4, except that it admits that in passing through the City of Paterson said railroad crosses several streets and highways at grade.

30 5. It admits the allegations in paragraph 5 but says that said leases were not made to the Erie Railroad Company but to a corporation known as Union Railroad Company and said Erie Railroad Company acquired the right, title and interest of the Union Railroad Company in said leased property and franchises by mean conveyances from the following named companies; the Union Railroad Company, New York and Erie Railroad Company, Erie Railroad Company and the New York, Lake Erie and Western Railroad Company.

6. It admits paragraph 6.

40 7. It admits paragraph 7.

Answer of Paterson & Ramapo Railroad Co.

8. It has no knowledge of the allegations in paragraph 8, but says that if true they are immaterial.

9. It has no knowledge of the allegations of paragraph 9.

10. It has no knowledge of the allegations of paragraph 10.

11. Respondent admits the allegations in paragraphs 11 and 12 except that it says that said maps are not accurate or complete in that the said maps do not show all of the railroad tracks nor any of the freight yards of said Erie Railroad Company, nor all sidings or switches or connections with the property of private individuals or corporations that rely upon said Erie Railroad Company for service, which would be affected by a change of grade of said railroads nor do they show all of the grade crossings that would necessarily be affected by a change of grade by the crossings described in the petition, nor do they show any of the freight or passenger stations of said Erie Railroad Company in the City of Paterson, nor do they show the names of owners of the land adjoining or abutting the streets within, nor all of the areas which may be possibly affected by any order made upon said petition, and in many other respects the said maps are inaccurate, incomplete and misleading. Respondent further says that if an order is made to depress the tracks operated by said Erie Railroad Company as prayed for in said petition, the present undergrade crossings of Essex, Governor, Fulton and Straight streets will be destroyed.

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12. Respondent has no knowledge of the allegations in paragraph 13.

13. Respondent has no knowledge of the allegations in paragraph 14, except as stated below and says that said petition does not fully and accurately set forth the protection provided at said crossings

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Answer of Paterson & Ramapo Railroad Co.

and begs leave to refer to Schedule A, annexed to the answer of the Erie Railroad Company heretofore filed in this matter as showing the protection actually provided therefor, and it says that the said protection is reasonable and adequate; and it denies that said crossings, or any of them are dangerous to public safety, or that public travel thereon is impeded within the meaning of the statute.

14. It has not sufficient information at present to state whether or not the alteration in one of the crossings described in the petition will necessarily involve all of the others.

15. It has no knowledge of the allegations in paragraph 16 except that it denies that the travel on said streets is impeded to an unusual extent, or is impeded at all within the meaning of the statute.

16. Respondent further says that the said board has no valid power or authority in law or otherwise, to compel this respondent by order or otherwise to eliminate, change or otherwise alter any of the streets or highway crossings referred to in the petition herein for the reason, among others, that this respondent is not the Company operating the railroad mentioned in the said petition.

17. Respondent further answering says that certain of said crossings mentioned in said petition were laid out and constructed by the City of Paterson across the existing tracks and right of way of this respondent, now operated by said Erie Railroad Company, and subsequent to the construction and commencement of operation of said railroad by this respondent and as to these crossings the said Board of Public Utility Commissioners is without jurisdiction to order respondent at its own expense to alter or change the grade thereof, or to construct other crossings in the place and stead thereof not at grade.

18. Respondent further answering says that the cost of eliminating said crossings as requested in said petition would exceed the value of all the property real and personal of this respondent and would make its property incapable of earning when used for railroad purposes, a fair and reasonable return upon the amount involved therein, and would result in the confiscation of its property and amount to a taking of its property without due process of law contrary to Article V and XIV amendments to the Constitution of the United States.

19. Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1 of the Constitution of the State of New Jersey. Said statute is also unconstitutional and void because it deprives and will operate to deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the Erie Railroad Company, or its said lessors by mandamus or other appropriate proceedings to perform the duties imposed by law upon said Erie Railroad Company or its lessors, with respect to the construction and maintenance of said crossings or some of them, contrary to the provisions of said Article VI, Section 1 of the Constitution of New Jersey.

20. Respondent further says that by virtue of its act of incorporation and the various amendments thereto it constructed its said railroad across certain of the streets mentioned in the petition as they then existed and that the Erie Railroad has succeeded to all of the rights and privileges of this respondent in the manner hereinbefore described and that therefore Chapter 57 of the Laws of 1913 of the State of New Jersey is inapplicable to said crossings and if held to

Answer of Paterson & Ramapo Railroad Co.

be applicable is unconstitutional and void in that, contrary to Article I, Section 10, paragraph 1 of the Constitution of the United States it will impair the obligation of contracts.

10 21. Respondent further says that the Act of the Legislature of the State of New Jersey, being Chapter 57 of the laws of 1913, is unconstitutional and void in that, if the said Board of Public Utility Commissioners complies with the request of the petition herein. Said statute will operate to take the property of this respondent, which property is private property, for a private use, and will also take property of this respondent for public use without just compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey.

20 22. Respondent, further answering, says that the said statute and the exercise of the power purporting to be conferred upon said Board thereby, operates and will operate to take the property of this respondent, without affording to it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guarantee of enjoying, defending, possession and protecting said property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey and in violation thereof.

30 23. Respondent further says that the said statute is unconstitutional and void under the constitution of the United States in that it operates and the requested action of the said Board of Public Utility Commissioners thereunder will operate to deprive this respondent of its property without due process of law, and denies and will deny to this respondent the equal protection of the law contrary to the XIV amendment to the Constitution of the United States.

40 WILLIAM L. LEWIS,
 Attorney of Respondent.

Answer of Public Service Railway Co.

Answer of Public Service Railway Co.

Changing of Grade Crossings.

The answer of Public Service Railway Company to the above petition respectfully shows:

That this respondent neither admits nor denies the allegations contained in the first thirteen sections of the complainant's complaint.

This respondent admits that it has street railway tracks crossing the tracks of the Erie Railroad Company at grade at Market street crossing, marked "D," in complainant's complaint; at Broadway crossing marked "G" in complainant's complaint, and at River street crossing marked "X" in complainant's complaint. 10

This respondent neither admits nor denies the allegations contained in the fifteenth to the nineteenth sections inclusive, of said complaint, but submits that the elimination of the grade crossing, if made, should be made without expense to this respondent. 20

Respectfully submitted,

PUBLIC SERVICE RAILWAY COMPANY.

By J. J. BURLEIGH,
Vice-President.

Dated, Newark, N. J.,

November 5, 1913.

*Answer of Public Service Electric Co.***Answer of Public Service Electric Co.**

The answer of Public Service Electric Company to the above petition respectfully shows:

That this respondent neither admits nor denies the allegations contained in the first thirteen sections of the complainant's complaint.

10 This respondent admits that it has electric wires crossing the tracks of the Erie Railroad Company at Fulton and Straight streets, Governor street, Broadway, Grand street, Montgomery street, Cedar street, Warren street and River street.

The crossings at Fulton and Straight streets, Governor street, Broadway and Grand street, under an agreement between Public Service Electric Company and City of Paterson will have to be made underground. The other crossings will be overhead.

20 This respondent neither admits nor denies the allegations contained in the fifteenth to the nineteenth sections inclusive, of said complaint, but submits that the elimination of the grade crossing, if made, should be made without expense to this respondent.

Respectfully submitted,

PUBLIC SERVICE ELECTRIC COMPANY.

By J. J. BURNHAM,

Vice-President.

30 Dated Newark, N. J.,

November 10, 1913.

Answer of Public Service Gas Co.

The answer of Public Service Gas Company to the above petition respectfully shows:

That this respondent neither admits nor denies any of the allegations contained in complainant's petition except in so far as the same relates to the acts or property of this respondent.

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This respondent admits that it has gas pipes beneath the surface of the following streets where the same are crossed by the tracks of the Erie Railroad Company; Madison avenue, Clay street, Cedar street, Market street, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Franklin street, Keene street, Warren street, Putnam street, Grand street, Governor street and Fulton street; and that the separation of the grades of the railroad and the streets above specified will necessitate large expense for removal and reconstruction of said pipes, but submits that the elimination of the grade crossings, if made, should be made without expense to this respondent.

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Respectfully submitted,

PUBLIC SERVICE GAS COMPANY.

By **GEO. J. ROBERTS,**
Vice-President.

Dated, Newark, N. J.,

December 11, 1913.

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Answer of New York Telephone Co.

Answer of New York Telephone Co.

October 29, 1913.

APPLICATION—CITY OF PATERSON
TO ALTER GRADE CROSSINGS ON LINE
OF ERIE RAILROAD COMPANY.

10 Board of Public Utility Commissioners,
Mr. A. N. Barber, Secretary,
Trenton, New Jersey.

Dear Sir:—

In answer to your letter dated October 18, 1913, relative to the above entitled matter, I submit the following statement, showing the present construction of this company at the points in question:

Madison Avenue—

No construction

20 Clay & Straight Streets—

No construction.

Cedar Street—

One (1) 100-pair No. 22 gauge aerial cable

Two (2) guys

Market Street—

Nine (9) subway ducts containing

Two (2) 500-pair No. 22 gauge underground cable

Two (2) 300-pair No. 19 gauge underground cable

30 One (1) 200-pair No. 19 gauge underground cable

Ellison Street—

No construction

Van Houten Street—

Six (6) subway ducts containing

Two (2) 600-pair No. 22 gauge underground cable

One (1) 300-pair No. 19 gauge underground cable

Answer of New York Telephone Co.

One (1) 200-pair No. 19 gauge underground cable

Broadway—

No construction

Fair Street—

No construction

Hamilton Avenue—

No construction

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Lafayette Street—

One (1) 50-pair No. 22 gauge aerial cable

Franklin Street—

Twelve (12) open wire No. 14 gauge

Four (4) twisted pairs

Keen Street—

No construction

Warren Street—

No construction

River & Putnam Streets

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One (1) Guy

Four (4) subway ducts containing

One (1) 200-pair No. 22 gauge underground cable

One (1) 100-pair No. 19 gauge underground cable

I desire to further advise you that this company does not maintain any construction at the following crossings, where the streets run under the tracks of the railroad:

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Essex Street

Governor Street

Fulton Street

Straight Street

Yours very truly,

(Signed) J. L. SWAYZE, C.,
General Attorney.

Answer of Western Union Telegraph Co.

Respondent, WESTERN UNION TELEGRAPH COMPANY, hereby answers the petition filed in the above entitled proceeding as follows:

10 (1) Respondent says that it has constructed and now maintains and operates certain wires along the right of way and across the several streets in the City of Paterson, as set forth in Schedule "A" which is attached hereto and made a part of this answer; that said wires and poles upon which they are strung were constructed and are operated and maintained under and by virtue of a certain lease or agreement made between it and the said Erie Railroad Company, under date of the 25th day of September, 1907, and respondent says that said statute is unconstitutional and void under the constitution of the United States and of the State of New Jersey, in that it operates, 20 and the proposed action of said Board thereunder will operate to take property of this respondent (which property is private property) for public use without just or any compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any order of the Board that may be made thereunder in the present proceedings operates and will operate to deny to it the equal protection of the law and to deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States contrary to and in violation 30 of the 5th and 14th amendments of the Constitution of the United States.

(2) The said Board has no valid power in law or otherwise to make any order for the alteration of said crossings or either of them, in such a manner as to require changes in or the removal of the property or constructions of respondent's telegraph lines and other property, or to compel respondent, at its own 40

Answer of Western Union Telegraph Co.

expense, to move or change the grade or location of its property or constructions in conformity with any order of said Board.

(3) Respondent further says that the said statute and the exercise of the power purporting to be conferred upon said Board, thereby operates and will operate to take the property of this respondent without affording it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guaranty of enjoying, defending, possessing and protecting said property, given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey. 10

(4) Respondent further says that the said statute is unconstitutional and void because it deprives and will operate to deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements contrary to Article VI, Section 1, of the Constitution of the State of New Jersey. 20

(5) Respondent further says that said act is unconstitutional and void, in that it is contrary to article I, Section 10, paragraph 1, of the Constitution of the United States in that it will impair the obligation of contracts.

(6) Respondent further says that any order that may be made by said board in this proceeding will require changes in or the removal of the property or constructions of respondent consisting of telegraph wires and poles and that such statute in so far as it operates or in so far as any order of this board made thereunder shall operate, to require this respondent its own expense to change, alter or remove the location of its said property or constructions so as to conform with such order of said board is unconstitutional and void, in that it takes the private property of this respondent for public use without just or any 30 40

Answer of Western Union Telegraph Co.

compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any order of the Board made thereunder in the present proceedings, operate and will operate to deprive said respondent of its property without due process of law, and denies to it the equal protection of the law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the Constitution of the United States.

WHEREFORE, this respondent, WESTERN UNION TELEGRAPH COMPANY, prays that this proceeding be dismissed.

GEORGE H. FEARONS,
General Attorney.

195 Broadway, New York City.

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SCHEDULE "A."

WESTERN UNION TELEGRAPH COMPANY has constructed and now maintains and operates poles and wires along the right of way of the Erie Railroad Company through the City of Paterson and across certain streets as follows:

(1) Madison Avenue, line of poles and wires on both sides of track, the line on the north side owned by Erie Railroad Company but leased to and maintained by the Western Union Telegraph Company, carries on top arm five telegraph and two signal wires operated by Erie Railroad Company. On the other arms all wires are signal wires operated by Erie Railroad Company. The line of poles and wires on the south side of tracks is owned and operated by Western Union Telegraph Company and carries two railroad company wires and eight Western Union wires.

(2) Between Newark Jct. and east end of the Paterson station opposite the telegraph office the lines

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Answer of Western Union Telegraph Co.

are consolidated on the north side. This joint line carries nine Erie Railroad telegraph wires, eighteen Western Union wires, and six Erie Railroad short line signal and telephone wires. The above wires are on six upper arms. The wires on arms below the sixth arm are Erie Railroad automatic signal wires.

(3) Between the east end of Paterson Station and a point opposite the Paterson City station of the N. Y. S. & W. R. R. There are seven Erie Telegraph wires and fourteen Western Union telegraph wires and a varying number of Erie R. R. short line telephone and signal wires and Public Service Electric light wires; also Erie Railroad automatic signal wires. 10

(4) Between a point opposite the N. Y. S. & W. R. R. Paterson City station and Broadway the line is consolidated and carries seven Erie R. R. telegraph wires; seven Western Union telegraph wires; three Railroad short line signal wires and two Erie R. R. short line telephone wires, with a varying number of Erie R. R. automatic signal wires. 20

(5) Between Broadway and River St. Station there are two pole lines one on either side of the tracks. The north side line carries seven Erie R. R. telegraph wires. Three Erie R. R. short line signal and two Erie R. R. short line telephone wires on the two upper arms and a varying number of automatic signal wires on the arms below the second crossarm. On the south side there are seven Western Union telegraph wires. 30

**Answer of Paterson, Passaic & Suburban
Telephone Company.**

R. E. LINDSAY,

PATERSON, PASSAIC AND SUBURBAN TELEPHONE CO.,
181 Market St., Paterson, N. J.

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November 1st, 1913.

Board of Public Utility Commissioners,
Trenton, New Jersey.

Gentlemen:—

The Paterson, Passaic and Suburban Telephone Company has no objection to the granting of the above petition, and will promptly carry out any instructions in the matter concerning the property of this company that may be issued by your Board.

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Neither proposed plan for the elimination of the several crossing presents any engineering difficulty for the telephone company, but I find that the petition is in error regarding the ownership of certain aerial wires crossing railroad right of way, and am submitting herewith a corrected list of property of the Paterson, Passaic and Suburban Telephone Company involved in the proposed work.

Very truly yours,

(Signed) R. E. LINDSAY.

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List of property of the Paterson, Passaic and Suburban Telephone Company crossing the right of way of the Erie Railroad in the City of Paterson, between Madison avenue and the Passaic River.

(B) Clay Street Crossing

30 Wires (15 Pair) No. 12 B & S Copper, Bare
38 feet above grade

South side of crossing City of Paterson right
of way.

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- (D) Market Street Crossing
 9—Ducts Underground Conduit
 2—100 pair Lead Cables installed.
- (C) Cedar Street Crossing
 16 Wires (8 pair) No. 12 B & S Copper, Bare
 38 feet above grade
 North side of crossing Pat., Pass. & Sub. Tel.
 Right of Way 10
- (E) Ellison Street Crossing
 4 Wires (2 pair) No. 12 B & S Copper, Bare
 42 feet above grade
 South side of crossing City of Paterson Right
 of Way.
- (G) Broadway
 4 Ducts Underground Conduit
 2—100 pair Lead Cables installed
 Fulton Street 20
 16 Wires (8 pair) No. 12 B & S Copper, Bare
 32 feet above grade
 South side of crossing Pat., Pass. & Sub. Tel.
 Right of Way.
- (J) Lafayette Street
 6 Wires (3 pair) No. 14 B & S Copper R. C.
 40 feet above grade
 North side of crossing.
- (N) River Street
 30 Wires (15 pair) No. 12 B & S Copper, Bare 30
 1-25 pair Cable—Okonite
 43 feet above grade
 North side of River St. City of Paterson Right
 of Way
 Sixth Ave.
 16 Wires (8 pair) No. 12 B & S Copper Bare
 30 feet above grade
 South side of crossing Pat., Pass. and Sub.
 Tel. Right of Way

Answer of Respondent, Passaic Water Co.

Respondent, PASSAIC WATER COMPANY, a corporation of the State of New Jersey, answers the petition in this proceeding as follows:

1. It admits that it maintains water pipes and water mains, as set forth in paragraph fourteen of the petition herein, and says that the same were constructed, and are maintained, under and by virtue of the provisions of a special Act of the Legislature of the State of New Jersey (constituting its charter) entitled "An Act to Incorporate the Passaic Water Company," approved February 13, 1849, and the various supplements and amendments thereto, under and by which said charter it was fully authorized and empowered to lay its pipes beneath such public roads, streets, avenues and alleys in the City of Paterson (among other places) as it might deem necessary for supplying the City (then Town) of Paterson (and other places) with water sufficient for extinguishing fires, culinary and other family uses, water the streets and such other purposes as might conduce to the health and comfort of the citizens of Paterson; that so far as any of said streets abutting on said crossings mentioned in said petition were laid out and constructed before the tracks and right of way of the President and Board of Directors of the Paterson & Hudson River Railroad Company, and those of the Paterson and Ramapo Railroad Company, now operated by Erie Railroad Company, came into existence the said Railroad Company's title was subject to the burden of said streets, with all their incidents such as the public right to lay and maintain sewers, water pipes and gas pipes and electric conduits, etc., and with reference to any of said streets abutting upon said crossings mentioned in said petition, which were laid out and constructed by the City of Paterson across the then existing tracks and right of way of

said Railroad Company, the said Railroad Company received compensation once for all when said streets were opened, and that this respondent in laying its pipes under all of said crossings was merely exercising the public easement conferred upon it by its charter, to which the said Railroad Company, whether it owned the land or had only a right of way, was bound to submit.

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2. Respondent says that the statute under which this proceeding is brought is unconstitutional and void under the constitutions of the United States and of the State of New Jersey, in that it operates, and the proposed action of said Board thereunder will operate, to take property of this respondent (which property is private property) for public use without just or any compensation, contrary to, and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any order of the Board that may be made thereunder in the present proceedings, operate, and will operate, to deny to it the equal protection of the law, and to deprive it of its property without process of law and abridge its privilege and immunities as a citizen of the United States, contrary to and in violation of the 5th and 14th amendments of the Constitution of the United States.

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3. Respondent further says that the Board of Public Utility Commissioners has no valid power in law or otherwise, to make any order for the alteration of said crossings, or any or either of them, in such manner as to require changes in or the removal of the property or construction of respondent's water pipes or water mains, or other property, or to compel respondent, at its own expense, to move or change the grade or location of its property or constructions in conformity with any such order.

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4. Respondent further says that the said statute and the exercise of the power purporting to be conferred upon said Board, thereby operates and will operate to take the property of this respondent without affording it any opportunity to protect said property, and thereby this respondent is and will be deprived of its right and guaranty of enjoying, defending, possessing and protecting said property, given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey.

5. Respondent further says that the said statute is unconstitutional and void because it deprives, and will operate to deprive, the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article VI, Section 1, of the Constitution of the State of New Jersey.

6. Respondent further says that said act is unconstitutional and void, in that it is contrary to Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that it will impair the obligation of contracts.

7. Respondent further says that any order that may be made by the said Board in this proceeding will require changes in or the removal of the property or constructions of respondent, consisting of water pipes and water mains, and that such statute in so far as it operates or in so far as any order of this Board made thereunder shall operate, to require this respondent at its own expense to change, alter or remove the location of its said property or constructions, so as to conform with such order of said Board, is unconstitutional and void, in that it takes the private property of this respondent for public use without just or any compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and said statute and any

Answer of D. Fullerton & Co.

order of the Board made thereunder in the present proceedings, operates and will operate to deprive said respondent of its property without due process of law, and denies to it the equal protection of the law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the Constitution of the United States.

WHEREFORE, this respondent, PASSAIC WATER COMPANY, prays that this proceeding be dismissed.

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HUMPHREYS & SUMMER,

*Attorneys for Respondent,
Passaic Water Company.*

Answer of D. Fullerton & Co.

The respondent, D. Fullerton & Co., makes answer as follows:

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1. It admits paragraphs 1 and 2 of the petition filed herein and paragraph 3.

2. It has not sufficient knowledge as to paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18 to make answer thereunto.

3. Respondent says that as to paragraph 19, it believes that depressing the tracks of said railroad, is impracticable, and that if the grade of said railroad is altered at all, it should be elevated.

4. Respondent says it has been engaged in business of selling meats and provisions at wholesale in the City of Paterson since its incorporation, and prior to its incorporation, the stockholders of respondent conducted the same business as a partnership, and have continued to conduct said business for about forty years last past.

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5. Respondent says its business is conducted upon property owned by it, consisting of a tract of land comprising the Northerly half of the plot bounded West by River Street; North by Keene Street and

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East by Erie Railroad Company, upon which land respondent has erected buildings and installed equipment at a cost of more than One Hundred Thousand Dollars.

10 6. Respondent says that Erie Railroad Company has for more than twenty years last past maintained a switch of about one hundred feet in length, along the Easterly line of the property of respondent. Said switch is entirely upon lands of Erie Railroad Company and extends parallel with the tracks of said company, and lies between the main tracks of said company and the lands of respondent. Said switch crosses no thoroughfare, and is used exclusively by D. Fullerton & Company in its business, and train movements thereon amount to about twenty cars a week; cars are placed and re-placed on and off said switch two and three times each day.

20 7. Respondent says its buildings were erected with reference to the facilities afforded it by the Erie Railroad Company, and especially with reference to said switch; that such switch privilege is absolutely necessary for the conduct of the business of D. Fullerton & Co.

30 8. Respondent says that if the tracks of the Erie Railroad Company are depressed as set forth in the petition, it will be deprived entirely of its use of said switch and railroad service, and that if said tracks are elevated, it will be required to remodel and rebuild its said buildings, and re-arrange its equipment both inside and outside of said buildings.

40 8. Respondent further says that the statute, being chapter 57 of the laws of 1913, is unconstitutional and void, under the constitution of the United States and of the State of New Jersey, in that it operates and the requested actions of said board thereunder will operate to take the property of this respondent and others for public use without just or any compensa-

tion, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey; and said statute and any order of the board that may be made thereunder in the present proceedings, operates and will operate to deny to respondent, equal protection of the law, and to deprive it without due process of law of its property and abridges its privileges and immunities as a citizen of the United States contrary to and in violation of the 5th and 14th amendment of the Constitution of the United States.

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9. Respondent further says that any order that may be made by the board in this proceeding, will require changes in and the removal of the property and buildings and equipment of respondent, and that said statute in so far as it operates to require respondent at its own expense to remove or change the grade or location of its property, buildings or equipment in conformity with the order of said Board, is unconstitutional and void, in that it takes the private property of respondent for public use without just or any compensation, contrary to and in violation of Article I, Section 16, of the Constitution of the State of New Jersey, and any order of the Board that may be made thereunder, in the present proceedings, and operates and will operate to deprive this respondent of its property without due process of law, and denies to it the equal protection of the law, and abridges its privileges and immunities as a citizen of the United States, contrary to and in violation of the Constitution of the United States.

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Respondent therefore prays that the petition filed herein shall be dismissed.

HUDSON & JOELSON,

Attorneys.

Answer of National Silk Dyeing Co.

The answer of the NATIONAL SILK DYEING COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

10 1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

20 3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief says that the Erie Railroad Company owns certain property adjacent to its right of way.

30 6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

40 7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it ex-

ists in reference to this respondent and other switch owners. It does not show the freight yard, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16, says that it admits the population of Paterson is correctly stated therein, and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A, and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says that it is a corporation engaged in business as silk dyers; that for the purpose of supplying its various dye houses

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Answer of National Silk Dyeing Co.

with coal it purchased some years ago property on Wait street, near Leon street, opposite the tracks of the Erie Railroad, and that it has expended a very large amount of money in adapting the same to such use; that its object in buying said property was because it adjoined the said Erie Railroad and would consequently have adequate facilities to unload its coal economically; that said property is connected
10 with said railroad by a switch and this respondent depends upon such connection with said railroad to use its said property for the purpose for which it was purchased; that this respondent interposes no objection to the elevation of said tracks as prayed for by the said petitioner, as it would not work any serious damage to it, but it strongly resists any efforts made to depress the said tracks, as such change of grade would utterly destroy the value of the property of
20 this respondent at the place aforesaid for the use for which it was purchased and improved, and would very seriously damage it for any purpose whatever.

14. Respondent further says that any change in the grade of the said railroad by depressing the same will deprive this respondent of the power to carry on its business as aforesaid, will be of the most serious damage, and will take its property for public use without compensation.

WILLIAM B. GOURLEY,

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Attorney of Respondent.

Answer of Fullers Express Co.

The answer of FULLERS EXPRESS COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

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2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

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5. Respondent has no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

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7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch own-

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ers. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

10 9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

20 10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

30 11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

40 13. Respondent further answering says that it is a corporation of this state engaged in the business of transporting merchandise in the City of New York to the City of Paterson and from the City of Paterson to the City of New York over the line of the Erie

Railroad Company; that it has a leasehold estate in property abutting on the line of the Erie Railroad Company upon which switches are laid to afford facilities for said express business; that it has erected valuable buildings on the west side of said railroad at the junction of Ellison street in the City of Paterson, which it uses in its aforesaid business; that such buildings consist of freight houses in which merchandise, transported as aforesaid, is stored and handled; that these buildings are constructed so that the floor thereof and the platform surrounding the same will be on a level with the floor of cars standing alongside thereof; that such aforesaid buildings were constructed in that manner to facilitate the unloading of cars into said houses, and that if the grade of said tracks were changed it would make such property of this respondent useless for such purposes; that said land was obtained and said buildings were erected because of the propinquity of said railroad; that this respondent has materially improved the property and has spent large sums of money in the construction of said building; that without the privilege of switching it will be unable to carry on its said business and that to depress the tracks of the said railroad would utterly destroy the value of your respondent's property; that if said tracks were elevated the present buildings constructed as aforesaid by this respondent would become useless; that this respondent has no precise information and no clear understanding of how said tracks could be elevated without totally destroying this respondent's said business.

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14. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid; will be of most serious damage and will take its property for public use without compensation.

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Answer of The Herman Co.

15. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons;

10 (a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this state.

20 (c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WM. B. GOURLEY,
Attorney of Respondent.

Answer of The Herman Co.

30 The answer of THE HERMAN COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph three.

40 3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public

safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

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6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

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8. Respondent is not informed as to the allegations in paragraph 13.

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9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that is it not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge con-

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cerning the allegations that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

10 11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

20 12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

30 13. Respondent further says that Ellison street upon which part of the buildings of this respondent is erected was laid out by the City of Paterson over and across the tracks of the Erie Railroad Company, or its predecessors in title, and that the respondent in constructing its buildings and adapting its property to the use to which it is put accepted this grade as established by the city and constructed its buildings in conformity therewith; that this recognized the level of the railroad as the street level and was used as a guide in the construction of its buildings in and along the line of said railroad, and that the petitioner cannot now cause the said grade to be changed without affording compensation therefor to this respondent.

40 14. Respondent further says that if said railroad is elevated it will, where its line crosses Ellison street, cause a high embankment to be erected immediately adjoining the property of this respondent in Ellison street and will materially damage such property.

15. Respondent further answering says that it is a corporation of this state, engaged in the business of wholesale grocers, and that its place of business is at Ellison street in said City of Paterson at the junction of said street with the said Erie Railroad; that it owns a tract of land abutting upon said railroad, on part of which has been erected a large brick building for its business; that respondent selected this site years ago because it bordered upon the line of said railroad; that it is of the utmost importance to this respondent in its competition with its competitors to have the quickest facilities for shipment of its purchases and sales; that it has a switch from the railroad to its property, and that this switch is the property of this respondent; that to depress the tracks at this point would be utterly to destroy the property of respondent for the purposes for which it is now used, and materially damage it for any purpose; that to elevate the tracks of the said railroad, while less damaging, would be of the most serious consequence to this respondent, and respondent is unable to understand how such elevation can be made without impairing the present value of its property.

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16. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

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(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use

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Answer of John Agnew Co.

without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

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WILLIAM B. GOURLEY,

Attorney of Respondent.

Answer of John Agnew Co.

The answer of John Agnew Company, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

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1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

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3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

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6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but

has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad. 10

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged. 20 30

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16, says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said 40

Answer of John Agnew & Co.

paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

- 10 13. Respondent further answering says that it is a corporation engaged in business as coal merchants, and has two places of business in the City of Paterson, one at Prince street and one at Ann and Governor streets, in the said City of Paterson; that its property at Prince street is connected with the Erie Railroad by tracks in the public street; that its property at Governor and Ann streets abuts upon the property of the Erie Railroad; that it has been doing business for over forty years as coal merchants; that both
20 places were selected because it was advantageous for the business and particularly for the coal yard at Governor and Ann streets; that if the grade of the Erie Railroad is changed it will prevent this respondent from obtaining its coal to supply the yard at Prince street and will destroy the business of the respondent; that the tracks of the respondent connect at the prince street yard with the tracks of the Erie Railroad at the freight yard, which yard is used in common by the merchants of the whole city; that if
30 there is any practical way—which the respondent does not think is practicable—of permitting the freight yard at this point to remain at its present level, no objection will be interposed by respondent to a change of grade of the main track.

14. Respondent further says that the yard at Governor and Ann streets would be affected by any change in the grade of said road and would seriously deprive the respondent of its property at this latter point without compensation.

Lawyer of John Agnew Co.

15. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid, will be of the most serious damage and will take its property for public use without compensation.

16. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

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(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property of constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

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(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,

Attorney of Respondent.

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Answer of James Wilson & Sons (Incorporated).

The answer of James Wilson & Sons (incorporated), respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

10 1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

20 4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

30 6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in refer-

Answer of James Wilson & Sons (Inc.).

ence to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further says that this company is engaged in business as dealers in coal and has been so engaged for about forty years; that its property is

Answer of P. S. Van Kirk Co.

situate on the west side of Railroad avenue, at the corner of Slater street, in said City of Paterson; that it purchased its said property and established its business and erected buildings thereon because it adjoined the said Erie Railroad and because of the facilities afforded in consequence thereof; that it is dependent upon its connection with the tracks of the Erie Railroad by means of an overhead coal conveyer; that it would work irreparable damage to this respondent if it was deprived of the right which it now enjoys; that the freight yard of the Erie Railroad Company is opposite the property of this respondent; that if the freight yard is allowed to remain upon the grade where it now is, this respondent would interpose no objection to any change sought to be made, as it would not in such case materially affect the interests of this respondent.

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WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of P. S. Van Kirk Co.

The answer of P. S. VAN KIRK COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

30 1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly
40 impeded by reason of such crossing.

Answer of P. S. Van Kirk Co.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10. 10

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad. 20

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegations that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged. 30 40

Answer of P. S. Van Kirk Co.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

10 11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

20 13. Respondent further answering says that it is a corporation of this State, engaged in business as general contractors on Fulton street, in the said City of Paterson, and that it has property abutting on the line of the Erie Railroad, upon which switches are laid to afford it facilities for shipment; that the proximity of said railroad to the property of this respondent is a valuable property right, adding materially to the value of the respondent's property; that said switch is used by tenants of said respondent, that is to say, by the Olive Oil Company and the Diamond Coal Company; that said land was purchased because
30 it abutted on said railroad; that this respondent has materially improved the property, and has added thereto and has spent considerable sums of money in the construction of buildings on its said lands, that without the privilege of switching, it will be unable properly to carry on its business; that to depress the tracks of the railroad would be utterly to destroy the value of respondent's property.

40 14. Respondent further says that if there is any practical way by which the tracks can be elevated and the rights of the respondent protected, it would

Answer of P. S. Van Kirk Co.

not interpose any objection thereto; but this respondent, in the absence of precise information, has no clear understanding that such plan can be executed.

15. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid, will be of the most serious damage and will take its property for public use without compensation. 10

16. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey. 20

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this state.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States. 30

WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Henry M. Post.

Answer of Henry M. Post.

The answer of HENRY M. POST, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

10 1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

20 4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

30 6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

40 7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch

Answer of Henry M. Post.

owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged. 10

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others. 20

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent. 30

12. Respondent says it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further says that he is engaged in business as a dealer in coal and masons' supplies, and has been so engaged for about thirteen years; that his property is situate on the westerly side of Wait street at its intersection with Lowe street; that 40

Answer of Paterson Brewing & Malting Co.

respondent purchased the said property because it ad-
joined the said railroad and because of the facilities
afforded in consequence thereof; that respondent is
dependent upon the connection with the tracks of
the Erie Railroad by means of a switch for a great
part of his business; and that the freight yard of the
Erie Railroad Company is opposite the property of
10 this respondent; and that if said tracks are depressed
and elevated it would deprive this petitioner of the
use of his property and materially affect its value.

WILLIAM B. GOURLEY,

Attorney of Respondent.

Answer of Paterson Brewing and Malting Co.

20 The answer of the PATERSON BREWING AND MALTING
COMPANY, respondent, to the petition of the City of
Paterson to alter grade crossings on line of the Erie
Railroad.

1. The respondent has no knowledge of the allega-
tions in paragraphs 1 and 2 of the petition, except
that it admits the Erie Railroad maintains certain
grade crossings in the City of Paterson.

2. Respondent admits paragraph three.

30 3. Respondent admits that said railroad crosses
a great number of streets and highways at grade as
alleged in the fourth paragraph, but it has no direct
knowledge that each of them is dangerous to public
safety or that public travel on each of them is greatly
impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations
of paragraph 5.

40 5. Respondent has no knowledge of the leases de-
scribed in paragraphs 6 and 7 but, upon information
and belief, says that the Erie Railroad Company owns
certain property adjacent to its right of way.

Answer of Paterson Brewing & Malting Co.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

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8. Respondent is not informed as to the allegations in paragraph 13.

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9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

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10. Respondent says that it is not advised whether or not as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of

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Answer of Paterson Brewing & Malting Co.

Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

10 12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

20 13. Respondent further answering says that it is a corporation engaged in business as brewers, and that it has been doing business for many years at its present site; that it owns property along the line of the Erie Railroad in said City at several places; that among them is one piece of property on the easterly side of Ramapo avenue on the corner of Cedar street; that the said piece of property of the respondent is
30 known as the Graham Branch of its brewery; that it has at said point a switch which connects its property with that of the Erie Railroad; that this connection is of the highest advantage to this respondent, and that without this facility for carrying on business, its business would be materially abridged; that its property known as the Katz Branch on Governor street abuts the Erie Railroad, and that its property known as the Hinchliffe Branch on Governor street abuts the Erie Railroad; that through its various places ad-
40 joining the tracks of the said Erie Railroad, respondent has increased advantages for carrying on its business; that this is of great pecuniary advantage to it; that switches run from the said Erie Railroad over and along its property on which goods are shipped and supplies obtained; that any depression of the tracks or elevation of said tracks in and along the line of the road at the respective places aforesaid would be to seriously damage the properties of the respondent known as the Hinchliffe Branch and the Katz

Answer of Paterson Brewing & Malting Co.

Branch, and to materially destroy the value of said property; that said lands were purchased because of their availability for such service, and to make such contemplated changes in the line of said railroad, either by depressing or elevating the same would be to take the property of this respondent without compensation.

14. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

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**Answer of Jacob Meyer and Kommer De Vogel,
Partners, Etc.**

The answer of JACOB MEYER AND KOMMER DE VOGEL, partners, trading and doing business as Meyer and De Vogel, respondents, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

10 1. The respondents have no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that they admit that the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondents admit paragraph 3.

20 3. Respondents admit that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but have no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondents have no knowledge of the allegations of paragraph five.

5. Respondents have no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, say that the Erie Railroad Company owns certain property adjacent to its right of way.

30 6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

40 7. Respondent says in answer to the allegations in paragraph 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately

places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

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9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

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10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says the traffic on these streets is not impeded to an unusual extent.

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12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. These respondents further answering say that they are dealers in grain, flour, feed, hay and other supplies; that their place of business is at the junct-

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tion of Franklin street and Summer street, in the said City of Paterson; that this tract of land is triangular in shape, and that the long side of the triangle fronts on the Erie Railroad, and that said land abuts on the property of the Erie Railroad, and that they have a switch upon their lands which connects with the Erie Railroad near Keen street; that said lands are very valuable to respondents for the purposes for which they were purchased, and that said lands were purchased because they abutted on the property of the Erie Railroad; that respondents have spent a large amount of money in making extensive alterations upon said property in constructing an elevator in which they have installed the most modern machinery; that either depressing said tracks or elevating them would be of the most serious damage to respondent; that to raise the tracks of said railroad twenty feet would bring them between the second and third stories of respondent's building; that respondents could not use the upper floors of their said building for the same purposes for which they now use the lower floors, as the upper structure of said building is not strong enough for such purposes, and besides such use would in other ways seriously incommode respondents in their business; these respondents say that the volume and frequency of travel at Franklin street is moderate, nor is travel seriously impeded.

14. Respondent further says that any change in the grade of the railroad by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business, as aforesaid, will be of the most serious damage and will take its property for public use without compensation.

15. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

Answer of Leslie Elliott Company.

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State. 10

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,

Attorney of Respondent. 20

Answer of Leslie Elliott Company.

The answer of WILLIAM LESLIE AND DAVID ELLIOTT, partners, trading and doing business as Leslie Elliott Company, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad:

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson. 30

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossings. 40

Answer of Leslie Elliott Company.

4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

10 6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

20 7. Respondent says in answer to the allegations in paragraph 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

30 9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon
40 is impeded, as therein alleged.

Answer of Leslie Elliott Company.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, his respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

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12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondents further say that they are engaged in business as boiler makers and have been so engaged for eight years; that their property is situate on the east side of Railway avenue, near Iowa avenue in said City of Paterson; that respondents purchased said property and established their business there and erected buildings on said property because it adjoined said railroad tracks of the Erie Railroad and because of the facilities afforded in consequence thereof; that respondents are dependent upon their connection with the tracks of the Erie Railroad Company by means of a switch for a great part of their business, and that in the judgment of these respondents, either the depressing or elevating of the tracks of the Erie Railroad Company would deprive respondents of this right.

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WILLIAM B. GOURLEY,
Attorney of Respondent.

Answer of Samuel Smith & Sons Co.

The answer of SAMUEL SMITH & SONS COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain
10 grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

4. Respondent has no knowledge of the allegations
20 of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7 but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any
30 public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said City at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners.
40 It does not show the freight yards, sidings and

Answer to Samuel Smith & Sons Co.

switches that would necessarily be affected by change of grade of said railroad.

8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

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10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

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11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

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12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further says that this company is engaged in business as boiler makers and has been so engaged for more than forty years; that its property is situate on the west side of Railroad avenue, between Slater street and Green street, in said City of Pater-

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Answer of Morris & Co.

son; that its said property was purchased and its said business established in said place because it adjoined said Erie Railroad and because of the facilities afforded it in consequence thereof; that respondent is dependent upon its connection with the tracks of the Erie Railroad by means of a switch for a great part of its business; that it would work irreparable damage to this respondent if it was deprived of this right which it now enjoys; that the freight yard of the Erie Railroad Company is opposite the property of this respondent; that if the freight yard is allowed to remain upon the grade where it now is, this respondent would interpose no objection to any change sought to be made, as it would not in such case materially affect the interests of this respondent.

WILLIAM B. GOURLEY,
Attorney of Respondent.

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Answer of Morris & Co.

The answer of MORRIS & COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

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2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such crossing.

4. Respondent has no knowledge of the allegations of paragraph 5.

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Answer of Morris & Co.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, says that the Erie Railroad Company owns certain property adjacent to its right of way.

6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by any public body in relation thereto, and that it has no knowledge of allegations in paragraph 9 and 10.

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7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

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8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true, are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged.

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Answer of Morris & Co.

10. Respondent says that it is not advised whether or not, as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

10 11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

20 13. Respondent further answering says that it is a corporation of this state engaged in the business of selling and transporting meat and provisions; that it has possession of property abutting on the line of the Erie Railroad Company in the City of Paterson between Ellison and Market streets upon which it has switches connected with the said tracks of the Erie Railroad; that it uses such property in its said business and has made valuable improvements thereon for such purposes; that such improvements have been made in reference to the tracks of the said railroad at their present grade and that if the grade of said tracks were changed it would make such property of this respondent useless for such purposes; that said land was obtained and said improvements made thereon because of the propinquity of said railroad; that this respondent has materially improved the property and has spent large sums of money in such improvements and in adapting it to its present use in conjunction with said railroad; that without the privilege of switching, it will be unable to carry on its said business; that to depress the tracks of said railroad would

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Answer of Morris & Co.

utterly destroy the value of your respondent's property and if said tracks were elevated, the improvements placed upon the said land by this respondent for the purpose of adapting it to the uses aforesaid would become useless; that this respondent has no precise information and no clear understanding of how said tracks could be elevated without totally destroying this respondent's said business at said location in the City of Paterson; that this respondent has also acquired the property and control of the Paterson Beef Company, a corporation of this state, which has property also adjoining the said tracks of the Erie Railroad Company between Ellison and Market streets in said City of Paterson; that the business of the said Paterson Beef Company is the same as the business conducted by this respondent and the improvements made upon its property for the purpose of adapting it to its present uses in conjunction with the said railroad tracks at their present grade would be destroyed if said tracks were either elevated or depressed.

14. Respondent further says that the Act of the Legislature, that is to say, Chapter 57 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

Answer of McNab & Harlin Manufacturing Co.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,

Attorney of Respondent.

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**Answer of McNab & Harlin Manufacturing
Company.**

The answer of the McNAB & HARLIN MANUFACTURING COMPANY, respondent, to the petition of the City of Paterson to alter grade crossings on line of the Erie Railroad.

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1. The respondent has no knowledge of the allegations in paragraphs 1 and 2 of the petition, except that it admits the Erie Railroad maintains certain grade crossings in the City of Paterson.

2. Respondent admits paragraph 3.

3. Respondent admits that said railroad crosses a great number of streets and highways at grade, as alleged in the fourth paragraph, but it has no direct knowledge that each of them is dangerous to public safety or that public travel on each of them is greatly impeded by reason of such grade crossing.

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4. Respondent has no knowledge of the allegations of paragraph 5.

5. Respondent has no knowledge of the leases described in paragraphs 6 and 7, but, upon information and belief, says that the Erie Railroad owns certain property adjacent to its right of way.

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6. Respondent says that it is informed that there has been some discussion from time to time in the City of Paterson about altering grade crossings, but has no knowledge that any action has been taken by

Answer of McNab & Harlin Manufacturing Co.

any public body in relation thereto, and that it has no knowledge of allegations in paragraphs 9 and 10.

7. Respondent says in answer to the allegations in paragraphs 11 and 12 that it admits that grade crossings exist in said city at the intersections named in this paragraph and also admits that certain crossings therein named are carried under the railroad, but this respondent denies that said map accurately places before the Commission the situation as it exists in reference to this respondent and other switch owners. It does not show the freight yards, sidings and switches that would necessarily be affected by change of grade of said railroad.

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8. Respondent is not informed as to the allegations in paragraph 13.

9. Respondent says in response to the allegations in paragraph 14 that said crossings, as this respondent is informed and believes to be true are protected as in said paragraphs set forth; that it is not fully informed as to the alleged obstructions to the respective crossings in this paragraph named, or to the volume and frequency of travel and other allegations therein contained, and leaves the petitioner to make proof thereof; that it has no direct knowledge concerning the allegation that said crossings are dangerous to public safety or that public travel thereon is impeded, as therein alleged; that as to the crossing at Cedar street near which the property of this respondent is situated and of which it has a more precise knowledge, this respondent says that the volume of travel is light; that the freight cars placed on the siding near this crossing does not materially affect the crossing.

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10. Respondent says that it is not advised whether or not as alleged in paragraph 15, any plan of altering one crossing necessarily involves the others.

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Answer of McNab & Harlin Manufacturing Co.

11. Respondent in answer to the allegations in paragraph 16 says, that it admits the population of Paterson is correctly stated therein and that it is constantly increasing; that it is the third city in size in the state, but as to the other allegations in said paragraph, this respondent has no knowledge except that it says that the traffic on these streets is not impeded to an unusual extent.

12. Respondent says, that it has no information in relation to the allegation in paragraph 14A and leaves the petitioner to make such proof as may be required.

13. Respondent further answering says, that it is a manufacturing corporation engaged in business as brass founders and finishers and manufacturers of plumbers supplies; that it has been doing business on part of its present site for over forty years; that such place was selected because it adjoined said railroad; that large sums of money have been expended in erecting buildings thereon; that its business has increased to such an extent that it has obtained possession of property along the line of this railroad in addition to its original tract; that its property abuts upon the property of the Erie Railroad Company; that this property is connected with switches with the Erie Railroad affording it the utmost facility in the operation of its works and better enabling it to compete in the market with its competitors; that these switches are essential to its business and without them it would be unable properly to carry on the same.

14. Respondent further says that any change in the grade of the railway by depressing the tracks or elevating the same will deprive this respondent of the power to carry on its business as aforesaid, will be of the most serious damage and will take its property for public use without compensation.

Answer of McNab & Harlin Manufacturing Co.

15. Respondent further says that Cedar street upon which part of the buildings of this respondent is erected was laid out by the City of Paterson over and across the tracks of the Erie Railroad Company, or its predecessors in title and that the respondent in constructing its buildings and adapting its property to the use to which it is put accepted this grade as established by the city and constructed its buildings in conformity therewith; that this recognized the level of the railroad as the street level and was used as a guide in the construction of its buildings in and along the line of said railway and that the petitioner cannot cause the said grade to be now changed without affording compensation therefor to this respondent.

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16. Respondent further says that from Cedar street south its property abuts upon the land of the railroad upon which land of respondent there are private tracks connected with those of said railroad; that north of said Cedar street, the siding runs to the switch upon the land of the Erie Railway.

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17. Respondent further says that the Act of the Legislature, that is to say, Chapter 37 of the Laws of 1913 is unconstitutional and void for the following reasons:

(a) It operates to take the private property of this respondent for public use without just or any compensation therefor, in violation of the Constitution of the State of New Jersey.

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(b) It operates to require the respondent at its own expense to move or change its property or constructions in conformity to the order of the Board of Public Utility Commissioners and thus will take the private property of this respondent for public use without just or any compensation in violation of the Constitution of this State.

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Report of Board.

(c) It operates to deprive this respondent of its property without due process of law and will deny to it the equal protection of the laws contrary to the 14th amendment of the Constitution of the United States.

WILLIAM B. GOURLEY,
Attorney of Respondent.

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Report of Board.

(Dated January 11, 1915.)

REPORT.

Submitted November 4th, 1914.

20 E. F. Merrey and R. B. Lewis, for the City of Paterson.

H. A. Taylor, G. S. Hobart and D. E. Minard, for the Erie Railroad Company.

William S. Lewis, for Paterson & Ramapo Railroad and President and Directors of Paterson and Hudson River Railroad.

L. D. H. Gilmour, for Public Service Railway Company, Public Service Gas Company and Public Service Electric Company.

30 Humphreys & Summer, for Passaic Water Company.

John L. Swayze, for New York Telephone Company.

George H. Pearsons, for Western Union Telegraph Company.

William B. Gourley, for numerous switch and property owners.

W. R. Hudson, for D. Fullerton & Company and Swift Company.

40 Frank H. Sommer, for the Commission.

Report of Board.

The Board of Finance of the City of Paterson (being the body having charge of municipal finances) filed its amended petition on September 15th, 1913, for the elimination of certain grade crossings on the main line of the Erie Railroad, in the City of Paterson, beginning with Madison avenue on the east and ending with River and Putnam streets on the west. In all, fifteen grade crossings are sought to be eliminated, to wit:

- A. Madison avenue.
- B. Clay and Straight streets (two crossings).
- C. Cedar street (Taylor street substituted).
- D. Market street and Park avenue (one crossing).
- E. Ellison street.
- F. Van Houten street.
- G. Broadway.
- H. Fair street.
- I. Hamilton avenue.
- J. Lafayette street.
- K. Franklin street (Montgomery street substituted).
- L. Keen street.
- M. Warren street.
- N. River and Putnam streets (one crossing).

The petition was filed under the fifth section of a supplement to the "Public Utilities Act," approved March 12th, 1913, P. L. 1913, p. 91, known as the "Fielder Grade Crossing Act." This provides, *inter alia*, that

"the board or body having charge of the finances of any municipality wherein any such crossing exists, may present to the Board of Public Utility Commissioners in writing a petition setting forth the facts upon which relief under this act is sought * * * whereupon said Board of Public Utility Commissioners shall fix a time and place

Report of Board.

for a hearing before it and shall give such notice thereof as it shall deem reasonable to the municipality and corporations, co-partnership or individuals interested therein and after such hearing, shall determine or order what, if any, alterations to or changes in or connected with such crossing and public highway shall be made."

- 10 Notice, as required by the statute, was given to the municipality and corporations, co-partnerships and individuals interested and likely to be affected by any order requiring changes or alterations at the crossings mentioned in said petition. Answers were filed by the railroad companies, some of the other utilities, switch owners, and others who might be affected.

The first section of the Act provides:

- 20 "Whenever a public highway and a railroad cross each other at the same level and it shall appear to the Board that such crossing is dangerous to public safety, or that the public travel on such highway is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad, within such time as said Board may fix, to alter such crossing according to plans to be approved by said Board, by substituting therefor a crossing not at the grade of such public highway either by carrying such public highway under or over such railroad, 30 or by reconstructing such railroad under or over such public highway, or by vacating, relocating or changing the lines, width, direction or location of such highway and the opening of a new highway in the place of the one ordered vacated."

- 40 The answers of the railroad companies deny that the conditions as to danger and impediment to traffic contemplated by the statute exist at the crossings in question, and deny the power of the Board to act because it is claimed the statute is invalid and, further,

Report of Board.

allege that the city has not done the things required to confer jurisdiction upon the Board.

Generally speaking, the other answers raise similar questions or submit the questions involved for the determination of the Board.

Inasmuch as the answer, and amendments to the answer, of the Erie Railroad Company, upon which company the heaviest burden would fall, raise most of the questions, it will be sufficient for present purposes to deal with some of the matters contained in its answer, and the amendments thereto. 10

Section 13 of the answer of the Erie Railroad Company avers that the petition is not filed under the act of 1913, or under the rules of the Board, and Section 20 raises the question that the petition is faulty because more than one crossing is embraced in the prayer of the petition.

No specific objection is made, but the claim is general that the petition is not filed under the act of 1913. 20

Obviously, the petition was filed under that act. The proper municipal body filed the petition, and it was intended to comply with the provisions of that act. There is no statutory requirement as to the form of the petition. The statute merely requires that the petition shall "set forth the facts upon which relief under this Act is sought."

The petition and amendments are quite full, and in the judgment of the Board, are a compliance with the statute, which is taken to mean that the petition must sufficiently set forth the facts relied upon as to put interested parties on notice of what the municipality intends to show to base its claim for relief under the act. The petition describes the physical conditions at each crossing as to protection, obstructions, volume of travel, proximity to other highways, property of other utilities likely to be affected, extent to which travel is impeded, and other facts concerning such crossings. The petition is, therefore, held to be a 30 40

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compliance with the statute and sufficient to confer jurisdiction upon the Board.

10 The grade crossing act is designed to provide a means whereby railroad grade crossings that are found to be dangerous or which unduly impede travel may be eliminated. It is true that the phrase "a public highway" is used in the first section of the act, but certainly the Legislature never intended thereby to limit the filing of a petition to a single crossing, in
20 cases where the elimination of one crossing would be impracticable and inadvisable. In a case like the present, to take such view would be to practically deny all relief, for the reason that separation of the grades of many of the crossings involved in this proceeding cannot be satisfactorily accomplished without affecting other crossings. It may be that each crossing must be dealt with and found to require change
20 or alteration, but the whole legislative scheme, as found in the act, negatives the idea that each crossing must be dealt with independently of, and not in connection with, other crossings in the same locality and upon the same line of railroad. The Board is of opinion that a separate proceeding is not required by the act for each crossing, and that more than one crossing may be embraced in a petition.

30 Many objections are urged to the constitutionality of the act. These are questions which must be determined by the courts. It is not the function of this Board to pass upon the constitutionality of legislative acts. Whenever this Board is directed by statute to act upon finding a state of facts to exist, its duty is to follow such mandate, leaving to the courts determination as to the validity of the statute.

40 Inasmuch as some of the questions raised by respondents have heretofore been dealt with by this Board, and others are now in the Courts, a lengthy discussion of such questions at this time would not appear to be necessary or profitable. It is sufficient

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that the rights of all parties to have such questions passed upon by a proper tribunal are preserved to them.

Having concluded that the petition is properly filed under the act, and that the Board is required to act whenever the conditions specified in the statute are found to exist, the first question of fact to be determined by this Board seems to be whether the crossings in question appear to the Board to be, in the language of the act, "dangerous to public safety, or that the public travel on such highway is impeded thereby." 10

Seventeen streets in the built-up section of the City of Paterson which now cross the railroad at grade are involved in this proceeding. At each of these crossings some form of protection is provided. At twelve, gates are operated continuously, namely, Clay street, Straight street, Cedar street, Market street, Park avenue, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Warren street, River and Putnam streets. At two, Market street-Park avenue, and Broadway, there is an additional man on the ground. At three, Madison avenue, Cedar street side tracks and yard, and Franklin street, gates are operated only during the day time; at Madison avenue and Keen street, there is bell protection when the gates are not operated at night; at Franklin street, there is no protection when the gates are not operated at night. At Keen street, there is a flagman on the ground between 6.30 A. M. and 6.30 P. M., and there is bell protection during the balance of the twenty-four hours. 20 30

Testimony was produced to show what the physical conditions are at each of the crossings in question. From all the testimony, it appears that the crossings in question are dangerous to safety; that a number of accidents have occurred at many of the crossings, resulting in injury and death; and that a high degree of protection is necessary in order to avoid more fre- 40

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quent accidents. For such protection the railroad company showed (Ex. R. 12) that it expends \$14,736.87 for employees and \$2,101.59 for costs of maintenance each year. A statement of such expense is appended hereto and marked Schedule "A." This sum is the interest at 5% upon approximately \$350,000. Notwithstanding the measures adopted to prevent accidents, the testimony shows that they have occurred at some of these crossings within the year 1913 (p. 234). That some of the crossings are regarded as especially dangerous is further evidenced by the fact that at two of them two men are constantly on duty, one operating gates and one on the crossing.

Paterson is one of the busiest and most populous cities in the State. Many thousands use the crossings every day. It is shown that there is an average of 210 train movements over a single crossing in eighteen hours. Schedule "B," attached to this report contains a statement based upon testimony as to the view at each crossing. The terms "Good," "Fair," "Poor" and "Bad" as used in this schedule, indicate the judgment of the Board as to the view obtainable at each crossing, from a point about 35 feet from the nearest rail, and may generally be defined as follows:

Good—A clear view; anything beyond 1,000 feet.

Fair—From 1,000 feet to 500 feet.

Poor—From 500 feet to 100 feet, and

Bad—Below 100 feet.

The statute provides that whenever the Board finds that public travel on the highway is impeded by the presence of the railroad, the Board may order a change of alteration of the grade.

Counts were made by the petitioner, as shown in the petition, by the Board of Trade, by the Street Commissioners of Paterson and by the Erie Railroad. Such testimony has been charted and is shown in Schedule "B."

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While the several counts vary, having been made at different times and different seasons of the year, they indicate that from one thousand to thirty thousand pedestrians pass over each of the crossings in eighteen hours, and that hundreds of vehicles use each of the crossings during the same period of time. On October 4th, 1913 (Ex. p. 4), it is shown that 34,517 pedestrians, 593 trolley cars, 1,901 horse-drawn vehicles, 1,700 automobiles, and 827 bicycles passed over Market street crossing between 5 A. M. and 11 P. M. During the same period of time, the gates were lowered 207 times, and 104 passenger trains, 13 freight trains and 47 drill engines passed over the crossing.

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It was testified that the gates were down from 30 seconds to three to four minutes on each occasion (pp. 95, 209). Mr. Hattersley testified (p. 95) that he took observations of the time gates were down on Market street for a period of $4\frac{1}{2}$ hours and found the average to be fifty-three seconds. Assuming this to be a fair average, it appears that traffic was blocked on the fourth of October, at Market street, for something over three hours out of the eighteen hours covered by the count, or about one-sixth of the time. The Erie Railroad Company's testimony showed that an average of about 103 trains passed over all of the crossings during eighteen hours. Assuming the same average time of fifty-three seconds consumed in lowering and raising gates, we find the streets blocked for a period of one hour and thirty-one minutes out of eighteen hours, or that traffic is interfered with about one-twelfth of the entire time.

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From the foregoing, it will be readily seen that public travel is seriously impeded at all of these crossings.

The Board, therefore, finds and determines that the crossing of each of the streets involved in this proceeding and the railroad tracks of Erie Railroad Company at the same level appear to this Board to be dangerous

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to public safety, and that public travel on such highways is impeded thereby.

Having determined that at each of the crossings involved a condition exists such as was designed to be remedied by the "Grade Crossing Act," the question arises as to whether it is practicable and feasible to change or alter such crossings.

10 While the Railroad Company, in its answer, protested against the inclusion of more than one crossing in the petition, the consideration of the entire subject is simplified by the acquiescence of all parties to the proceeding, that all of the crossings mentioned in the petition must be considered in any plan of elimination. From the beginning to the conclusion of the hearings, there was no intimation from anyone that a change at a particular crossing only should be considered. We will, therefore, deal with the proceeding
20 as involving the adoption of one comprehensive plan or scheme covering all of the crossings. It was never questioned but that a general plan for the separation of grades at the crossings was practicable. Differences of opinion between engineers for the municipality and the utilities affected occurred as to some details, but the chief objection raised was to the expense.

 The estimates of cost varied from that of the city of \$2,587,924.95 to that of the Erie Railroad of \$3,384,084.88, if the work was all done at one time. The
30 city's estimate did not include certain elements of cost included in the railroad's estimate.

 In considering this matter the Board has been mindful of the claim of the Erie Railroad Company that it is not now financially able to make the expenditure necessary to do the work. The testimony discloses that the Company contemplates spending larger sums than would be required for this purpose, in doing work that, in the judgment of the Board, is not so immediately necessary. It seems to the Board that
40 some of the money intended to be used for other purposes might more appropriately be used in this work,

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should it be found necessary to divert it. Nor does the testimony satisfy us that the Company will not be able to secure the necessary funds:

Having reached the conclusion that the crossings are such that the grades should be changed in accordance with the prayer of the petition, as provided by the statute, it now remains to consider plans to accomplish the purpose.

Plans were submitted by the City of Paterson, showing how the grades of the streets and railroad can be altered.

In the territory covered by the streets in question are three streets which at the present time pass under the railroad, namely, Essex street, Governor street and Fulton street.

The plans of the city provide for substituting for Cedar street the opening of a new street under the railroad one block east at Taylor street, and for substituting for the present crossing at Franklin street a new undergrade crossing at Montgomery street.

The plans submitted by the city extend the territory to be considered for elimination westward of River street in two schemes—the first one, known as Plan No. 2, is but the harmonizing of the existing grade with the elimination scheme outlined in the petition, and leaves the situation at Sixth avenue practically as it is, and the crossing at Fifth avenue at grade.

The second scheme, known as Plan No. 1, contemplates a new grade line from a point west of the proposed crossing of River street, running down to the present grade line at a point west of the Passaic river near the present overhead crossing of the Susquehanna railroad. This scheme contemplates the elimination of the grade crossing at Fifth avenue and the creation of a new undergrade crossing at Sixth avenue. In this scheme the Passaic river bridge would have to be raised 6.9 feet. The part of the city's plan known as Plan No. 1 is not included in the petition.

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Of the existing undergrade crossings, the Essex street bridge will have to be renewed at a higher elevation, because the street is to be widened. The Governor street and Fulton street bridges would be raised to accommodate the new line. The heaviest grade on the existing line through the city is .78%, and on the line as proposed by the city a .95% grade, which occurs on the run-off west of the River street bridge down to grade at Fifth avenue according to Plan No. 2. Plan No. 1 changes this particular part of the grade to .55%, leaving the maximum grade, .78%, from Lafayette street to Governor street. The proposed grades are therefore well below the ruling grade of the New York division, which is a little over 1% (p. 422). 1.00% grades are used temporarily on the division of work into sections proposed by the railroad company.

The City of Paterson submitted a profile (Exhibit P-2, p. 85) dated March, 1908, showing a scheme for eliminating the Market street and River street group of streets in separate sections; Madison avenue, Fifth avenue, Clay and Straight streets, and Main street on the Newark branch, were also included in the elimination. On this plan permanent approach grades run as high as 2%. James C. Patterson, for the Erie Railroad, comments on this as not being a "plan" but only a "scheme" (page 421) and indicates the objections to or defects of the plan as follows (p. 422):

First, the profile shows a proposed 2% east-bound grade approximately 2,000 feet long; 500 feet of this grade would be equivalent to 2.14% since it is located on a four degree curve, or what appears to be a four degree curve from the map. As .035 per degree is allowed for the resistance of the curve, .14% which added makes 2.14% which a portion of this grade would be equivalent to.

Q What have you to say about the practicability of that from a railroad proposition?

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"A I should say the grade was prohibitive.

"Q What is the ruling grade now of the New York division?

"A The ruling grade of the New York division at the present is a little over 1%.

"Q When you say the ruling grade, what do you mean?

"A The ruling grade is the one that limits the tonnage of a division. 10

"Q What limits this division?

"A The limits of the New York division are Port Jervis and Jersey City."

There are various other utilities affected by the proposed changes, the principal one being the Public Service Railway Company whose lines would be interfered with by the city's plan at Madison avenue, Straight and Clay streets, Park avenue and Market street, Broadway and River street. Detailed estimates of the cost of making changes at these points have been placed in evidence, the result of which are tabulated in parallel columns below: 20

PATERSON ESTIMATES—STREET WORK ONLY.

	P. S. Ry.	Clay.	Erie R. R.
Park Ave. and Market St....	\$18,816.12	\$10,899.90	\$11,955.40
Madison St. and Railway Ave.	14,621.33	5,223.79	7,606.31
Straight and Clay Sts.....	5,351.52	5,926.80	6,196.20
Broadway	14,830.80	10,156.52	10,825.18
River Street	8,650.00	7,797.79	8,320.42
	<hr/>	<hr/>	<hr/>
	\$62,278.77	\$40,804.80	\$44,903.51
EXCESS P. S. Ry. over others..	.....	22,273.97	17,375.26
	<hr/>	<hr/>	<hr/>
	\$62,278.77	\$62,278.77	\$62,278.77

Damages to other utilities affected are included in the estimates, details of which are in evidence. Some of these other utilities will be affected very little. Estimates have been made by the city covering the entire work, which are shown in detail in a pamphlet entitled "Report on Proposed Elimination of Grade Crossings, Along the Erie Railroad in Paterson, N. J., H. J. Harder, City Engineer," and this is dated May 21st, 1914. It is summarized in Exhibit P-48. The 40

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detailed estimates cover items for changes to all the utilities affected.

- A comparative table is annexed (Schedule "C") considering the entire work to be done at one time, showing the totals of the estimates made by the city and Erie Railroad on the same basis, and one made by the Erie Railroad including the various items omitted by the city. They are arranged in parallel columns for convenience, showing estimates for the complete plan and three suggested modifications—
- (1) Leaving Fifth avenue at present grade; that is, following city's Plan No. 2; (2) Leaving both Fifth and Madison avenues at the present grade; that is, following city's Plan No. 2 without Section D; (3) Leaving Madison avenue at present grade, but raising Fifth avenue; that is, following city's Plan No. 1 without Section D.

- It being obvious that the complete plan must be considered, Mr. Brameld, the engineer of grade crossings of the Erie Railroad Company, at the hearing of July 9th, 1914 (p. 712), suggested the division of the work into five sections. These sections were designated by the letters from A to E, inclusive, in the order of their assumed importance, and in the order in which it was believed they could be taken up so as to give the relief sought at the earliest possible time.

- Section A covers the district from a point east of Essex street, and provides for the elimination of Market street, Ellison street, Van Houten street, Broadway, Fair street, and Hamilton avenue. It would leave Governor and Fulton streets open as they now are. It would separate the grades at Lafayette street, open a new street, Montgomery street, and permanently close Franklin street, and temporarily close Keen street. Warren street would be temporarily maintained as a grade crossing by raising it about three feet.

- Section B provides for raising the grade from Hamilton avenue to Fifth avenue, at the elevation shown

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on the city's plan. Included in this section would be the elimination of crossings of Keen street, Warren street and River street, using the city's Plan No. 2 west of River street to grade at Fifth avenue.

Section C provides for eliminating crossings at Straight street and Clay street, providing an under-grade crossing at Taylor street, in place of Cedar street, which would be closed, and widening Essex street, as proposed by the city. 10

Section D provides for the elimination of the crossing of Madison avenue, in accordance with the city's plan.

Section E provides for the elimination of the crossing of Fifth avenue, the opening undergrade of Sixth avenue, according to the city's Plan No. 1.

Mr. Brameld, for the Erie Company, testified (pp. 714 and 715) as follows:

"Q Now, Mr. Brameld, have you given sufficient study to this subject to be able to state whether or not this division of the whole work for these sections would be practicable and possible without interfering substantially with the city's plan? 20

"A Yes, sir. The only change in the city's plan would be the temporary closing of Keen street, and they have sufficient access to Keen street by using Lafayette street, and the raising of Warren street temporarily three feet. It does change the elimination of Lafayette street by depressing the street probably a foot and a half more, but the railroad is on a knoll there, and it means just cutting the knoll down one and a half feet. 30

"Q It disposes of the same crossings as the city's plan proposes to eliminate?

"A It is the city's plan.

"Q With regard to the sidings does it have substantially the same effect on the sidings as the city's plan? 40

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"A Yes, temporarily they would have to make some slight changes to meet the temporary grade, but eventually the situation is the same as proposed by the city.

"Q Now, have you prepared an estimate of the cost of each of these sections?

"A I have.

10 "Q Let me ask you first does your total of the entire work of the five sections amount to any more than the estimate you made of doing the entire work?

"A Yes, sir, due to the necessity of duplication of trestle, raising track and ballasting and surfacing track.

"About how much more would it amount to?

A Roughly about \$115,000 to \$120,000."

Objection was made by the Erie Railroad Company to the scheme proposed by the city for eliminating
20 Madison avenue, known as "Section D," because it involves a heavy rock cut, and did not provide width enough for the tracks with the necessary drainage through the cut. An alternative plan, Exhibit R-105, was submitted, showing the railroad grade for this entire section to remain as it is at the present time, and carrying Madison avenue over the railroad track with a bridge having the standard clearance of 22 feet, located on the westerly side of Madison avenue, in such manner as not to disturb the grade of the
30 streets around the crossing; thus Madison avenue, East Railway avenue and California avenue, the first two of which carry tracks of the Public Service Railway Company, would not have to be changed. The estimate for this substitution by the Erie Company effects a saving of \$192,133.92 in the cost of "Section D."

This plan provides for grade approaches of 5% and gives the standard 22 feet clearance over the railroad, and effects such a large saving that it commends itself

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to the Board. The Board will, therefore, adopt the plan of the Erie Railroad Company, known as Exhibit R-105, for the elimination of Madison avenue, instead of "Section D" of the plan submitted by the city.

The proposal of Erie Railroad Company, Exhibits R-106 and R-107, for the elimination of Keen, Warren and River streets, does not commend itself to the Board and is not adopted. It appears to the Board that the highway grades on approaches to Keen street bridge and on the approach to the viaduct crossing at River street are excessive, and that the right angled turn on the viaduct which would carry the traffic of a highway as important as River street is dangerous. In addition the platforms provided in this plan are shorter than they should be, according to the claim of the Railroad Company (p. 699). The objections more than balance the possible saving in cost.

A further estimate is made by the Erie Railroad Company (Exhibit R-108, p. 744) which provides for the elimination of Fifth and Sixth avenues, on the city's plan, but with the railroad grades changed so as to allow River street to be carried over the railroad according to plan (Exhibit R-107).

The Board having declined to adopt the suggestion contained in Exhibit R-107, the proposal contained in Exhibit R-108 falls with it.

The suggestions of Mr. Falconer, engineer for Erie Railroad Company, as to using a standard floor at some of the bridges, and placing columns in River and Market streets are adopted by the Board as being more economical and, at the same time, rendering possible a reasonable solution of a difficult problem, that otherwise would seem well nigh impossible.

The request for the consolidation of Straight and Clay streets does not appeal to the Board. The general lay-out of the ground in such that, in the judgment of the Board, both streets should be maintained at their present location. No plan covering such con-

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solidation was submitted, and it does not seem desirable under present conditions.

10 Other modifications proposed by the Erie Railroad Company and by Public Service Railway Company, were as to matter of detail only. In all matters of this kind some little adjustments for such matters as arranging vertical curves, slight alterations in grade, clearances, etc., are to be expected and can readily be
10 met when the plans are advanced to a stage of accurate detail. The plans submitted, as modified, show that the scheme for elevation proposed is entirely feasible.

The results of the various estimates for dividing the work into sections, and the various modifications thereunder, are shown in tabular form in "Section D" attached hereto.

20 In addition to the utilities mentioned and others whose property will be affected, there are sixty-one private siding owners served by sixty-eight railroad sidings. Testimony was taken with respect to many of these sidings, and as to some no testimony was taken.

With Section D modified according to the Erie Railroad plan, no switch owners east of Newark Branch Junction would be affected, neither would the Newark branch be affected. It appears, from present plans, five industries would be left without any switch connections, and two industries would be moved to a
30 new location with switching facilities equal to the ones they now enjoy. Alterations will have to be made in connections to 31 industries by Plan No. 1 and 26 by Plan No. 2, some apparently resulting advantageously and others not so much to their advantage; and 20 on Plan No. 1 and 25 on Plan No. 2 will have no change in their present accommodations. At present one has no siding.

40 It is unfortunate that a few interests served by sidings along the railroad may be required to suffer some inconvenience and expense, but when the magnitude

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and importance of the work is considered, it appears that the inconvenience to the property and switch owners is reduced to a minimum.

If the city's plan is adopted, with Section D modified according to the Erie plan, the total cost based on the Erie Railroad estimate would be for Plan No. 1, \$3,320,708.90; and for Plan No. 2, \$2,937,858.44, which would be modified by including the Public Service Railway's estimates for street work to \$3,331,069.14 for Plan No. 1 and \$2,948,218.68 for Plan No. 2. A division of the work would be more expensive than to do the work at one time, but would result in an advantage to the city in that traffic in only part of the territory involved would be interfered with at one time. This method accords with the Railroad Company's suggestion. 10

Upon consideration of all questions involved, the Board is of opinion that the work of elimination should be ordered at the earliest practicable time; that the plan to be approved should be that generally outlined in Plan No. 2 of the City of Paterson, as modified in the respect hereinbefore referred to, and that the work should be permitted to be done in sections as requested, and in the order suggested by Erie Railroad Company. 20

There remains but a single question to be considered, namely, the time within which work should be commenced and completed. To secure the views of parties interested, the Board hereby fixes Friday, February 5th, at eleven A. M., at Newark, to hear discussion upon the questions of the times to be provided in the order within which the work included in each section and in its entirety, is to be commenced and completed. Meantime, and sufficiently in advance of such hearing to permit study, copies of this report and the plan and profile, embodying these conclusions, will be made available to the parties hereto. 30

After said hearing, an order will issue in accordance with the conclusions reached. 40

Dated, January 11, 1915.

"SCHEDULE A."

ERIE RAILROAD COMPANY.

Statement showing kind of protection.

Streets at Grade.	No. Men.	Kind of Protection.	Cost of Protection Per Annum.	Cost of Maintenance Per Annum.
Madison Avenue	1	gates 6:30 A. M.—7:30 P. M. \$1.25 Bell also	\$ 456.25	\$ 177.25
Clay and Straight Streets.....	1	gates 6:00 A. M.—6:00 P. M. 1.00		
(Straight Street)	1	" 6:00 P. M.—6:00 A. M. 1.00		
	1	" 6:00 A. M.—6:00 P. M. 1.25		
	1	" 6:00 P. M.—6:00 A. M. 1.25	1,642.50	222.50
Cedar Street	1	" 6:00 A. M.—6:00 P. M. 1.25		
	1	" 6:00 P. M.—6:00 A. M. 1.25		
(Side Tracks and Yard)	1	" 6:00 A. M.—6:00 P. M. 1.25		
Market Street and Park Avenue....	1	" 6:00 A. M.—6:00 P. M. 1.50	1,368.75	150.62
	1	" 6:00 P. M.—6:00 A. M. 1.50		
	1	ground 6:00 A. M.—6:00 P. M. 1.25		
	1	" 6:00 P. M.—11:30 P. M. .75	1,825.00	150.62
Ellison Street	1	gates 6:00 A. M.—6:00 P. M. 1.25		
	1	" 6:00 P. M.—6:00 A. M. 1.25	912.50	150.62
Van Houten Street	1	" 6:00 A. M.—6:00 P. M. 1.25		
	1	" 6:00 P. M.—6:00 A. M. 1.25		

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"SCHEDULE A,"—Continued.

Broadway	1	gates	6:00 A.	M.—6:00 P.	M.	\$1.25	\$012.50	\$131.25
Broadway (continued)	1	"	6:00 P.	M.—6:00 A.	M.	\$1.25		
Broadway (continued)	1	ground	6:00 A.	M.—6:00 P.	M.	1.25	1,596.87	150.62
Broadway (continued)	1	"	6:00 P.	M.—11:30 P.	M.	.62½		
Fair Street	1	gates	6:00 A.	M.—6:00 P.	M.	1.25	912.50	120.30
Fair Street	1	"	6:00 P.	M.—6:00 A.	M.	1.25		
Hamilton Avenue	1	"	6:00 A.	M.—6:00 P.	M.	1.25	912.50	150.62
Hamilton Avenue	1	"	6:00 P.	M.—6:00 A.	M.	1.25		
Lafayette Street	1	"	6:00 A.	M.—6:00 P.	M.	1.25	912.50	139.67
Lafayette Street	1	"	6:00 P.	M.—6:00 A.	M.	1.25		
Franklin Street	1	"	6:00 A.	M.—7:00 P.	M.	1.00	365.00	120.30
Franklin Street	1	Balance of day—no protection,					365.00	166.30
Keen Street	1	ground	6:30 A.	M.—6:30 P.	M.	1.00		
Keen Street	1	Ball balance of time,						
Warren Street	1	gates	6:00 A.	M.—6:00 P.	M.	1.00	730.00	139.67
Warren Street	1	"	6:00 P.	M.—6:00 A.	M.	1.00		
River and Putnam Streets	1	"	6:00 A.	M.—6:00 P.	M.	1.25		
River and Putnam Streets	1	"	6:00 P.	M.—6:00 A.	M.	1.25		
(South Side Gates)	1	"	6:00 A.	M.—6:00 P.	M.	1.25	1,825.00	131.25
(South Side Gates)	1	"	6:00 P.	M.—6:00 A.	M.	1.25		
							<u>1,825.00</u>	<u>131.25</u>
							\$2,101.59	\$2,101.59

STREETS CARRIED UNDER.

Essex Street	Under grade.
Governor Street	"
Fulton Street	"
Straight Street	"

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SCHEDULE "B."

	VEHICLES.		TRAIN MOVEMENTS.				REMARKS.	VIEWS. (operating direction).
	Pedestrian.	Horse Drawn.	Auto.	Motocycles.	Gates Down.	Passenger.	Freight.	Drill Ends.
MADISON AVE.	2200 to 2500	500	250			73	Large No. of trains.	
	Petition Board of Trade Street Comm'rs Erie R. R.	2148 481 1168	250 151				73	
				34	5	76	12	17
CLAY ST.	2500 to 3000	250	50			103	Large No. of trains.	
	Petition Board of Trade Street Comm'rs Erie R. R.	2691 871 2945	218 51	122	194	104	12	98
				32	4	161	159	98
STRAIGHT ST.	2458 to 2555	222 318	50 105	22	4	161	153	98
	Petition Board of Trade Street Comm'rs Erie R. R.					103	much switching.	
				7	1	163	68	84
CEDAR ST.	3200 to 3500	300	25					
	Petition Board of Trade Street Comm'rs Erie R. R.	3151 251 2332	16 365					
MARKET ST. (incl. Park Ave.)	28000 to 35000	3000	1100			103		1000
	Petition Board of Trade Street Comm'rs Erie R. R.	28812 1795 27136	749 187			104	14	44
				429	51	188	73	592
ELLISON ST.	4000 to 5000	700	50			103		
	Petition Board of Trade Street Comm'rs Erie R. R.	3892 524 4121	92 169	31	120	103	15	21
VAN HOUTEN ST.	4000 to 5000	500	300			103		
	Petition Board of Trade Street Comm'rs Erie R. R.	4009 273	400	110	120	103	92	92

Report of Board.

		12000 to 15000	400 to 500	500 to 600	103							Automobile travel heavier on Saturdays and Sundays than here shown.		
	Petition											Average of 2 days.		From south side, poor. From north side, poor.
BROADWAY	Board of Trade	8278	280	518	144	133	194	12	13	682		Average of 2 days.		
	Street Comm'rs	10484	245	288	75	8	122	99	10	17	506	Average of 3 days.		
	Eric R. R.	7479	291	322										
FAIR ST.	Petition	2000 to 2500	200 to 250	250 to 300	103									From south side, poor. From north side, poor.
	Board of Trade	1306	161	47										
	Street Comm'rs	1931	158	37	37	1	116	163	8	10		Average of 2 days.		From south side, poor. From north side, fair.
HAMILTON AVE.	Petition	4000 to 5000	400 to 500	500 to 600	103									
	Board of Trade	3258	423	108	67	4	117	100	10	11		Average of 2 days.		From south side, fair. From north side, poor.
	Street Comm'rs	2401	272	160										
	Eric R. R.	5000 to 6000	400 to 500	500	103									
LAFAYETTE ST.	Petition	4611	327	35										From south side, poor. From north side, poor.
	Board of Trade	2274	200	52	14	2	119	166	16	21		Average of 2 days.		
	Street Comm'rs	2000 to 2500	200 to 300	300										
	Eric R. R.	1188	91	7	10	1	90	98	9	17		Average of 2 days.		From south side, poor. From north side, poor.
FRANKLIN ST.	Petition	1169	76	8										
	Board of Trade	2000 to 2500	200 to 300	300 to 400										
	Street Comm'rs	2000	200	100										
	Eric R. R.	1367	131	28										From south side, poor. From north side, poor.
KEEN ST.	Petition	1238	140	23	21							Average of 2 days.		
	Board of Trade													
	Street Comm'rs													
	Eric R. R.													From south side, poor. From north side, fair.
WARREN ST.	Petition	2500	200	100										
	Board of Trade	1520	113	48										
	Street Comm'rs	1285	162	25	30	1	125	98	10	23		Average of 2 days.		River Street, both sides fair. Putnam Street, both sides poor.
	Eric R. R.	1200 to 1500	200 to 300	300 to 400										
RIVER ST.	Petition	15000 to 20000	1000 to 1500	1500 to 2000										
	Board of Trade	7579	979	352	304	136	103	103	12	35	586	Average of 3 days.		
	Street Comm'rs	10913	156	279								Average of 3 days.		
	Eric R. R.	5873	756	332	148	98	121	97	8	21	192			

NOTE.—The count given under "Petition" is taken for the amended petition. Board of Trade's count is shown on Exhibits P-4, P-5 and P-6, taken Oct. 4th, 6th and 7th, 1913. Time covered from 5 A. M. to 11 P. M. Street Commissioner's count is shown on Exhibits P-33, P-34, P-35 and P-36, taken in March and April, 1914. Time covered 6 A. M. to 7 P. M. Erie R. R.'s count is shown on Exhibit R-25, made in November and December, 1913, from 5 A. M. to 11 P. M.

*Report of Board.***SCHEDULE "C."****PATERSON ESTIMATES.****Considering Entire Work Done at One Time.**

	By City, Ex. P. 48, Page 473. Not including property damages nor operating costs due to interference with regular schedules.	By Erie R. R., Ex. R. 101, Page 719. Not including property damages nor operating costs due to interference with regular schedules nor rearranging industries off right of way.	By Erie R. R., Ex. 102, Page 711. Total cost, including various items not in city's estimate.	Revelation. If excess claimed by Public Railway Co. is included in Erie R. R. Company's estimate of total cost, Exhibit 102.
Complete Plan....	\$2,587,024.95	\$2,969,037.88	\$3,384,084.88	\$3,401,460.16
Plan leaving Fifth Avenue at present grade	2,351,277.35	2,702,268.42	3,072,690.42	3,090,865.68
Plan leaving both Fifth Avenue and Madison Avenue at grade	2,038,024.85	2,426,659.75	2,776,081.75	2,786,441.99
Plan leaving Madison Avenue at grade but raising at Fifth Avenue	2,273,772.45	2,692,429.21	3,087,476.21	3,104,851.47

Report of Board.

Division of Work Into Five Sections, A, B, C, D and E.

[illegible]

Petition of Erie Railroad for Further Hearing.

**Petition of Respondent, Erie Railroad Co., for
Further Hearing.**

(Filed February 5, 1915.)

To the Honorable, The Board of Public Utility Commissioners of the State of New Jersey:

Erie Railroad Company, one of the respondents in the above matter, respectively shows as follows:

10 1. On the 11th day of January, 1915, this Board filed its report herein, in which it stated:

(a) That the crossing of each of the streets involved in this proceeding, and the railroad tracks of this respondent at the same level, appeared to the Board to be dangerous to public safety, and that public travel on such highways was impeded thereby.

20 (b) That said crossings are such that the grades should be changed in accordance with the prayer of the petition of the City of Paterson, as provided by the statute;

(c) That it would deal with the proceeding as involving the adoption of one comprehensive plan or scheme covering all of said crossings;

30 (d) That this respondent contemplates spending larger sums than would be required for the purpose of eliminating the crossings in question in making other improvements which, in the judgment of the Board, are not considered so immediately necessary, and that some of the money intended to be used for such other improvements might be more appropriately used in this work, should it be found necessary to divert it.

(e) That the testimony offered by this respondent for the purpose of showing its financial ability to pay the cost of eliminating said crossings (if said cost should be imposed upon it), did not satisfy said Board that his respondent would not be able to secure the necessary funds:

40 (f) That the work of elimination of said grade crossings should be ordered at the earliest practicable

Petition of Erie Railroad for Further Hearing.

time, and that the plan to be approved should be that generally outlined in what is described in the preceding as Plan No. 2 of the City of Paterson, with certain modifications thereof, and that the work should be permitted to be done in sections:

(g) That the question of the time within which work should be commenced and completed would be heard by the Board on February 5th, 1915.

2. Respondent, Erie Railroad Company, represents that it infers from the said report that it is the intention of this Board when it issues its order upon said report, to direct that the expense of the elimination of said grade crossings shall be paid by this respondent, except such proportion of the expense as may be legally chargeable to Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company, Western Union Telegraph Company, the City of Paterson; and also except such proportion of said expense as may be legally chargeable to the owners of adjacent sidings or other property.

3. Respondent therefore respectfully calls the attention of the Board to the fact that its answer and amended answer, and undisputed testimony offered on its behalf at the hearings, show that this respondent is not the owner of the right of way upon which said railroad tracks are constructed, and over which this respondent runs certain trains, but that the fee of the same, and the franchise to operate a railroad thereon, are, and for many years past have been, owned by two other companies, part of said right of way and franchises being owned by a corporation organized under the laws of the State of New Jersey, known as the President and Board of Directors of the Paterson and Hudson River Railroad Company,

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Petition of Erie Railroad for Farther Hearing.

and part thereof being owned by a corporation organized under the laws of the State of New Jersey, known as Paterson and Ramapo Railroad Company; the testimony shows that this respondent runs trains over said right of way of said companies by virtue of certain leases made under date of September 9, 1852, by said President and Board of Directors of the Paterson and Hudson River Railroad Company, and said Paterson and Ramapo Railroad Company, to a corporation known as Union Railroad Company, and that this respondent has succeeded to the rights of said Union Railroad Company in said leased property and franchises; the testimony further shows that this respondent does not own or control the fee of any of the right of way or property where said grade crossings are proposed to be eliminated, except that it owns or controls certain property adjacent to said right of way, consisting of various parcels of real estate upon which are located certain side tracks, switches and station buildings. The testimony shows in detail which portions of said right of way and other property are owned or controlled by said Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent, respectively.

4. Respondent further shows that it does not own any of the right of way upon which said trains are run, but that it runs trains over the crossing in question only as lessees under the two leases above referred to, and in so far as the obligation to the State is concerned, it runs the same only as an agent of said Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, and that the obligation to the State of New Jersey and the people thereof for the operation of said railroad, is imposed by their respective charters solely upon the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company; and that there

Petition of Erie Railroad for Further Hearing.

fore the said two companies, and each of them, are the companies operating such railroad, within the meaning of Chapter 57 of the Laws of 1913, upon which this proceeding is based. Wherefore, this respondent urges and insists that any order made by this Board should direct that said two companies should eliminate said crossings, and bear the expense thereof as their respective interests may appear, and that no part of the expense thereof should be borne by this respondent, except so much, if any, as it may be legally chargeable with under Section 4 of said statute. 10

5. Respondent further urges and insists that if this Board should find that this respondent is one of the companies operating said railroad, or any part thereof, within the meaning of said statute, then and in that event any order made by this Board with respect to the elimination of said crossings, or any or either of them, should direct that said crossings be eliminated jointly by said Paterson and Hudson River Railroad Company, Paterson and Ramapo Railroad Company and this respondent, so that the cost thereof may thereafter be apportioned between and among the said Paterson and Hudson River Railroad Company, Paterson and Ramapo Railroad Company and this respondent by appropriate proceedings as now provided by law. 20

6. Respondent further says that from said report it appears that the Board has decided to adopt a plan for the elimination of said crossings which will cost approximately \$2,350,000.00; it also appears from said report that the Board has decided to divide the work of eliminating said crossings into five sections, as shown in schedule "D" attached to said report; that of said five sections numbered from "A" to "E," inclusive, sections "A," "B" and "E," the cost of eliminating which according to the estimate of this respondent would amount to approximately \$2,400,000.00, are on the right of way of the Paterson and Rama- 30 40

Petition of Erie Railroad for Further Hearing.

po Railroad Company; that sections "C" and "D," the cost of eliminating which, according to estimates of this respondent, would amount to about \$980,000.00, are on the right of way of the Paterson and Hudson River Railroad Company.

10 Respondent further says that it appears from Exhibit R-19 offered in this proceeding, that the entire valuation of the property of the Paterson and Ramapo Railroad Company within the State of New Jersey amounts to \$1,836,688.00, and from Exhibit R-18 offered in this proceeding, that the entire valuation of the property of the Paterson and Hudson River Railroad Company within the State of New Jersey amounts to \$2,881,603.00.

20 Respondent further says that the assessed valuation of all property, including the franchise, of the Paterson and Ramapo Railroad Company located within the limits of the City of Paterson, amounts to the sum of \$495,474.00, and that the assessed valuation of all property, including the franchise, of the Paterson and Hudson River Railroad Company located within the limits of the City of Paterson, amounts to \$593,290.00; that the total amount assessed upon the Paterson and Ramapo Railroad Company in the State of New Jersey, as the value of the franchise, is the sum of \$10,000.00; and that the total assessment for franchise upon the Paterson and Hudson River Railroad Company is the sum of \$40,000.00.

30 This respondent therefore says that the proportion of the expense for the elimination of said crossings proposed to be charged to that portion of the railroad in question embracing the crossings mentioned in sections "A," "B" and "E" will far exceed the total assessed valuation of the entire railroad, including franchise, of the Paterson and Ramapo Railroad Company; and that the cost of eliminating the crossings which fall within sections "C" and "D" of said report,
40 and which lie within that portion of the right of way

Petition of Erie Railroad for Further Hearing.

of the railroad in question owned by Paterson and Hudson River Railroad Company will far exceed the total assessed valuation of all character of property, including franchise, of said company lying within the limits of the City of Paterson.

That the cost of such elimination, as stated in the Board's opinion, exceeds the value of the leasehold interest of this respondent in the property of either or both of said two companies, which is subject to termination by the State without adequate provision for reimbursement of this respondent for the expense incurred by it in such elimination. Your petitioner therefore urges and insists that any order made by this Commission in accordance with said report will exceed the authority or power conferred upon this Commission by Chapter 57 of the Laws of 1913, or possessed by the State of New Jersey, and amounts to the confiscation of the property of this respondent within the meaning of the Constitution of the State of New Jersey and of the United States, as set forth in more detail in the answer and amended answer filed in this proceeding.

7. Respondent further says that the conclusion of the Board, above referred to, (d), to the effect that this respondent contemplates spending larger sums than would be required for the purpose of eliminating the crossings in question, in making other improvements, and the position of the Board, above referred to, (e), that it is not satisfied that this respondent will not be able to secure the necessary funds to eliminate the crossings in question, indicate that the uncontradicted evidence submitted to the Board by this respondent was not understood and that the Board has mistaken the Company's desire to make needed improvements for its ability to secure or expend the sums required therefor; that as a matter of fact, the respondent does not now and at the time of the giving of the testimony in this proceeding did not con-

Petition of Erie Railroad for Further Hearing.

- template the spending of larger sums than would be required for the elimination of these crossings, nor indeed any considerable sums, in making other improvements, for the reason, as the evidence submitted shows, that the respondent did not at that time have, nor has it now, nor can it at the present time obtain, the necessary funds or any considerable part thereof
- 10 beyond what it actually required for the continuance of safe operation on its railroad, either for the making of such other improvements or for the elimination of the crossings in question; that as shown by the evidence heretofore submitted, this respondent's net income available for expenditure on improvements during the fiscal year ending June 30th, 1914, was \$662,295.87, being its entire net income less such amounts as were required to be devoted to sinking and other reserve funds under prior existing mortgages. That
- 20 the result of the Company's operations for the six months following June 30th, 1914, indicate that the amount of income available for expenditure on improvements will not exceed, if it equals, the amount available during the proceeding year, and even this result can be obtained only by the exercise of the most rigid economy in operation and postponement of expenditures actually required. That the company has already during the six months ending December 31st, 1914, been required to expend for necessary improve-
- 30 ments, principally in the interest of safety in operation, such as the furnishing of additional ballast, heavier rails and tie plates and reconstructing and strengthening bridges, safety appliances and steel underframes on cars and locomotives, over \$600,000.00, and expenditures of this character must continue to large amounts. Your respondent is also under legal obligation to spend large sums for improvements under existing contracts, or orders of the courts or of public authorities, as set forth in Section 8 below.
- 40 There are also expenditures required immediately in

Petition of Erie Railroad for Further Hearing.

the interests of safety in operation as set forth in Section 9 below. Your respondent has no capital funds outside of its income, to devote to these purposes except the remaining proceeds of certain capital obligations heretofore issued, amounting to approximately \$300,000.00, all of which is required by an obligation heretofore incurred, to be devoted to a particular work now in the course of construction, under order of the public authorities; that your respondent has no additional capital obligations available for issue and disposition for the purpose of securing new capital funds over and above what is required for the payment of capital obligations about to mature.

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8. Respondent further says that it will be required during the remaining portion of the year ending June 30, 1915, by obligations already incurred under orders of public authorities, or contracts heretofore made, to expend for improvements the amount of \$885,900.00, as shown more in detail on schedule "A" attached hereto; that during the next twelve months this respondent will be obliged to expend under similar obligations the amount of \$2,052,400.00, as shown more in detail on schedule "A" attached hereto, and that the total amount of such obligations for improvements so imposed upon respondent is the sum of \$4,042,700.00, as shown more in detail on schedule "A" attached hereto; that it will be impossible for the respondent to obtain funds for the elimination of grade crossings in question in this case from the diversion of funds from the expenditures mentioned in this paragraph, as respondent is bound by law to make the same.

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9. Respondent further says that during the next twelve months, repairs and renewals of bridges on its railroad will be absolutely necessary for safety in the operation of its railroad as an estimated cost of \$1,094,825.00, details of which are shown on schedule "B" attached hereto; that it will be impossible for

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Petition of Erie Railroad for Further Hearing.

10 this respondent to divert funds from such work for the purpose of eliminating the grade crossings now in question, because such work is absolutely necessary for safety, and the failure on the part of this respondent to make the same might result in serious accident and loss of life, and subject this respondent to suits for heavy damages, or result in prosecution of this respondent, its officers, or directors, for failure to properly perform its or their duty.

20 10. Respondent further says that the various improvements set forth in the evidence heretofore presented by it in this proceeding should be made, and that in particular the sum of upwards of \$12,000,000.00, as set forth more in detail in schedule "C" attached hereto, should be expended at once upon improvements and settlements of its railroad and property for the purpose of enabling it to render safe, adequate and proper service in the transportation of the traffic in interstate commerce which is now offered to it, and any order made in this proceeding whereby any substantial part of the cost of eliminating said crossings, or any or either of them, is imposed upon this respondent, will inevitably impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers because, such order would compel this respondent to expend, 30 for the purpose of eliminating said crossings, to the extent that it complied with the same, moneys which would otherwise be available for, and could be used by this respondent in the making of the changes and improvements, or some of them, referred to in Sections 7 to 10 hereof, and particularly those specified in schedules "A" to "C" inclusive, and such order would to that extent prevent this respondent from making such necessary changes and improvements.

40 11. Respondent further shows that from and by the report of the said Board, it appears that it is the

Petition of Erie Railroad for Further Hearing.

determination of the Board that the heaviest burden of expense for the elimination of said crossings will fall upon this respondent, but said report does not announce any determination of the Board as to what, if any, other persons or corporations will share in the cost of such eliminations, or to what extent they or either of them should so share; this respondent respectfully calls the attention of this Board to the provisions of Section 2, Chapter 57, Laws of 1913, under which this proceeding is brought, providing as follows:

“The entire expense of such alterations, changes, relocation or opening, including the damages to adjacent property, shall be paid by such railroad, unless a street railway uses such crossings, in which event the Board may order not exceeding ten per centum of such expense directly chargeable to the crossing, by the street railway company, to be paid by the company operating said street railway and the balance to be paid by the company operating such railroad.”

Respondent shows that the Public Service Railway Company is a street railway, and as such, uses the crossings at Market street, Broadway and River street—three of the crossings involved in the one comprehensive plan or scheme which the Board has adopted in its report as a general plan covering all of the crossings involved in this proceeding; and this respondent respectfully urges and insists that said Public Service Railway Company should be chargeable with ten per cent. of the total cost of eliminating all of said crossings involved in said plan or scheme so adopted by said Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company or made necessary by reason of changes in, or the removal of, property, constructions, tracks, wires, poles or other appurtenances thereto, which may be necessary to conform its property or

Petition of Erie Railroad for Further Hearing.

constructions to any order which this Board may make in this proceeding.

- 10 12. Respondent further says that in and by said report the Board finds, among other things, that the crossing of each of the streets involved in this proceeding and the railroad tracks of this respondent at the same level, is dangerous to public safety, and that public travel on such highways is impeded there-
by; these conclusions are predicated upon the finding of the Board that a large number of freight trains, passenger trains and drill engines pass daily over said crossings, or some of them, thereby endangering public safety and impeding public travel; that inas-
much as this respondent cannot assume the cost which would be imposed upon it by an order of the Commission requiring it to eliminate the grade cross-
20 ings in question, this respondent urges that if the Board concludes that under existing circumstances such an order must be made, an opportunity should be given this respondent to present plans whereby the number of trains or engine movements, or the manner of the same, or both, over said crossings, may be changed so as to remove the danger and impediment to public travel.

- 30 Wherefore, this respondent, expressly reserving, and not waiving, any and all objections heretofore made, and saving all legal rights or defenses heretofore asserted or claimed, respectfully prays that further hearing be granted for the purpose of considering the following matters, and taking testimony thereon so far as may be necessary.

- 40 (a) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company as the railroad companies operating the railroad over the crossings in question within the meaning of Chapter 57, Laws of 1913.

Petition of Eric Railroad for Further Hearing.

(b) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent jointly, so that the cost thereof may be apportioned between and among said companies by appropriate proceedings.

(c) Whether this respondent is financially able to carry out the terms of any order made in this proceeding if the heaviest burden of the cost thereof falls upon it. 10

(d) Whether such order would impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

(e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the total cost of eliminating all of the crossings involved in said plan or scheme adopted by the Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company under Section 4 of said statute. 20

(f) If the Board reaches the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this respondent will submit. 30

Dated February 5th, 1915.

H. A. TAYLOR,
GEO. S. HOBART,
DUANE E. MINARD,
*Attorneys for Respondent,
Eric Railroad Company.*

*Petition of Erie Railroad for Further Hearing.***SCHEDULE "A."**

**Work Required to be Done by Existing Contracts,
Statutes or Orders of Courts or Commissions.
The Railroad's Proportion of the Cost Only.**

	From Date to June 30, 1915.	From Date to Jan. 1, 1916	From Date to Complete.
ELIMINATION OF GRADE CROSSINGS.			
*Jamestown, NY	\$57,000.	\$160,000.	\$396,000.
Youngstown, O.	115,000.	570,000.	1,730,000.
Union Avenue, Cleveland, O.	35,000.	98,000.	98,000.
*Buffalo, NY General	265,000.	335,000.	918,000.
*Corning, NY	10,000.	10,000.	10,000.
Rivare, Ind.		20,000.	25,000.
*Midvale, NJ	6,000.	6,000.	6,000.
*Chester, NY	21,000.	21,000.	21,000.
Mill Village, Pa.		15,000.	15,000.
Dunmore, Pa.	10,000.	10,000.	10,000.
Haverstraw, NY		5,000.	5,000.
*Waverly, NY	500.	500.	500.
*Gowanda, NY	500.	500.	500.
*Nanuet, NY	1,500.	1,500.	1,500.
*Laketon, Ind. to Akron, Ind.	1,000.	18,000.	18,000.
Double Track Sharon RR through Sharon, Pa.	168,000.	386,000.	386,000.
Detour of Penna. RR at Belfast, NY	30,000.	100,000.	100,000.
*Interlocking "SJ" Tower, Lima, O.	12,000.	12,000.	12,000.
*Interlocking at North Judson, Ind.	15,000.	15,000.	15,000.
*Molasses Tanks at Weehawken, NJ	29,900.	29,900.	29,900.
*Additions to Corning station, Corning, NY	2,000.	2,000.	2,000.
Ridgewood, NJ Improvements,	50,000.	116,000.	122,300.
New Station at Niles, Ohio,	15,000.	20,000.	20,000.
Dock at Farmer's Point, Buffalo, NY	28,500.	95,000.	95,000.
Bridge 198.3 C & E Divn. Gold ditch	4,000.	6,000.	6,000.
	\$885,900.	\$2,052,400.	\$4,042,700.

NOTE:—The * denotes work now under construction.
Erie Railroad Company,
Office of Supt. of Construction,
New York, N. Y.,
Feb. 4, 1915.

*Petition of Erie Railroad for Further Hearing.***SCHEDULE "B."****Work Which is Absolutely Necessary for Safety.****NOTE:—This list covers a period of one year only.**

Bridge 383.27, Rochester Division	\$76,825.
Bridge 5.49, Newark Branch, Newark, N. J.	235,000.
Bridges 13.73 and 15.11, Tioga Divn.	160,000.
Bridge 3, Jefferson Division	30,000.
Various bridges all over the system covered by bridge program of 1913 and 1914 in addition to above	385,000.
Bridge Program for 1914 and 1915	208,000.
	<hr/>
	\$1,094,825.

NOTE:—After all the items above have been taken care of, we will have an annual expense of about \$250,000. to renew various bridges which are now nearing the limit of their usefulness.

Erie Railroad Company,
Office of Supt. of Construction,
New York, N. Y.,
Feb. 4, 1915.

SCHEDULE "C."

Completing double track Marion to Lomax	\$540,000.
Extension to yards and terminal facilities at division points,	600,000.
Coal Unloader, Cleveland, O.	105,000.
Docks at Columbus Road and Scranton Ave. Cleveland	150,000.
Extension to North Randall Ore Docks	72,000.
18th St. Float Bridge, Chicago,	20,000.
Erie St. Yard Chicago,	107,000.
23rd St. Ferry Rack, New York City	1,200.
Freight House, Akron, Ohio,	233,000.
Coal Dock at Buffalo, N. Y.,	350,000.
Bulkhead Shed Pier 7, East River, N. Y.	10,000.
Extension of Piers 20 and 21, North River, N. Y.,	500,000.
Automatic Signals and Interlocking as follows:—	
Alleghany Division	200,000.
Meadville Division, Salamanca to Pymantuning	262,000.
C & E Division, Lomax to Griffith	43,000.
Leavittsburg	12,000.
Distant Signals on Greenwood Lake, Rochester and Alleghany Divisions	13,000.
New Engine House and Facilities at Croxton, N. J.	335,000.
Pier 56, North River	150,000.
Second Track and Grade Reduction, Lomax to Griffith	2,051,000.
Second Track Canal Branch, Youngstown, O.	40,000.
Second Track and Grade Reduction Steamburgh to Jamestown	2,116,000.
Second Track and Grade Reduction Buchanan Jct. to Shenango	1,204,000.
Second Track M. P. 401 to "CY" Tower Alleghany Divn.	514,000.
Webster Ave. Yard, Chicago,	100,000.
Pier Shed 49th St. New York	6,000.

Petition of Erie Railroad for Further Hearing.

Ferry Coaling Station, Jersey City	\$16,000.
Jersey City Terminal, Pier, renewals and extensions	1,800,000.
Terminal 150th St. and Harlem River, New York	200,000.
Terminal, Weehawken, New Jersey	307,000.
	<hr/>
	\$12,001,200.

Erie Railroad Company,
Office of Supt. of Construction,
New York, N. Y.,
Feb. 4, 1915.

Order of Board of April 29, 1915.

Order of Board.

Dated April 29, 1915.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN THE MATTER OF THE APPLICATION
OF THE CITY OF PATERSON FOR
ALTERATION OF GRADE CROSSINGS
ON THE LINE OF THE ERIE RAIL-
ROAD.

Order.

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The Board of Finance of the City of Paterson, a municipality of this state, having presented to, and filed with, the Board of Public Utility Commissioners, a petition in writing, and an amendment to said petition, likewise in writing, praying that, by virtue of the powers conferred by an Act of the Legislature of this State entitled, "A Supplement to an Act concerning Public Utilities; to create a Board of Public Utility Commissioners, and to prescribe its duties and powers, approved April 21, 1911," which supplement was approved March 12, 1913, and which constitutes Chapter 57 of the Laws of 1913, the Board order the alteration of the crossing of Madison Avenue, Clay and Straight Streets (two crossings), Cedar Street, Market Street and Park Avenue (one crossing), Ellison Street, Van Houten Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Franklin Street, Keen Street, Warren Street, River and Putnam Streets (one crossing), each of which streets and highways is a public highway in said City of Paterson, where the same cross at the same level the railroad of the Erie Railroad Company, in said City of Paterson, "according to plans to be approved by said board by substituting for each of such crossings a crossing not at the grade of such public highways either by carrying such public highway under or over such railroad or by recon-

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Order of Board of April 20, 1915.

10 structing such railroad under or over such public highway or by vacating, relocating or changing the lines, width, direction or location of such highway, and the opening of a new highway in place of the one or ones ordered vacated," and which petition set forth the facts upon which relief under said statute was sought, and the Board having fixed a time and place for a hearing before it upon said petition, and having given
20 notice thereof to the said municipality, the Erie Railroad Company, the Paterson and Ramapo Railroad Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, and all corporations, co-partnerships and individuals interested, all in accordance with the provisions of said act, and the said Erie Railroad Company having filed its answer to said petition, which answer was later amended, and the Paterson and Ramapo Railroad
30 Company, the President and Board of Directors of the Paterson and Hudson River Railroad Company, Passaic Water Company, Western Union Telegraph Company, National Silk Dyeing Company, Fullers' Express Company, The Herman Company, John Agnew Company, James Wilson & Sons (Inc.), P. S. Van Kirk Company, Henry M. Post, Paterson Brewing and Malting Company, Public Service Electric Company, Public Service Gas Company, Public Service Railway Company, D. Fullerton & Company, Meyer & DeVogel, Leslie Elliott & Co., Samuel Smith & Sons Company,
40 Morris & Company, McNab & Harlin Manufacturing Company, New York Telephone Company, and Paterson, Passaic & Suburban Telephone Company having likewise filed answers, and all of the parties in interest who appeared having been duly heard, the Board of Public Utility Commissioners filed a report of its findings and determinations on January 11th, 1915, which report is made part of this order by reference thereto herein, and it

40 Now appearing to said Board that the Board of Finance of the City of Paterson is the board or body

Order of Board of April 20, 1915.

having charge of the finances of said municipality, and that said Madison Avenue (Clay Street, Straight Street), Cedar Street, Market Street, Park Avenue, Ellison Street, Van Houten Street, Broadway, Fair Street, Hamilton Avenue, Lafayette Street, Franklin Street, Keen Street, Warren Street, River Street and Putnam Street is each a public highway; and that the said public highways, and each of them, and the railroad of the Erie Railroad Company in said city cross each other at the same level, and that such crossings are, and each of them is, dangerous to public safety and that the public travel on such highways, and each of them is impeded thereby and that the said Erie Railroad Company is operating said railroad, and that said crossings, and each of them, should be altered according to a plan and profile approved by the board, and such a plan and profile having been prepared.

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Now, therefore, it is on this twentieth day of April, nineteen hundred and fifteen, ORDERED, and the said Board of Public Utility Commissioners by virtue of the power and authority vested in it by the aforesaid act, does hereby ORDER the Erie Railroad Company to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof, entitled "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings Plan for Elimination of Grade Crossings on Main Line of Erie Railroad from Madison Avenue to River Street, Paterson, N. J. Based on Surveys Made by the City of Paterson, H. J. Harder, Eng'r. Scale, 1 in. = 50 ft. January, 1915, Approved Chas. A. Mead, Chief Inspector Div. of Bridges and Grade Crossings," and profile of same also annexed to and made part hereof, entitled "State of New Jersey Board of Public Utility Commissioners Division of Bridges and Grade Crossings. Profile for Elimination of Grade Crossings on Main Line of Erie Railroad from Madison Ave. to River St., Paterson, N. J. Based in surveys made by the City of Paterson, H. J. Harder, Eng'r. Scales:

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Hor. 1" = 100' Vert. 1" = 4'. January, 1915, Drawn
by J. L. Vogel, Approved Chas. A. Mead, Chief Inspec-
tor Div. of Bridges & Grade Crossings," which said
plan and profile are hereby approved; by substituting
therefor crossings not at the grade of the public high-
ways known as Madison Avenue, Straight Street, Clay
Street, Market Street and Park Avenue, Ellison Street,
10 Van Houten Street, Broadway, Fair Street, Hamilton
Avenue, Lafayette Street, Keen Street, Warren Street,
Putnam and River Streets; by changing the lines,
width and direction thereof and carrying so much
thereof as so changed under the said railroad, except
in the case of Madison Avenue, which is carried over
the railroad, according to and as shown on said plan
and profile for said purpose, and by vacating the re-
maining parts of said highways within the lines of the
right of way of said railroad company, and further by
20 vacating that part of Madison Avenue lying west of the
railroad which is included between the right of way
line of the railroad and the line of the relocated Madi-
son Avenue; by substituting for the existing crossings
at Cedar Street a crossing under the railroad at Taylor
Street and for the existing crossing at Franklin Street
a crossing under the railroad at Montgomery Street
and also by widening and altering the existing high-
ways known as Essex Street, Governor Street and Ful-
ton Street, adjusting the structures spanning them
30 to the proposed grade or grades (which said new high-
ways shall be located, and of the width, length and
direction and carried over or under the said railroad
where so indicated); by reconstructing said railroad
and highways and by performing all other work re-
quired according to and as shown on the said plan and
profile.

Any telegraph, telephone, gas, electric, lighting,
water, oil, pipe, line or other company, or corporation,
co-partnership or individual whose property or con-
struction it may be necessary to change or remove to
40 carry said plan and this order into effect, shall change
or remove the same, according to said plan.

Order of Board of April 20, 1915.

AND IT IS FURTHER ORDERED, that the said Erie Railroad Company and the City of Paterson, and Public Service Railway Company, Public Service Gas Company, Public Service Electric Company, Passaic Water Company, New York Telephone Company, Paterson, Passaic and Suburban Telephone Company and Western Union Telegraph Company, and all other parties to this proceeding, and each and every of them proceed with due diligence to the execution of this order, and comply with all of the requirements thereof and the duties imposed upon them thereby, and by the said Act under which this order is made, and the laws of this State, and that to that end, they and each of them exercise in good faith, all of the powers conferred upon them and each or any of them by the Laws of this State. 10

AND IT IS FURTHER ORDERED, that the said Erie Railroad Company begin the actual work of construction required in the performance and execution of this order on or before the first day of August, nineteen hundred and sixteen, and continuously carry on the same thereafter and perform and fully comply with the directions and requirements of this order, and complete all of the work required to be done, within eight years from the date hereof, and that in the continuous prosecution of said work it takes up in the order named the divisions thereof in said profile marked and designated "A," "B," "C," and "D"; the work required in connection with Section "A" thereof to be begun on or before August 1st, 1916, and to be completed within four years and three months from the date hereof; the work required in connection with Section "B" to be begun within four years and three months from the date hereof and completed within five years and six months from the date hereof; the work required in connection with Section "C" to be begun within five years and six months from the date hereof and completed within seven years and three months from the date hereof; and the work in connection with Section "D" 20 30 40

Order of Board of April 20, 1915.

to be begun within seven years and three months and completed within eight years from the date hereof.

And it appearing to the Board that the street railway operated by Public Service Railway Company uses the said crossings at (1) Park Avenue and Market Street, (2) Broadway, and (3) River Street, the Board in accordance with the power and authority vested in it by said act further ORDERS the Public Service Railway Company to pay ten per centum of the expenses of the alterations, changes, relocating and opening, required by this order, including damages to adjacent property, directly chargeable to the crossings, and each of them, so used by the said street railway operated by it.

And the said Erie Railroad Company and said Public Service Railway Company are ordered to keep specific and complete records of the expenses directly chargeable to the crossings, and each of them, so used by said street railway of said Public Service Railway Company and leave is hereby given to said companies, or either or them, to make application to the Board for further order in the event that they cannot agree upon the amount of such expenses so directly chargeable to said crossings used by the street railway operated by said Public Service Railway, or any of them.

This order shall take effect May 20th, 1915.

Dated April 20th, 1915.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By

(Signed) RALPH W. E. DONGES,

(SEAL)

President.

Attest:

(Signed) ALFRED N. BARBER,

Secretary.

I HEREBY CERTIFY the foregoing to be a true copy of Order adopted by the Board of Public Utility Commissioners, at a meeting held Tuesday, April 20th, 1915, and recorded in the minutes of said meeting.

(Signed) ALFRED N. BARBER,

Secretary.

*Report of Board on Petition for Further Hearing.***Report of Board.**

(Filed April 20, 1915.)

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN THE MATTER OF THE APPLICATION
OF THE CITY OF PATERSON FOR
ALTERATION OF GRADE CROSSINGS
ON THE LINE OF THE ERIE RAIL-
ROAD.

*On Petition
for Further
Hearing.
Report.*

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E. F. Merrey, for the City of Paterson.

G. S. Hobart, D. E. Minard and H. A. Taylor, for
Erie Railroad Company.

20

William B. Gourley, for numerous switch and prop-
erty owners.

L. D. H. Gilmour, for Public Service Railway Com-
pany, Public Service Gas Company and Public Service
Electric Company.

Frank H. Sommer, for the Board.

The Board filed its conclusions in this proceeding,
and fixed a date for hearing upon the single question
as to the time to be allowed for the commencement and
completion of the work found to be necessary to be
done. At such hearing the Erie Railroad Company
made application for leave to file a petition for a fur-
ther hearing upon certain matters set forth in such
petition. The Board granted leave to file the petition,
and also afforded counsel an opportunity to discuss the
merits of the application contained therein.

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The petition prayed that the Board take further tes-
timony upon six questions, namely:

“(a) Whether any order made in this proceed-
ing should not be made against the Paterson and Hud-
son River Railroad Company and the Paterson and

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Report of Board on Petition for Further Hearing.

Ramapo Railroad Company as the railroad companies operating the railroad over the crossings in question within the meaning of Chapter 57, Laws of 1913.

10 “(b) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent jointly, so that the cost thereof may be apportioned between and among said companies by appropriate proceedings.

 “(c) Whether this respondent is financially able to carry out the terms of any order made in this proceeding if the heaviest burden of the cost thereof falls upon it.

20 “(d) Whether such order would impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

 “(e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the total cost of eliminating all of the crossings involved in said plan or scheme adopted by the Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company under Section 4 of said Statute.

30 “(f) If the Board reaches the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this respondent will submit.”

40 This proceeding was pending for a number of months, during which time ample opportunity was afforded to all parties interested to present fully and completely all the testimony desired to be submitted.

Report of Board on Petition for Further Hearing.

Testimony was in fact submitted touching all questions, except that arising from the suggestion to reduce train movements, and the Board had before it and considered such proofs in arriving at the conclusion. Since the filing of the petition for further hearing, the Board has given further consideration to the testimony taken, and the suggestions contained in the petition of the railroad company.

The Board concludes that as the petitioner had ample opportunity to submit all and any material evidence, and the Board had before it and actually considered the questions raised, that the prayer for an opportunity to submit further testimony on such questions should be denied.

As to the reduction of train movements, the company was afforded every opportunity to furnish such proof, if it had any, and did not avail itself of such opportunity. In addition, the offer on this score was so indefinite that it does not appear reasonable to delay the proceeding for the purpose.

The prayer of the petition will be denied.

Dated April 20th, 1915.

BOARD OF PUBLIC UTILITY COMMISSIONERS,

By

(Signed) RALPH W. E. DONGES,

(SEAL)

President.

Attest:

(Signed) ALFRED N. BARBER,

Secretary.

I HEREBY CERTIFY the foregoing to be a true copy of Report made and filed by the Board of Public Utility Commissioners at a meeting held Tuesday, April 20th, 1915.

(Signed) ALFRED N. BARBER,

Secretary.

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Writ of Certiorari—(Erie Railroad Company).

**Writ of Certiorari.
(Erie Railroad Company.)**

NEW JERSEY, ss.

The State of New Jersey to the Board
(L. S.) of Public Utility Commissioners, GREET-
ING:

10 We being willing for certain reasons, to be certi-
fied of a certain order of said Board dated April 20,
1915, in a certain proceeding entitled "In the Matter
of the application of the City of Paterson for altera-
tion of grade crossings on the line of the Erie Rail-
road," wherein the Board of Finance of the City of
Paterson was the petitioner and the Erie Railroad
Company and certain others were respondents, by
which order said Erie Railroad Company was ordered
20 to alter certain crossings and each of them, named
in said order, according to the plan therefor, thereto
annexed and made part thereof, by substituting
therefor crossings not at the grade of said streets; do
command you that the said order, together with the
said petition, the answers of Erie Railroad Company
and of the other respondents in said proceeding, the
petition of Erie Railroad Company for further hear-
ing thereon (filed February 5, 1915), and the report
and order of the Board with respect thereto, the testi-
mony and exhibits offered before said Board, the peti-
30 tion of Erie Railroad Company for rehearing (filed
June 16, 1915), and all other proceedings by or be-
fore said Board concerning the same, as fully and
entirely as before you they remain or are in your
custody or control, you do certify and send, together
with this writ, to our Supreme Court at Trenton, on
the sixth day of July, 1915, that we may cause to be
done thereupon what of right and according to law
ought to be done.

Writ of Certiorari—(Eric Railroad Company).

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D. 1915.

WM. C. GEBHARDT,
Clerk.

COLLINS & CORBIN,
Attorneys.

10

Endorsed:

NEW JERSEY SUPREME COURT.

Eric Railroad Company, <div style="text-align: right;"><i>Prosecutor,</i></div> <div style="text-align: center;">vs.</div> Board of Public Utility Commissioners, City of Paterson and Board of Finance of said city, <div style="text-align: right;"><i>Defendants.</i></div>	}	
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WRIT OF CERTIORARI.

COLLINS & CORBIN,
Attorneys of Prosecutor,
Jersey City, N. J.

I allow this writ. Let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,
J. S. C.

36

Writ of Certiorari—(Public Service Railway Co.)

Writ of Certiorari.

(Public Service Railway Company.)

NEW JERSEY, ss.

The State of New Jersey to Alfred N. Barber, Secretary of the Board of Public Utility Commissioners, GREETING:

10

We being willing for certain reasons to be certified of and concerning a certain order of the Board of Public Utility Commissioners made on the twentieth day of April, in the year of our Lord one thousand nine hundred and fifteen, requiring Public Service Railway Company to pay ten per centum of the cost of abolishing certain grade crossings of the Erie Railroad Company in the City of Paterson, to wit, at Park avenue and Market streets, Broadway, and River street, and all things touching and concerning the same;

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We do command that the said order, together with all proceedings had and taken by the Board of Public Utility Commissioners upon which the same is founded, and all the testimony of witnesses and other evidence taken thereon with all things touching and concerning the same, as fully as before you they appear and remain, you do certify and send over your seal to our Justices of our Supreme Court at Trenton on the sixth day of July, 1915, that we may cause to be done thereon what according to law and the constitution of the State of New Jersey ought to be done.

30

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, in the year of our Lord one thousand nine hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

FRANK BERGEN,
Attorney.

40

Writ of Certiorari—(Public Service Railway Co.)

Endorsed:

NEW JERSEY SUPREME COURT.

Public Service Railway Company, <i>Prosecutor,</i>	} <i>On Certiorari.</i> 10
vs. Board of Public Utility Commis- sioners and City of Paterson, <i>Defendants.</i>	

WRIT OF CERTIORARI.

Returnable July 6th, 1915.

FRANK BERGEN,
Attorney of Prosecutor,
755 Broad Street, 20
Newark, N. J.

Allocatur:

JAMES F. MINTURN,
J. S. C.

Writ of Certiorari—(Passaic Water Company).

Writ of Certiorari.
(Passaic Water Company.)

NEW JERSEY, ss.

The State of New Jersey to the Board
of Public Utility Commissioners, GREET-
ING:

- 10 We being willing, for certain reasons, to be certified of a certain order of said Board dated April 28, 1915, in a certain proceeding entitled "In the Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company, Passaic Water Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order into effect, should change or remove the same, according to said plan; do command you that the said order, together with the said petition, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board with respect thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings by or before said Board concerning the same, as fully and entirely as before you they remain
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1891

Writ of Certiorari—(Passaic Water Company).

or are in your custody or control, you do certify and send, together with this writ, to our Supreme Court at Trenton, on the sixth day of July, 1915, that we may cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D. 1915.

WM. C. GEBHARDT,
Clerk.

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HUMPHREYS & SUMNER,
Attorneys.

Endorsed:

NEW JERSEY SUPREME COURT.

20

Passaic Water Company,	}
<i>Prosecutor,</i>	
vs.	
Board of Public Utility Commis-	
sioners, City of Paterson and	}
Board of Finance of said city,	
<i>Defendants.</i>	

WRIT OF CERTIORARI.

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HUMPHREYS & SUMNER,
Attorneys of Prosecutor.

Paterson, N. J.

I allow this writ; let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,
J. S. C.

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Writ of Certiorari—(Western Union Telegraph Co.)

Writ of Certiorari.

(Western Union Telegraph Company.)

NEW JERSEY, ss.

The State of New Jersey to the Board
of Public Utility Commissioners, GREET-
ING:

- 10 We being willing, for certain reasons, to be certi-
fied of a certain order of said Board dated April 28,
1915, in a certain proceeding entitled "In the Matter
of the Application of the City of Paterson for altera-
tion of grade crossings on the line of the Erie Rail-
road," wherein the Board of Finance of the City of
Paterson was the petitioner and the Erie Railroad
Company, Western Union Telegraph Company and
certain others were respondents, by which order said
Erie Railroad Company was ordered to alter certain
20 crossings and each of them, named in said order, ac-
cording to the plan therefor, thereto annexed and
made part thereof, by substituting therefor crossings
not at the grade of said streets; and by which said
order it was provided that any telegraph, telephone,
gas, electric, lighting, water, oil, pipe line or other
company, or corporation, co-partnership or indi-
vidual, whose property or construction it might be
necessary to change or remove to carry said plan
and said order into effect, should change or remove
30 the same, according to said plan; do command you
that the said order, together with the said petition,
the answers of Erie Railroad Company and of the
other respondents in said proceeding, the petition of
Erie Railroad Company for further hearing thereon
(filed February 5, 1915) and the report and order of
the Board with respect thereto, the testimony and
exhibits offered before said Board, the petition of
Erie Railroad Company for rehearing (filed June 16,
1915), and all other proceedings by or before said
40 Board concerning the same, as fully and entirely as

1803

Writ of Certiorari—(Western Union Telegraph Co.)

before you they remain or are in your custody or control, you do certify and send, together with this writ, to our Supreme Court at Trenton, on the sixth day of July, 1915, that we may cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D. 1915.

WM. C. GEBHARDT,
Clerk.

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COLLINS & CORBIN,
Attorneys.

Endorsed:

NEW JERSEY SUPREME COURT.

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Western Union Telegraph Company,

Prosecutor,

vs.

Board of Public Utility Commissioners,
City of Paterson and
Board of Finance of said city,
Defendants.

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WRIT OF CERTIORARI.

COLLINS & CORBIN,
Attorneys of Prosecutor,

Jersey City, N. J.

I allow this writ. Let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,
J. S. C.

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Writ of Certiorari—(D. Fullerton & Co.)

Writ of Certiorari.

(D. Fullerton & Company.)

NEW JERSEY, ss.

The State of New Jersey, To The
Board of Public Utility Commissioners,
GREETING :

- 10 We being willing, for certain reasons, to be certified
of a certain order of said Board dated April 20, 1915,
in a certain proceeding entitled "In the Matter of the
Application of the City of Paterson for alteration of
grade crossings on the line of the Erie Railroad,"
wherein the Board of Finance of the City of Paterson
was the petitioner and the Erie Railroad Company,
D. Fullerton & Co. and certain others were respondents,
by which order said Erie Railroad Company was
ordered to alter certain crossings and each of them,
20 named in said order, according to the plan therefor,
thereto annexed and made part thereof, by substituting
therefor crossings not at the grade of said streets;
and by which said order it was provided that any
telegraph, telephone, gas, electric, lighting, water, oil,
pipe line or other company, or corporation, co-partnership
or individual, whose property or construction it might
be necessary to change or remove to carry said plan and
order into effect, should change or remove the same,
according to said plan; do command
30 you that the said order, together with the said petition,
the answers of Erie Railroad Company and of the other
respondents in said proceeding, the petition of Erie Railroad
Company for further hearing thereon (filed February 5, 1915)
and the report and order of the Board with respect thereto,
the testimony and exhibits offered before said Board, the
petition of Erie Railroad Company for rehearing (filed June
16, 1915), and all other proceedings by or before said
Board concerning the same, as fully and entirely as
40 before you they remain or are in your custody or con-

1805

Writ of Certiorari—(D. Fullerton & Co.)

trol, you do certify and send, together with this writ, to our Supreme Court at Trenton, on the sixth day of July, 1915, that we may cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of June, A. D., 1915.

WM. C. GEBHARDT,

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Clerk.

HUDSON & JOELSON,

Attorneys.

Endorsed :

NEW JERSEY SUPREME COURT.

D. Fullerton & Co.,

Prosecutor.

vs.

Board of Public Utility Commissioners,
City of Paterson and
Board of Finance of said city,

Defendants.

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WRIT OF CERTIORARI.

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HUDSON & JOELSON,

Attorneys of Prosecutor,

Paterson, N. J.

I allow this writ. Let it be sealed. The writ to operate as a stay.

Dated June 16th, 1915.

JAMES F. MINTURN,

J. S. C.

40

Writ of Certiorari—(Meyer & De Vogel).

Writ of Certiorari.

(Meyer & De Vogel.)

The State of New Jersey to The Board
(L. S.) of Public Utility Commissioners of the
State of New Jersey, GREETINGS:

10 We being willing for certain reasons to be certified
of a certain order made by the Board of Public Utility
Commissioners of the State of New Jersey on the
twentieth day of April, nineteen hundred and fifteen,
in a certain proceeding before said Board wherein
City of Paterson was petitioner and Erie Railroad
Company, and Jacob Meyer and Kommer De Vogel,
partners, trading and doing business as Meyer &
De Vogel, *et al*, were respondents directing the said
Erie Railroad Company to elevate its railroad tracks
20 through a portion of the City of Paterson and which
matter is entitled "In the matter of the application
of the City of Paterson for alteration of Grade Cross-
ings in the line of the Erie Railroad."

We do command you, that the aforesaid order made
by the said Board of Public Utility Commissioners of
the State of New Jersey on the twentieth day of April,
1915, with the testimony of the witnesses and the
report of said Board in said matter and all records
affecting the said cause, together with all things touch-
ing and concerning the making of said order as fully
30 and entirely as before you they remain to our Justices
of the Supreme Court of Judicature at Trenton on the
sixth day of July, nineteen hundred and fifteen, you
certify and send together with this our writ that
therein may be done what of right and according to
the laws of this state should be done.

Witness, William S. Gummere, Esquire, Chief
Justice of our Supreme Court at Trenton, this six-

1807

Writ of Certiorari—(Meyer & De Vogel).

teenth day of June, in the year of our Lord one thousand nine hundred and fifteen.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

WILLIAM C. GEBHARDT,
Clerk.

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Endorsed:

NEW JERSEY SUPREME COURT.

Jacob Meyer and Kommer De Vogel,
partners, as Meyer & De Vogel,
Prosecutors,

vs.

Board of Public Utility Commissioners of the State of New Jersey, and City of Paterson,
Defendants.

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WRIT OF CERTIORARI.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

Returnable July 6th, 1915.

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The writ is allowed. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

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Writ of Certiorari—(Fullers Express Co.)

Writ of Certiorari.

(Fullers Express Company.)

The State of New Jersey to The Board
(L. S.) of Public Utility Commissioners of the
State of New Jersey, GREETINGS:

10 We being willing for certain reasons to be certified
of a certain order made by the Board of Public Utility
Commissioners of the State of New Jersey on the
twentieth day of April, nineteen hundred and fifteen,
in a certain proceeding before said Board wherein
City of Paterson was petitioner and Erie Railroad
Company, and Fullers Express Company, *et al*, were
respondents directing the said Erie Railroad Com-
pany to elevate its railroad tracks through a portion
of the City of Paterson and which matter is entitled
"In the matter of the application of the City of Pater-
son for alteration of grade crossings in the line of the
20 Erie Railroad."

We do command you, that the aforesaid order made
by the said Board of Public Utility Commissioners
of the State of New Jersey on the twentieth day of
April, 1915, with the testimony of the witnesses and
the report of said Board in said matter and all records
affecting the said cause, together with all things touch-
ing and concerning the making of said order as fully
and entirely as before you they remain to our Justices
of the Supreme Court of Judicature at Trenton on the
30 sixth day of July, nineteen hundred and fifteen, you
certify and send together with this our writ that
therein may be done what of right and according to
the laws of this State should be done.

Witness, William S. Gummere, Esquire, Chief
Justice of our Supreme Court at Trenton this six-
teenth day of June, in the year of our Lord one thou-
sand nine hundred and fifteen.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

40 WILLIAM C. GEBHARDT,
Clerk.

1809

Writ of Certiorari—(Fullers Express Co.)

Endorsed :

NEW JERSEY SUPREME COURT.

Fullers Express Company, <i>Prosecutor,</i>	}	10
<i>vs.</i>		
Board of Public Utility Commis- sioners of the State of New Jersey and City of Paterson, <i>Defendants.</i>	}	

WRIT OF CERTIORARI.

WILLIAM B. GOURLEY,
Atty. of Prosecutor. 20

Returnable July 6th, 1915.

~~This~~ writ is allowed. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

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40

Writ of Certiorari—(Morris & Company).

Writ of Certiorari.

(Morris and Company.)

The State of New Jersey to the Board
(L. S.) of Public Utility Commissioners of the
State of New Jersey, GREETINGS:

10 We being willing for certain reasons to be certified
of a certain order made by the Board of Public Utility
Commissioners of the State of New Jersey on the twenty-
tieth day of April, nineteen hundred and fifteen, in a
certain proceeding before said Board wherein City
of Paterson was petitioner and Erie Railroad Com-
pany, and Morris and Company, *et al.*, were respon-
dents, directing the said Erie Railroad Company to
elevate its railroad tracks through a portion of the
City of Paterson and which matter is entitled "In
20 the matter of the application of the City of Paterson
for alteration of Grade Crossings in the line of the
Erie Railroad.

We do command you, that the aforesaid order made
by the said Board of Public Utility Commissioners
of the State of New Jersey on the twentieth day of
April, 1915, with the testimony of the witnesses and
the report of said Board in said matter and all records
affecting the said cause, together with all things touch-
ing and concerning the making of said order as fully
30 and entirely as before yet they remain to our Justices
of the Supreme Court of Judicature at Trenton on
the sixth day of July, nineteen hundred and fifteen,
you certify and send together with this our writ that
therein may be done what of right and according to
the laws of this state should be done.

Witness, William S. Gummere, Esquire, Chief Jus-
tice of our Supreme Court at Trenton, this sixteenth

1811

Writ of Certiorari—(Morris & Company).

day of June, in the year of our Lord one thousand nine hundred and fifteen.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

WILLIAM C. GEBHARDT,
Clerk.

10

Endorsed :

NEW JERSEY SUPREME COURT.

Morris and Company,

Prosecutor,

vs.

Board of Public Utility Commis-
sioners of the State of New Jersey
and City of Paterson,

Defendants.

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WRIT OF CERTIORARI.

WILLIAM B. GOURLEY,
Atty. of Prosecutor.

Returnable July 6th, 1915.

30

This writ is allowed. Let it be sealed.

JAMES F. MINTURN,
Justice of the Supreme Court.

40

*Return of Board.***Return.**

*To the Honorable the Judges of the Supreme Court of
Judicature of the State of New Jersey:*

10 The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain order made by said Board on the twentieth day of April, one thousand nine hundred and fifteen, together with the record and proceedings of said Board, and all things touching and concerning the same, as fully and entirely as before said Board they remain, as it is within commanded.

In witness whereof the seal of said Board is hereto affixed and certified by the subscriber.

ALFRED N. BARBER,

*Secretary of the Board of Public
Utility Commissioners of New Jersey.*

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(Copy of testimony will be found in Volume 1 of Printed Book; copy of exhibits in Volumes 2 and 3, and copy of pleadings and other proceedings before said Board in Volume 4.)

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*Rule Re Return.***Rule Re Return.**

Filed September 11, 1915.

NEW JERSEY SUPREME COURT.PUBLIC SERVICE RAILWAY COM-
PANY,*Prosecutor.**vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND CITY OF PATER-
SON,*Defendants.**On
Certiorari.
Rule.*

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A writ of *certiorari* having been sued out by the prosecutor in the above stated cause, returnable on the sixth day of July, nineteen hundred and fifteen, and the proceedings sought to be brought up for review by said writ having been duly returned to this court under the command of a certain writ of *certiorari* returnable the same day wherein the Erie Railroad Company is prosecutor, and it having been agreed that reasons should not be filed herein until after the return was made to said last-mentioned writ, and that such rule or rules should be made and entered in this cause as should be necessary, and it having been since further agreed that the prosecutor's reasons should be filed on or before the twentieth day of September, nineteen hundred and fifteen, and this rule being consented to;

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It is ordered that the return under the writ of *certiorari* wherein the Erie Railroad Company is prosecutor, above recited, be deemed and taken to be the return to this writ, and that the reasons of the prose-

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Rule Re Return.

cutor for reversal be filed herein on or before the twentieth day of September, 1915.

Rule entered this eleventh day of September, nineteen hundred and fifteen.

On motion of

FRANK BERGEN,
Attorney for Prosecutor.

10

We consent to the above rule:

FRANK H. SOMMER,
*Attorney for Board of Public
Utility Commissioners, Defendant.*

EDWARD F. MERREY,
Attorney for City of Paterson, Defendant.

(Similar rules entered for Passaic Water Co., Western Union Telegraph Co., D. Fullerton & Co., Meyer & De Vogel, Fullers Express Co., Morris & Co.)

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1815

Reasons of Erie Railroad Company.

**Reasons
of
Erie Railroad Company.**

Filed September 15, 1915.

NEW JERSEY SUPREME COURT.

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ERIE RAILROAD COMPANY,
Prosecutor,
vs.
BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND
BOARD OF FINANCE OF SAID CITY,
Defendants.

**On
Certiorari.
Reasons.**

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The prosecutor files the following reasons upon which it will rely for the reversal of the proceedings under review in this case:

(1) The conclusions or findings of the Board of Public Utility Commissioners that the crossings, and each of them, at the same level of the following highways, and each of them, known respectively as (A) Madison avenue, (B) Clay and Straight streets (two crossings), (C) Cedar street, (D) Market street and Park avenue (one crossing), (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Franklin street, (L) Keen street (M) Warren street, (N) River and Putnam streets (one crossing), and the railroad stated in the order under review to be the railroad of the Erie Railroad Company in the City of Paterson are dangerous to public safety and that the public travel on said highways and each of them is impeded thereby, were not, nor was either of them, justified nor reasonably supported as to any

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Reasons of Erie Railroad Company.

or all of said crossings, by the evidence taken before said Board.

(2) There was no evidence before said Board to support reasonably the order under review with respect to said crossings named in Reason (1), or any or either of them.

10 (3) According to the whole of the evidence taken before said Board, the said order under review, so far as the same relates to the crossings of the said highways, and each of them, named in Reason (1), and the railroad stated in said order to be the railroad of Erie Railroad Company is unreasonable as to each and all of said crossings.

20 (4) The evidence taken before said Board shows that at the crossings at the same level of the highways, and each of them, named in Reason (1) and the railroad stated in said order to be the railroad of Erie Railroad Company, the prosecutor has provided and maintains safeguards that measure up to the danger to be encountered by the public at said crossings and each of them; and further shows that the said highway crossings are not, nor is any or either of them, dangerous to public safety; and that the public travel at the crossings of the said highways, and each of them, is not impeded by said crossings, or any or either of them, within the meaning of Chapter 57, Laws of 1913.

30 (5) The evidence shows that the action of said Board in ordering that the crossings at the same level of the highways, and each of them, named in Reason (1) and the railroad stated in said order to be the railroad of Erie Railroad Company be altered in the manner and according to the plan described in the said order, is, as to each and all of said crossings—

(a) purely arbitrary, or

(b) without reasonable basis upon which to rest,

(c) unsupported by the facts laid before said Board, and should therefore be declared null and void and ordered to be set aside.

(6) If the conclusions or findings of said Board that all of the said crossings, and each of them named in Reason (1) are dangerous to public safety and that the public travel on all of said highways, and each of them, is impeded thereby, are justified, or reasonably supported, by the evidence taken before said Board so far as it relates to some one or more of said crossings, nevertheless, the said conclusions or findings are not justified, or reasonably supported, so far as relates to the other crossings, or any or either of them; and said conclusions or findings cannot, under the evidence be applied to the other crossings, or any or either of them, so as to support or justify like conclusions or findings as to said other crossings, and each and all of them.

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(7) If there was some evidence before said Board to support reasonably the order under review, with respect to some one or more of the said crossings named in Reason (1), nevertheless, there was no evidence to support reasonably the order under review with respect to the other crossings, or any or either of them; and the conclusions or findings as to some one or more of said crossings cannot, under the evidence, be applied to the other crossings, or any or either of them, so as to permit like conclusions or findings or a similar order as to said other crossings, and each and all of them respecting which there was no evidence to support reasonably the conclusions or findings, and the order based thereon.

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(8) According to the whole of the evidence taken before said Board, the said order under review is unreasonable so far as relates to at least some one or more of the said crossings named in Reason (1); and even if, according to the whole of the evidence, the

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Reasons of Erie Railroad Company.

said order is unreasonable as to some one or more of said crossings, that fact does not permit the Board to enlarge and extend its order so as to include the other crossings, or any or either of them, as to which said order is unreasonable.

- (9) The evidence taken before said Board shows that at least some one or more of the said crossings named in Reason (1), the prosecutor has provided and maintains safeguards that measure up to the danger to be encountered by the public at said crossings, or some one or more of them; and further shows that at least some one or more of said crossings named in Reason (1) are not dangerous to public safety, and that public travel is not impeded thereby, within the meaning of Chapter 57, Laws of 1913; and, even if the evidence shows that, at some one or more of said crossings the prosecutor has not provided and does not maintain such safeguards, and even if the evidence shows that some one or more of said crossings are dangerous to public safety, and that public travel is impeded thereby, within the meaning of said statute, those facts do not permit the Board to enlarge and extend its order so as to include the other crossings, or any or either of them, at which the prosecutor has provided and maintains such safeguards, and which are not dangerous to public safety, and by which public travel is not impeded within the meaning of said statute.

(10) The evidence shows that the action of said Board in ordering that the crossings at the same level at the highways and each of them named in Reason (1) and the railroad stated in said order to be the railroad of Erie Railroad Company be altered in the manner and according to the plan described in the said order is, as to at least some one or more of said crossings—

- (a) purely arbitrary, or

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(b) without any reasonable basis upon which to rest, or

(c) unsupported by the facts laid before said Board, and even if the order is not purely arbitrary, nor without any reasonable basis upon which to rest, nor unsupported by the facts laid before said Board as to some one or more of said crossings, that fact does not permit the Board to enlarge and extend its order so as to include the other crossings, or any or either of them. 10

(11) The petition of the Board of Finance of the City of Paterson was not made or presented as required by Chapter 57 of the Laws of 1913, or by the rules of the Board of Public Utility Commissioners, and said Board therefore did not acquire any jurisdiction to take any proceedings under said statute or to make any order by virtue thereof, because more than one highway grade crossing was involved and embraced in said petition, proceedings and order. 20

(12) Said order under review is unreasonable and invalid because the fact, if it be a fact, that some one or more of the public highway crossings named in Reason (1) are dangerous to public safety or that public travel on such highways is impeded thereby (within the meaning of Chapter 57 of the Laws of 1913) does not confer upon said Board of Public Utility Commissioners power or jurisdiction under said statute to order, at the expense of the prosecutor, the alteration or the elimination of other highway grade crossings that may be affected by, or involved in, the alteration or elimination of such crossing, or crossings, as are dangerous to public safety or impede public travel, within the meaning of said statute. 30

(13) The conclusions or findings of said Board that the railroad which crosses at the same level the highways named in Reason (1) was the railroad of 40

Reasons of Erie Railroad Company.

Erie Railroad Company were not justified, or reasonably supported by the evidence taken before said Board.

10 (14) There was no evidence before said Board to support reasonably the order under review with respect to the ownership of said railroad by Erie Railroad Company at said highway crossings named in Reason (1).

(15) According to the whole of the evidence taken before said Board the said order under review is unreasonable so far as it is based upon the conclusions or findings of said Board that the railroad which crosses at the same level the highways named in Reason (1) is the railroad of Erie Railroad Company.

20 (16) The evidence taken before said Board shows that the railroad which crosses the said highways named in Reason (1) is not the railroad of Erie Railroad Company.

(17) The evidence shows that the action of said Board in finding that the railroad which crosses the said highways named in Reason (1) is the railroad of Erie Railroad Company is—

(a) purely arbitrary, or

30 (b) without reasonable basis upon which to rest, or

(c) unsupported by the facts laid before said Board.

(18) The conclusions or findings of said Board that Erie Railroad Company was, within the meaning of Chapter 57, Laws of 1913, operating the railroad which crosses at the same level the highways named in Reason (1), were not justified nor reasonably supported by the evidence taken before said Board.

40 (19) There was no evidence before said Board to support reasonably the order under review, with re-

Reasons of Erie Railroad Company.

spect to the operation of said railroad, within the meaning of Chapter 57, Laws of 1913, by Erie Railroad Company at said highway crossings named in Reason (1).

(20) According to the whole of the evidence taken before said Board, the said order under review is unreasonable so far as it relates to the operation of said railroad, within the meaning of Chapter 57, Laws of 1913, by Erie Railroad Company, at the said highways named in Reason (1). 10

(21) The evidence taken before said Board shows that Erie Railroad Company was not, within the meaning of Chapter 57, Laws of 1913, operating the railroad which crosses the said highways named in Reason (1).

(22) The evidence shows that the action of said Board in finding that the said Erie Railroad Company was operating said railroad within the meaning of Chapter 57, Laws of 1913, at the said highways named in Reason (1) is— 20

- (a) purely arbitrary, or
- (b) without reasonable basis upon which to rest, or
- (c) unsupported by the facts laid before said Board.

(23) The evidence taken before said Board shows that the railroad which crosses at the same level the highways known as (A) Madison avenue, (B) Clay and Straight streets, (C) Cedar street and (D) Market street and Park avenue, is the railroad of a corporation known as "The President and Board of Directors of the Paterson and Hudson River Railroad Company." 30

(24) The evidence taken before said Board shows that the railroad which crosses at the same level the highways known as (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Frank- 40

Reasons of Erie Railroad Company.

lin street, (L) Keen street, (M) Warren street, and (N) River and Putnam streets, is the railroad of a corporation known as "Paterson and Ramapo Railroad Company.

10 (25) The evidence taken before said Board shows that a corporation known as "The President and Board of Directors of the Paterson and Hudson River Railroad Company" is the company operating the railroad which crosses at the same level the highways known as (A) Madison avenue, (B) Clay and Straight streets, (C) Cedar street, and (D) Market street and Park avenue, within the meaning of Chapter 57, Laws of 1913.

20 (26) The evidence taken before said Board shows that a corporation known as "Paterson and Ramapo Railroad Company" is the company operating the railroad which crosses at the same level the highways known as (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Franklin street, (L) Keen street, (M) Warren street, and (N) River and Putnam streets, within the meaning of Chapter 57, Laws of 1913.

30 (27) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways known as (A) Madison avenue, (B) Clay street and Straight street, (C) Cedar street, (D) Market street and Park avenue, for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street), whereas said order, if, under the evidence, any order is justified, should
40 have directed that the expense of such alterations,

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changes, re-locations and opening (less the amount to be paid by Public Service Railway Company), should be paid by The President and Board of Directors of the Paterson and Hudson River Railroad Company.

(28) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways known as (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Franklin street, (L) Keen street, (M) Warren street, (N) River and Putnam streets, for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street), whereas said order—if, under the evidence, any order is justified—should have directed that the expense of such alterations, changes, re-location and opening (less the amount to be paid by Public Service Railway Company), should be paid by Paterson and Ramapo Railroad Company.

(29) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways named in Reason (1) for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street, whereas said order—if, under the evidence, any order is justified—should have directed that the expense of such alterations, changes, re-location and opening (less the amount to

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be paid by Public Service Railway Company), should be paid by The President and Board of Directors of the Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, as their respective interests may appear, or be determined by appropriate proceedings.

- 10 (30) Said order under review is unreasonable and invalid in so far as it orders Erie Railroad Company to alter the crossings and each of them at the highways named in Reason (1), for the reason that said order requires that the entire expense of the alterations, changes, re-location and opening, as directed in said order, be paid by Erie Railroad Company (less the amount to be paid by Public Service Railway Company at (1) Park avenue and Market street, (2) Broadway, and (3) River street), whereas said order —if, under the evidence any order is justified—should
- 20 have directed that the expense of such alterations, changes, re-location and opening (less the amount to be paid by Public Service Railway Company), should be paid jointly by said Erie Railroad Company, The President and Board of Directors of Paterson and Hudson River Railroad Company, and Paterson and Ramapo Railroad Company, so that the cost thereof might be apportioned between and among said Erie Railroad Company, The President and Board of Directors of Paterson and Hudson River Railroad Company,
- 30 and Paterson and Ramapo Railroad Company, by appropriate proceedings, as provided by law, in accordance with the respective interests of said companies.

(31) Said order and the statute upon which the same is based, to wit, Chapter 57, Laws of 1913, are void, for the reason that the same are in violation of, and contrary to, the Constitution of the State of New Jersey in the following particulars:—

- 40 (a) Said order and statute take the private property of the prosecutor for a private use and also take

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the property of the prosecutor for public use without just compensation, contrary to Article I, Section 16, reading as follows:

"Private property shall not be taken for public use without just compensation."

(b) Said order and statute take the property of the prosecutor without affording to it any opportunity to protect its said property, thereby depriving the prosecutor of its right and guaranty of enjoying and defending, acquiring, possessing and protecting said property, contrary to Article I, Section 1, reading as follows: 10

"All men are by nature free and independent
 "and have certain natural and unalienable rights,
 "among which are those of enjoying and defending
 "life and liberty, acquiring, possessing and
 "protecting property, and of pursuing and obtaining safety and happiness."

(c) Said order and statute deprive the Court of Chancery of the State of New Jersey of its exclusive jurisdiction over the regulation of the use of easements, contrary to Article III, Section 1, reading as follows: 20

"The powers of the government shall be divided into three distinct departments—the legislative, executive and judicial; and no person or persons belonging to, or constituting one of these departments shall exercise any of the powers properly belonging to either of the others, except as herein expressly provided." 30

and contrary to Article VI, Section 1, reading as follows:

"The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; a court for the trial of impeachment; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law, which in-

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"inferior courts the legislature may alter or abolish,
 "as the public good shall require."

10 (d) Said order and statute deprive the Supreme Court of the State of New Jersey of its jurisdiction to compel the prosecutor or its lessors, The President and Board of Directors of the Hudson River Railroad Company, and the Paterson and Ramapo Railroad Company, by mandamus or other appropriate proceed-
 ings to perform the duties imposed by law upon the prosecutor or upon its said lessors, or either or both of them, with respect to the construction and maintenance of such crossings particularly named in said order, or some one or more of them, contrary to the provisions of said Article III, Section 1, and Article VI, Section.

20 (e) The object of the said statute is not expressed in the title thereof and the said statute embraces more than one object, contrary to Article IV, Section VII, paragraph 4, reading as follows:

"To avoid improper influence which may result
 "from intermixing in one and the same act such
 "things as have no proper relation to each other,
 "every law shall embrace but one subject, and
 "that shall be expressed in the title."

30 (32) Said order and statute upon which the same is based, to wit, Chapter 57 of the New Jersey Laws of 1913, are void for the reason that the same are in violation of and contrary to the Constitution of the United States in the following particulars:

(a) Said order and statute deprive the prosecutor of its liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of said Constitution, reading as follows:

"ARTICLE V."

"No person shall be * * * deprived of
 life, liberty or property, without due process of
 law."

"ARTICLE XIV."

"Nor shall any state deprive any person of life, liberty or property without due process of law."

(b) Said order and statute deny to prosecutor the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

(c) Said order and statute abridge the privileges or immunities of the prosecutor, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

(d) Said order and statute take the private property of the prosecutor for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

"Nor shall private property be taken for public use without just compensation."

(e) Said order and statute create a burden upon and operate as a regulation of, and an interference with interstate commerce, contrary to Article I, Section VIII, paragraph 3, reading as follows:

"The Congress shall have power * * * 3. To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes."

(f) Said order and statute impair the obligation of contracts between the State of New Jersey and the prosecutor, contrary to Article I, Section X, paragraph 1, reading as follows:

"No State shall pass any * * * law impairing the obligation of contracts."

(33) The statute upon which the order under review is based (being Chapter 57, Laws of 1913), is

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unreasonable, unconstitutional and invalid for the reason that it establishes no reasonable, or any, standard whereby the Board of Public Utility Commissioners may determine when or under what circumstances a highway grade crossing is dangerous to public safety, or that the public travel on said highway is impeded thereby, within the meaning of said statute, and delegates legislative power to said Board with respect to such crossings and the orders that may be made concerning the same.

(34) The statute upon which the order under review is based (being Chapter 57, Laws of 1913), is unreasonable, unconstitutional and invalid for the reason that, when and if the Board finds that a highway grade crossing is dangerous to public safety, or that the public travel on the highway is impeded by such crossing, the said statute confers upon said Board arbitrary power to order or to refuse to order that such crossing be altered.

(35) Said order is unreasonable and unconstitutional for the reason that it appears that the cost to Erie Railroad Company of complying with said order will greatly exceed the value of the leasehold interest of said company in the property of the President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company, or both of them combined, without any compensating advantage to said Erie Railroad Company, and therefore is, in effect, a confiscation of the property of said Erie Railroad Company, and takes the property of said Erie Railroad Company for the benefit of said The President and Board of Directors of Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, contrary to the provisions of the Constitution of the State of New Jersey and of the United States as hereinbefore set forth.

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(36) Said order is unreasonable and unconstitutional for the reason that the cost of complying therewith will exceed the total combined value of all the property, real and personal, of the corporations known as The President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company and the value of the prosecutor's interest therein, and will make the interest and investment of the prosecutor in said properties, or either of them incapable of earning, when used for railroad purposes, a fair and reasonable return upon the amount invested therein, and will confiscate prosecutor's property and interest therein. 10

(37) Said order, with the plan thereto annexed, in so far as they require, changes in the location or grades or other property of the corporations known respectively as, "The President and Board of Directors of Paterson and Hudson River Railroad Company," and "Paterson and Ramapo Railroad Company," and the construction, relocation or rebuilding thereof in whole or in part, as indicated on said plan, is invalid and beyond the jurisdiction of said Board, for the reason that the said changes, relocations, constructions, reconstructions and rebuildings confiscate the property of the prosecutor for the benefit of the said The President and Board of Directors of the Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, and take the property of the prosecutor for public use without just compensation, contrary to the provisions of the Constitutions of the State of New Jersey and of the United States, as hereinbefore set forth. 20 30

(38) The statute upon which said order is based (being Chapter 57, Laws of 1913), if construed to permit or require the Board of Public Utility Commissioners to order the company operating the rail- 40

Reasons of Erie Railroad Company.

road at the highway crossings named in Reason (1) to alter said crossings, or any or either of them, at the expense of said company so operating such railroad (less such amount as may be ordered to be paid by the street railway company using such crossing or crossings), is unconstitutional and void because it takes the property of the prosecutor for private use, and also takes its property for public use without just compensation and otherwise violates the provisions of the constitutions of the State of New Jersey and of the United States, as hereinbefore set forth.

10 (39) Said order is unreasonable and invalid and impossible of performance, for the reason that the cost to the prosecutor of complying therewith will be approximately the sum of three million dollars (exclusive of property damage), whereas the testimony taken before said Board shows that prosecutor did not have, and in all, reasonable probability will not have, sufficient funds available for such purpose; and has not and in all reasonable probability will not have, any means of securing funds whereby it might be enabled to comply with said order within the time limited therein.

30 (40) Said order is unreasonable, and the statute upon which the same is based is unconstitutional and invalid, for the reason that each of them fails to give to the railroad the alternative of decreasing or eliminating the danger to public safety and the impediment to public travel by decreasing the number of train movements over said crossings, or some of them, or by abandoning the railroad at said crossings, or some of them.

40 (41) Said order and the statute upon which the same is based, in so far as they require changes in, or the removal of, the property or constructions (or changes in the grade or location thereof), of persons or corporations other than telegraph, telephone, gas,

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electric, lighting, power, water, oil or pipe lines companies (as specified in Section 4 of Chapter 57, Laws of 1913), or other persons or companies owning or controlling or operating or managing within the State of New Jersey any steam railroad, street railway, traction railway, canal, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, telegraph system, plant or equipment for public use under privileges granted by the State of New Jersey, or by any political sub-division thereof, are unconstitutional and invalid for the reason that none of said persons or corporations is included within the description of the term "public utility" as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor are any of them otherwise subject to the jurisdiction of said Board.

(42) Said order and statute in so far as they require that the expense of removing, relaying or relocating municipal water or sewer pipes or other municipal pipes, conduits or subways to be borne by the municipality owning the same, and in so far as they require the expense of paving, curbing and flagging the highway, or highways, constructed as the result of changes of grade to be borne by the municipality, are unconstitutional and invalid, for the reason that a municipality is not included within the description of the terms, "public utility," as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners, and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is it otherwise subject to the jurisdiction of said Board.

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10 (43) Said statute (being Chapter 57, Laws of 1913), is in violation of and contrary to Article III, Section VII, paragraph 4, of the Constitution of the State of New Jersey, in that the object of the said statute is not expressed in the title thereof and the said statute embraces more than one object, in that said statute purports to empower the Board of Public Utility Commissioners to exercise jurisdiction over municipalities, companies, or corporations, copartnerships or individuals which are not included within the description of the term, "public utility," as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), to which said statute is a supplement.

20 (44) Said order is impossible of performance, in that it has no effective provision requiring changes in the property or construction of the various companies, copartnerships and individuals mentioned in the testimony taken before said Board, whose lands, buildings, facilities or other property will, as shown on the plan annexed to said order, be affected, or destroyed, or rendered useless thereby.

30 (45) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to acquire certain property for the purpose of complying therewith, to reconstruct the said railroad and highways, to perform all other work required according to and as shown on the plan and profile attached to said order, and to proceed with due diligence to the execution of said order, and to comply with all of the requirements thereof, and the duties imposed on it thereby, and by the said act under which said order was made and the laws of this state, and that to that end it exercise in good faith all of the

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powers conferred upon it by the laws of this State, for the following reasons:—

(a) The prosecutor is not now required, or empowered, by law, to carry out the said commands of said order, or any or either of them.

(b) Said Board has no power to issue such commands or any or either of them, to the prosecutor.

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(c) Said commands, and each of them, interfere unlawfully with the judgment and discretion of the board of directors of the prosecutor and deprive said directors of the right given them by law to exercise their judgment and discretion in the management of the prosecutor's business.

(46) Said order with the plan thereto annexed, so far as they require changes in the location or grade of various switches, sidetracks, leads, bridges, yards, structures and other facilities and property of the prosecutor, and other companies, corporations, co-partnerships, or individuals, and the construction, relocation or rebuilding thereof, in whole or in part, as indicated on said plan, is invalid and beyond the jurisdiction of said Board for the following reasons:

20

(a) The petition of the Board of Finance of the City of Paterson, upon which said order is based, was limited to a prayer for the elimination of certain highway crossings, and did not include therein any prayer for the relocation or reconstruction or rebuilding of said property of prosecutor, and said other companies, corporations, copartnerships or individuals.

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(b) Said Board has no power to order said changes, relocations, constructions, reconstructions and rebuildings, or any or either of them, upon the petition filed by said Board of Finance of the City of Paterson.

(c) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, included within the powers conferred by law upon said Board.

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(d) Said order was not made after hearing, upon notice, as required by law.

(e) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, any part of the duties or obligations imposed by law upon the prosecutor, or upon said other companies, corporations, co-partnerships or individuals.

10

(f) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, reasonably necessary, or required, or appropriate for the elimination of said crossings named in Reason (1), or any or either of them.

20

(g) Said changes, relocations, constructions, reconstructions and rebuildings impose a burden upon the interstate traffic of the prosecutor and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

(47) Said order is invalid in so far as it requires the construction or reconstruction and the relocation of the station buildings and facilities at or near Market street and the station buildings and facilities at or near River street, or either of them, in the City of Paterson, other than the station buildings and facilities respectively now occupied and maintained by the prosecutor, for the following reasons:

30

(a) The petition of the Board of Finance of the City of Paterson, upon which said order was based, was limited to a prayer for the elimination of certain highway crossings, and did not include therein any prayer for the construction or reconstruction or relocation of said station buildings and facilities, or either of them.

(b) There is no evidence to show that said existing station buildings and facilities, or either of them, are not safe, adequate or proper.

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(c) It was not made, after hearing, upon notice, as required by law.

(d) It does not appear that said constructions, or reconstructions, or relocations, or any or either of them, are reasonably necessary, required or appropriate for the elimination of the highway crossings named in Reason (1), or any or either of them.

(e) It deprives the prosecutor of its property without due process of law, as no hearing has been given to the prosecutor on the question as to whether said present station buildings and facilities, or either of them, are safe, adequate and proper, or on the question whether, in order to have the same safe, adequate and proper, it is necessary or reasonable to construct or reconstruct or relocate said station buildings and facilities, or either of them, in the manner required by said order.

10

(48) Said order is invalid in so far as it requires the prosecutor as a part of the construction, reconstruction and relocation of its station buildings and facilities at or near Market street in the City of Paterson, to take, occupy and use certain property on the approach of the Paterson City station of the New York, Susquehanna and Western Railroad Company indicated on said plan under the name of "Crosby Place," and owned by said New York, Susquehanna and Western Railroad Company.

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(49) Said order is invalid in so far as it requires the prosecutor as a part of the construction, reconstruction and relocation of its station buildings and facilities at or near River street in the City of Paterson, to build and maintain a sidewalk in the public street and to take, occupy and use part of a public street for the purpose of said construction, reconstruction and relocation.

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(50) Said order is invalid in so far as it requires the prosecutor as a part of the construction, recon-

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struction and relocation of its station buildings and facilities at or near River street in the City of Paterson, to devote part of its right of way to the use of the public in the form of a sidewalk on said right of way, and to construct and maintain the same as shown on said plan.

10 (51) Said order is invalid in so far as it requires the prosecutor to remove from its present location the buildings and facilities, and each of them, now used respectively by Fullers Express Company and Morris & Company, and to relocate, rebuild, reconstruct and maintain the same upon the respective sites indicated on the plan and profile attached to said order, for the following reasons:—

20 (a) Said Board is without authority or jurisdiction to make an order requiring the prosecutor to take any action whatever involving or affecting said buildings and facilities, or either of them.

(b) Said Board is without authority or jurisdiction to require the prosecutor to remove, rebuild, relocate and maintain said buildings and facilities or either of them at the respective sites indicated on the said plan and profile.

30 (c) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or either of them, to private purposes for the benefit of said Fullers Express Company and Morris & Company, or either of them.

(d) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or either of them, to public or any purposes other than the public purposes to which the same, or either of them, are now devoted.

40 (e) The evidence does not show that the removal of said buildings and facilities, or the relocation, rebuilding, reconstruction and maintenance of the same or either of them, are reasonably necessary, or required, or appropriate for the

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elimination of the highway crossings named in Reason (1), or any or either of them.

(52) Said order is invalid in so far as it requires the Prosecutor to relay, relocate, rebuild, reconstruct and maintain the tracks, poles and wires of Public Service Railway Company on the several sites indicated on the plan and profile attached to said order, for the following reasons:—

10

(a) Said Board is without authority or jurisdiction to make an order requiring the prosecutor to take any action whatever involving or affecting said tracks, poles, wires, or any or either of them.

(b) Said Board is without authority or jurisdiction to require the prosecutor to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires at the respective sites indicated on said plan and profile.

20

(c) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or any or either of them, so far as the same or some of them are on the right of way or other property of the prosecutor, to private purposes for the benefit of said Public Service Railway Company.

(d) Said Board is without authority or jurisdiction to require the prosecutor to devote said sites, or any or either of them, so far as the same or some of them are on the right of way or other property of the prosecutor, to public or any purposes other than the public purposes to which the same or some of them are now devoted.

30

(e) The evidence does not show that the relaying, relocation, rebuilding, reconstruction, or maintenance of said tracks, poles and wires, or any or either of them, are reasonably necessary or appropriate for the elimination of the highway crossings named in Reason (1), or any or either of them.

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(f) The prosecutor has no legal duty or right to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires, or any or either of them.

(g) The legal duty and right to relay, relocate, rebuild, reconstruct and maintain said tracks, poles and wires rests on persons or corporations other than the prosecutor.

10

(h) The existing contracts between the prosecutor or its predecessors, and other persons or corporations, or their predecessors, respectively, with respect to the relaying, relocating, rebuilding, reconstruction and maintenance of said tracks, poles and wires, and each of them, are impaired and destroyed.

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(i) There is no right in the prosecutor to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires in, along, or through public streets, except under the limitations imposed by law.

(53) Said order of said Board is invalid in so far as it requires the prosecutor to substitute for the existing crossings at Cedar street a crossing under the railroad at Taylor street and for the existing crossing at Franklin street a crossing under the railroad at Montgomery street, for the reason that:—

30

(a) Such substitution amounts to the opening of new streets across the railroad at Taylor street and Montgomery street and the closing of existing streets at Cedar street and Franklin street, and the power to open and close said streets respectively is not within the authority or jurisdiction conferred upon said Board by law.

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(b) The opening or closing of said streets respectively does not constitute the altering of such crossings by substituting therefor a crossing not at the grade of such public highway, either by carrying such public highway over or under said railroad or by reconstructing such railroad under or over such public highway, or by vacating, re-

locating or changing the lines, width, direction or location of such highway and the opening of a new highway in place of the one ordered vacated, within the meaning of Chapter 57, of the Laws of New Jersey for 1913.

(54) Said order is invalid in so far as it requires the prosecutor to widen and alter the undergrade crossings at Essex street, Governor street and Fulton street, and each of them, and to adjust, relocate and reconstruct the existing abutments and other structures at said streets and each of them, for the following reasons :— 10

(a) The petition of the Board of Finance of the City of Paterson, upon which said order was based, did not pray for any change in said undergrade crossings, or any or either of them, nor for the widening, nor alteration thereof, nor for the adjustment, reconstruction or relocation of the said abutments, and other structures, or any or either of them. 20

(b) Said order was not made after hearing, upon notice, as required by law.

(c) Said order deprives the prosecutor of its property without due process of law, because the prosecutor has had no hearing in regard thereto or concerning the propriety thereof.

(d) Said Board is without authority or jurisdiction to make any order requiring any action whatever to be taken for the widening or alteration of said undergrade crossings, or any or either of them, or the adjustment, reconstruction or relocation of the existing abutments, or other structures, at said undergrade crossings, or any or either of them. 30

(e) It does not appear that the widening and alteration of said undergrade crossings, or any or either of them, and the adjustment, reconstruction and relocation of said abutments and other structures are reasonably necessary, re- 40

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quired or appropriate for the elimination of the highway crossings named in Reason (1), or any or either of them.

(f) None of said highways cross the railroad of the prosecutor at the same level.

- 10 (55) Said order is invalid in so far as it requires the prosecutor to change the lines, width and direction of the highways named in Reason (1), or any or either of them, and to carry so much thereof as so changed under said railroad (except in the case of Madison
20 avenue), and to carry Madison avenue over said railroad, according to and as shown on said plan and profile for said purpose, and to vacate the remaining parts of said highways within the lines of the right of way of the prosecutor, and to vacate that part of Madison avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison avenue, for the following reasons:—

(a) The prosecutor is under no legal duty or obligation to change the lines, width or direction of the said highways, or any or either of them, nor to carry any part thereof as so changed under the said railroad, nor to vacate the remaining parts of said highways, or any or either of them, within the lines of said right of way, nor to vacate said part of said Madison avenue.

- 30 (b) The prosecutor has no power, or authority to change the lines, width or direction of the said highways, or any or either of them, nor to carry any part thereof as so changed under the said railroad, nor to vacate the remaining parts of said highway, or any or either of them, within the lines of the said right of way, nor to vacate said part of said Madison avenue.

- 40 (c) Said order imposes upon the prosecutor the entire expense of such changes, relocations and vacations, including damages to adjacent property (except such expenses as by statute are

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expressly imposed upon municipalities, or other persons or corporations), without affording to the prosecutor any hearing as to the propriety or necessity of such changes, relocations and vacations, and without affording to the prosecutor any hearing as to the cause of such changes, relocations or vacations and the method or the amount of the assessment, or assessments, therefore.

10

(d) The power or authority to order the prosecutor to change the lines, width or direction of said highways, or any or either of them, and to carry any part thereof as so changed under the said railroad and to vacate the remaining parts of said highways, or any or either of them, within the lines of the said right of way, and to vacate said part of said Madison avenue has not been conferred by law upon said Board of Public Utility Commissioners, and can only be exercised by the proper municipal, or other authorities, in the manner provided by law.

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(e) No appropriate proceedings have been taken and the necessary consents have not been given by or in behalf of the prosecutor, or other interested property owners, for the said changes, relocations and vacations of said highways, or any or either of them, as required by the Charter of the City of Paterson and by the laws of the State of New Jersey.

(56) The statute upon which said order is based is unreasonable, invalid and unconstitutional, in so far as it permits or requires said Board of Public Utility Commissioners to order the prosecutor to vacate, relocate or change the lines, width, direction or location of the highways named in Reason (1), or any or either of them; and in so far as it permits or requires the opening of new highways in the place of those ordered vacated, for the following reasons:—

30

(a) The prosecutor is under no legal duty or obligation to vacate, relocate or change the lines,

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width, direction or location of said highways, or any or either of them, or to open new highways in the place of those ordered vacated.

(b) The prosecutor has no power or authority to vacate, relocate or change the lines, width, direction or location of said highways, or any or either of them, or to open new highways in the place of those ordered vacated.

10

(c) Said statute attempts to impose upon the prosecutor the entire expense of such changes, relocations, or openings, including damages to adjacent property (except such expenses as by statute are expressly imposed upon municipalities or other persons or corporations), without affording to the prosecutor any hearing as to the propriety or necessity of such changes, relocations, or openings; and without affording to the prosecutor any hearing as to the cost of such changes, relocations or openings and the method or the amount of the assessment or assessments therefor.

20

(d) The power or authority to vacate, relocate or change the lines, width, direction or location of such highways and to open new highways in the place of those ordered vacated, has not been conferred by law upon said Board of Public Utility Commissioners and can only be exercised by the proper municipal or other authorities in the manner provided by law.

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(e) No appropriate proceedings have been taken, and the necessary consents have not been given, by or in behalf of the prosecutor or other interested property owners for the vacation, relocation or change of the lines, width, direction or location of such highways, or any or either of them, or for the opening of new highways in the place of those ordered vacated, as required by the Charter of the City of Paterson and by the laws of the State of New Jersey.

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(57) Said order is invalid in so far as it requires the prosecutor to reconstruct the railroad over the

public highways named in Reason (1) (except Madison avenue), by elevating the railroad at such public highways, and each of them, and by depressing the grade of said highways, and each of them, in order to pass under the railroad when thus elevated.

(58) The statute upon which the order under review is based is unreasonable and invalid and deprives the prosecutor of its property without due process of law, because it requires grade crossings to be altered and eliminated by substituting therefor a crossing not at the grade of the public highway, either by carrying the public highway over or under such railroad, or by reconstructing such railroad over or under such public highway, without permitting the Board of Public Utility Commissioners in its discretion to alter and eliminate such crossings by depressing or elevating the public highway in part and depressing or elevating the railroad in part.

(59) Said order and the statute upon which the same is based are illegal, unconstitutional and void in so far as they permit or require the prosecutor to construct or maintain bridges or passages over or under the railroad at the said crossing, or some one or more of them, named in Reason (1), for the reason that the highways at said crossings, or some one or more of them, were opened and laid out subsequent to the construction of the railroad at said crossings.

(60) The statute upon which the order under review is based (being Chapter 57, Laws of 1913) is unreasonable, unconstitutional and invalid because it deprives the prosecutor of its property without due process of law, and impairs the obligation of prosecutor's contracts by permitting the Board of Public Utility Commissioners to alter and amend the charters of the several predecessors in interest of the prosecutor, to whose rights the prosecutor has succeeded.

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(61) The statute upon which the order under review is based (being Chapter 57, Laws of 1913) is unreasonable, unconstitutional and invalid because it purports, or attempts to delegate, to the Board of Public Utility Commissioners, the power in its discretion to alter and amend the charters of the predecessors in interest of the prosecutor, to whose rights the prosecutor has succeeded.

(62) Said order and the statute upon which the same is based are illegal, unconstitutional and void in so far as they permit or require the prosecutor to relocate and reconstruct the highways mentioned in Reason (1), and to change the grade thereof, or parts thereof, outside of the right of way of the prosecutor at said crossings.

(63) The statute upon which said order is based is unreasonable and in violation of the Constitution of the United States, because it takes the property of the prosecutor without just compensation and without due process of law, and denies to it the equal protection of the laws and impairs the obligation of the prosecutor's contracts as follows:—

(a) The contracts made by the prosecutor with the holders of its stocks, bonds, notes and other obligations.

(b) The contracts made between the State of New Jersey and the prosecutor or its predecessors in interest, to whose rights prosecutor has succeeded.

(c) The contracts made between the prosecutor or its predecessors in interest, to whose rights the prosecutor has succeeded, and the Public Service Railway Company, or its predecessors in interest.

(d) The contracts made between the prosecutor, or its predecessors in interest, to whose rights prosecutor has succeeded, and the various corporations, copartnerships and individuals in pos-

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session or enjoyment of various sidings, switches and other facilities, as described in the evidence and in the plan attached to said order.

(e) The contracts made between the corporations known respectively as "The President and Board of Directors of Paterson and Hudson River Railroad Company," and "Paterson and Ramapo Railroad Company"; and the prosecutor, or its predecessors in interest, to whose rights the prosecutor has succeeded. 10

in that the said statute imposes upon the prosecutor the entire expense of the alterations, changes, relocations or openings, including damages to adjacent property, caused by the alteration of crossings in the manner described in said statute—except such part of such expense not exceeding ten per cent., which may be imposed upon the street railway using such crossings, and except such part of such expense as the statute requires to be borne by the municipality, and except such part of such expense as the statute requires to be borne by any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe lines or other companies, or corporations, co-partnerships or individuals. 20

(64) Said order and the statute upon which the same are based are unconstitutional, unreasonable and invalid in so far as they limit the proportion of expense of the alterations, changes, relocations or openings (as specified in said statute) to be paid by the street railway using such crossing, or crossings, for the following reasons: 30

(a) Said proportion is not commensurate with, or in proportion to, the danger to public safety or the impediment to public travel created by and chargeable to said street railway at such crossings, and each of them; nor is it commensurate with, or in proportion to, the protection made necessary by such danger or impediment.

(b) Said proportion is not a fair or reasonable amount of the expense of such alterations, changes, relocations or openings. 40

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(c) Said proportion is less than that imposed upon, and assumed by, the street railway under the terms and conditions of existing agreements between said street railway company, or its predecessors, and the prosecutor or its predecessors, respecting the use, maintenance and protection of said crossings, and each of them.

10 (65) Said order is unreasonable and invalid in so far as it requires the prosecutor to alter said highway crossings named in Reason (1), and each of them, according to a plan which is more expensive to the prosecutor than is necessary for the purpose of removing danger to the public safety, or impediment to public travel at said crossings and each of them.

20 (66) Said order is unreasonable and invalid in so far as the Board of Public Utility Commissioners does not adopt the proposal of the prosecutor for the elimination of the highway grade crossings at Keen, Warren and River streets.

(67) Said order is unreasonable and invalid in so far as the Board of Public Utility Commissioners does not adopt the proposal of the prosecutor for the consolidation of the highway grade crossings at Straight and Clay streets.

30 (68) Said order is unreasonable and invalid in so far as it specifies the date on or before which the prosecutor is required to begin the actual work of construction in the performance and execution of said order, and the dates on or before which the prosecutor is required to begin and complete the divisions of said work, respectively marked and designated on the profile attached to said order as "A," "B," "C" and "D."

40 (69) Said order is unreasonable and invalid in so far as it arbitrarily requires the actual work of construction in the performance and execution of said order to be done according to certain divisions marked and designated in the profile attached to said order as

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"A," "B," "C" and "D"; and in so far as it requires said work to be prosecuted in the sequence of divisions named in said order.

(70) Said order is unreasonable and invalid, and the statute upon which same is based is unconstitutional and invalid, for the reason that the testimony shows that it is impossible for the prosecutor to obey said order; but on failure to obey, the prosecutor becomes subject to a penalty of one hundred dollars per day for every day during which default continues; and the prosecutor and its officers, agents and employees, on such neglect or default, become liable to indictment for misdemeanor.

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(71) Said order is unreasonable and invalid and in violation of the Constitution of the United States in that the cost to the prosecutor of compliance therewith is so great that it imposes a burden upon the interstate traffic of the prosecutor and interferes with and impairs its ability to perform its duty as an interstate carrier of freight and passengers, for the reason that said order compels the prosecutor to raise and expend moneys which (if available for any purpose), would otherwise be available for, and in the ordinary course of events, would be used by the prosecutor in the making of changes and improvements which are essential for the purpose of enabling the prosecutor to carry on its interstate traffic.

20

(72) Said order is in violation of the Constitution of the State of New Jersey in that it takes the private property of the prosecutor for a private use, and takes the property of the prosecutor for public use without just compensation; and takes the property of the prosecutor without offering to it any opportunity to protect said property, thereby depriving the prosecutor of its right and guaranty of enjoying and defending, acquiring, possessing and protecting its said property, Said order is likewise in violation of the Constitution

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10 of the United States, in that it deprives the prosecutor of its liberty and property without due process of law, denies to the prosecutor the equal protection of the laws, abridges the privileges and immunities of the prosecutor, takes the private property of the prosecutor for public use without just compensation, creates a burden upon and operates as a regulation of and an interference with, interstate commerce, and impairs the obligation of contracts, for the reason that the effect of said order will be to deprive the prosecutor of the rights, benefits, advantages, privileges and contracts now possessed by it with reference to certain sidings in the following respects (numbers correspond to numbers of sidings on maps marked "Exhibit 23" and "Exhibit 23-A") :—

20	(a)	Passaic Steel Co.	No. 3
		R. H. McDonald	No. 4
		Paterson Vehicle Co.	No. 19
		Paterson Beef Co.	No. 20
		David C. Rodgers Co.	No. 24

Said order requires the destruction of each of said sidings.

30	(b)	G. A. Zabriskie	No. 5
		Commercial Lumber and Mill	
		Work Co.	No. 6
		Christopher Kelly	No. 7
		M. Gobel	No. 8
		National Wood Co.	No. 9
		Standard Oil Co.	No. 10

Said order requires the destruction of the existing siding and the construction of three other sidings in lieu thereof at different locations; and said new sidings, if constructed as required by said plan, will be unavailable for use.

40 Said order further requires the construction of a bridge across Taylor street for the purpose of carrying two of said new sidings to G. A. Zabriskie Commercial Lumber and Mill Work Co., Christopher Kelly, M. Gobel and National Wood Co.; and requires the con-

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struction of another bridge across Taylor street for the purpose of carrying said third new siding to Standard Oil Company.

(c) John Agnew Co.

No. 11

Said order requires the destruction of the two sidings located between Hamilton avenue and Governor street; and the construction of two new sidings, each at an elevation of about sixteen feet above the present grade upon the land of John Agnew Co., and also requires the construction of a bridge over Hamilton avenue for the purpose of carrying one of said new sidings. 10

(d) McNabb & Harlin

No. 15

Graham Brewing Co.

No. 16

National Biscuit Co.

No. 17

Hygeia Ice Co.

No. 47

Paterson Consolidated Ice Co.

No. 50

Bon Arbor Chemical Co.

No. 55

20

Said order requires the destruction of the lead by which each of said sidings is reached, and requires the construction of a new and longer lead through a public street in order to reach said sidings and each of them, which said new lead is partially on and partially off the right of way and property of the prosecutor.

Said order further requires the maintenance of each of said sidings along, in and through a public street.

(e) Morris & Co.

No. 18

Fullers Express Co.

No. 50

30

Said order requires the destruction of each of said sidings and the construction of two other sidings at the locations indicated on said plan.

(f) Herman Co.

No. 22

Sulsberger & Sons Co.

No. 23

Said order requires the destruction of the siding and the construction of a new siding at an elevation of fifteen feet above the grade of the present siding and the construction of a bridge over Ellison street for the purpose of carrying said new siding—said new siding 40

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being partially on and partially off the right of way and property of the prosecutor.

(g) Armour & Co.

No. 25

Said order requires the destruction of the lead by which said siding is connected with the main line, and the construction of a new lead and of bridges at Lafayette, Montgomery, Fulton and Governor streets on
10 which to carry said new lead.

(h) Hinchliffe Brewery.

No. 26

Said order requires the destruction of said siding and the construction of a new siding at an elevation of sixteen and one-half feet above the present grade.

(i) Katz Brewery

No. 27

Said order requires the destruction of said siding and the construction of a new siding at a different place and grade.

20 Said order also requires the construction of a new lead, and of new bridges at Lafayette, Montgomery, Fulton and Governor streets, on which to carry said new lead.

(j) P. S. Van Kirk Co.

No. 28

Diamond Coal Co.

No. 53

Olive Oil Soap Co.

No. 61

Said order requires the destruction of each of said sidings and the construction of new sidings at a different grade and off of the right of way and property of
30 prosecutor.

(k) A. H. Smith

No. 29

Said order requires the destruction of said siding and the construction of a new siding on a different elevation and place, partly on and partly off the right of way and property of the prosecutor.

(l) Meyer and De Vogel

No. 30

Said order requires the destruction of said siding and the construction of a new siding at an elevation of about fifteen feet above the present grade.

Reasons of Erie Railroad Company.(m) **Armstrong Sons Co.** **No. 31**

Said order requires the destruction of said siding and the construction of a new siding at an elevation about seventeen feet above the present grade.

Said order further requires the construction of a bridge across Montgomery street on which to carry said new siding.

(n)	A. H. Smith	No. 32	10
	D. Fullerton & Co.	No. 33	

Said order requires the destruction of said sidings and the construction of other sidings at an elevation of about sixteen feet above the present grade.

(o)	Atherton Grain Co.	No. 34	
	J. A. Lydecker	No. 35	

Said order requires the destruction of the siding and the construction of a new siding at an elevation of about sixteen feet above the present grade.

Said order further requires the construction of a bridge over Keen street on which to carry said new siding.

(p)	Public Service Gas Co.	No. 36	
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Said order requires the partial destruction of the two existing sidings and the construction of a new siding in a different location through a public street and off the right of way and property of the prosecutor.

(q)	J. Van Den Hendell	No. 37	
	Swift & Co.	No. 38	
	H. M. Post	No. 39	30
	Ashley & Bailey	No. 40	
	National Silk Dyeing Co.	No. 41	
	Grasselli Chemical Co.	No. 42	
	Auger & Simon Co.	No. 49	
	Center Paper Box Co.	No. 56	
	Waldo Silk Ribbon Co.	No. 57	

Said order requires the destruction of the leads and connections by which each of said sidings is now reached, and requires the construction of new leads and connections.

Reasons of Erie Railroad Company.

(73) Said order is illegal and unconstitutional in so far as it requires the construction and maintenance of sidings—

(A) on the right of way and other property of the prosecutor;

10 (B) off the right of way and other property of the prosecutor on the property of other persons or corporations;

(C) in, along and through public highways, for the reason that—

(a) The prosecutor has no legal duty or right to construct and maintain said sidings or any or either of them.

(b) The legal duty and right to construct and maintain the same rests on persons or corporations other than the prosecutor.

20 (c) No hearing has been given to the prosecutor as to whether said sidings, or any of them, should be constructed or maintained by it, nor as to the terms under which said sidings or any of them should be constructed or maintained.

(d) Existing contracts between the prosecutor and other persons or corporations with respect to the construction and maintenance of said sidings and each of them are impaired or destroyed.

30 (e) There is no right in the prosecutor to construct or maintain sidings in, along or through public streets, except under the limitations imposed by law.

(f) There is no power of jurisdiction in said Board of Public Utility Commissioners in this proceeding to order the prosecutor to construct or maintain the said sidings or any or either of them in the manner required by said order and plan.

40 (g) The order imposes a burden upon the interstate traffic of the prosecutor and interferes with and impairs its ability to perform its duty as an interstate carrier of freight and passengers.

Reasons of Erie Railroad Company.

(h) The construction and maintenance of said sidings, and each of them, by the prosecutor as required by said order would constitute an unjust discrimination, preference or advantage between interstate shippers, in violation of the provisions of the Interstate Commerce Act.

(74) Said order is invalid and unreasonable because it arbitrarily requires the alteration of said crossings named in Reason (1) according to and as shown on said plan and profile, without making any provision for such changes or modifications of the details of said plan and profile as may become necessary during the progress of the work for engineering, or other reasons. 10

(75) Said order is invalid and beyond the jurisdiction of the said Board of Public Utility Commissioners, because it prevents or impairs the right of the prosecutor to change the construction or use of switches, sidetracks, leads, bridges, yards, structures, facilities and other property of the prosecutor, comprehended in said plan, in such manner and to such extent as the necessities of its business may from time to time demand; and requires the prosecutor arbitrarily to devote and surrender its said structures, facilities and other property to the uses and purposes limited in and prescribed by said order and plan, and to maintain the same accordingly, and divests the prosecutor of the powers, duties and obligations imposed upon and delegated to it by law, with respect to the construction, use and maintenance of said structures, facilities and other property. 20 30

(76) The action of the Board in denying the prayer of the prosecutor for a further hearing was arbitrary, unjustified and unreasonable.

(77) Said Board should have granted the prayer of the prosecutor for a further hearing for the purpose of considering some one or more of the following 40

Reasons of Erie Railroad Company.

matters, as specified in the prosecutor's petition for such further hearing, to wit:—

10 (a) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company as the railroad companies operating the railroad over the crossings in question within the meaning of Chapter 57, Laws of 1913.

(b) Whether any order made in this proceeding should not be made against the Paterson and Hudson River Railroad Company, the Paterson and Ramapo Railroad Company and this respondent jointly, so that the cost thereof may be apportioned between and among said companies by appropriate proceedings.

20 (c) Whether this respondent is financially able to carry out the terms of any order made in this proceeding if the heaviest burden of the cost thereof falls upon it.

(d) Whether such order would impose a burden upon the interstate traffic of this respondent, and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

30 (e) Whether in any order made in this proceeding the Public Service Railway Company should not be chargeable with ten per cent. of the total cost of eliminating all of the crossings involved in said plan or scheme adopted by the Board, in addition to all costs and expenses legally chargeable to said Public Service Railway Company under Section 4 of said statute.

40 (f) If the Board reaches the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this respondent will submit.

Amendment to Reasons (Erie Railroad Company).

(78) The conclusion of said Board whereby it denied the prayer of prosecutor's petition for a further hearing with respect to the matters described in Reason (77), sub-division F, was arbitrary, unreasonable and unjustified, and was made without hearing and without any evidence in support thereof.

COLLINS & CORBIN,

Attorneys of Prosecutor.

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**Amendment to Reasons
of
Erie Railroad Company.**

(Filed October, 1915.)

Prosecutor files the following amendment to the Reasons heretofore filed by it in the above cause:

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1. Add to Reason (53) the following:

53 (c). The evidence taken before said Board does not show, nor does the said Board find, that the width and character of the bridges and passages ordered to be constructed at Taylor street and Montgomery street respectively are such as are suitable to the locality in which the same are situated.

2. Add to Reason (54) the following:

54 (g). The evidence taken before said Board does not show, nor does the said Board find, that the width and character of the bridges and passages ordered to be constructed at Essex street, Governor street and Fulton street respectively, are such as are suitable to the locality in which the same are situated.

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3. Add to Reason (55) the following:

55 (f). The evidence taken before said Board does not show, nor does the said Board find, that the width and character of the bridges and passages ordered to be constructed at the highways named in Reason (1), or any or either of them,

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Reasons of Public Service Railway Company.

are such as are suitable to the locality in which the same are situated.

COLLINS & CORBIN,

Attorneys of Prosecutor.

We consent to the foregoing amendment.

FRANK H. SOMMER,

Attorney of Board of Public Utility Commissioners.

EDWARD F. MERREY,

Attorney of City of Paterson and Board of Finance of said city.

**Reasons
of
Public Service Railway Company.**

Filed September 11, 1915.

The prosecutor presents the following reasons for setting aside the order made by the Board of Public Utility Commissioners on the twentieth day of April, A. D. nineteen hundred and fifteen, and brought up for review by the writ allowed in the above stated cause:

1. The order brought up for review was and is not within the lawful jurisdiction of the defendant, Board of Public Utility Commissioners.
2. The order brought up for review is unlawful, unjust, unreasonable and oppressive to the prosecutor.
3. There was no evidence before the defendant, Board of Public Utility Commissioners, to support reasonably the said order brought up for review.
4. The order brought up for review makes an unjust and unlawful imposition and burden upon the prosecutor.

Reasons of Public Service Railway Company.

5. The order brought up for review, if enforced, would have the effect of taking property of the prosecutor for public use without just compensation, in violation of paragraph 16 of Article I of the Constitution of the State of New Jersey.

6. It is beyond the power of said Board of Public Utility Commissioners, by said order or otherwise, to compel the prosecutor to contribute specially to the expense of the abolishment of the grade crossings mentioned in said order, or any of them, or to contribute otherwise to such expense except its proportion in connection with other taxpayers.

7. The order, if enforced, would have the effect of levying a special tax on the prosecutor and its property for the cost of a general public improvement.

8. The order, if enforced, would have the effect of taxing the property of the prosecutor otherwise than by general laws and uniform rules according to its true value.

9. The order, if enforced, would violate the rights of the prosecutor secured by paragraph 12, Section 7, Article IV of the Constitution of the State of New Jersey.

10. The order brought up for review takes the property of the prosecutor without just compensation in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

11. The order, if enforced, would have the effect of depriving the prosecutor of its property without due process of law, in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

12. The order, if enforced, would deny to the prosecutor the equal protection of the law in violation of Section 1 of the 14th Amendment of the Constitution of the United States.

Reasons of Passaic Water Company.

13. The order, if enforced, would be an unjust and unlawful discrimination against the prosecutor, and would impose upon it part of the cost of a public improvement which ought to be borne, if incurred at all, by the taxpayers or property owners generally of the taxing district.

10 14. The order brought up for review is in divers other respects contrary to the Constitution of the United States and of the State of New Jersey and in violation of the laws thereof, and is illegal, unjust, unjustly discriminatory and oppressive.

The prosecutor therefore prays that the said order so brought up for review by the writ of *certiorari* in this cause be reversed, set aside and for nothing holden.

FRANK BERGEN,
Attorney for Prosecutor.

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**Reasons
of
Passaic Water Company.**

(Filed September 11, 1915.)

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

30 (1) The order under review and the statute upon which the same is based are invalid and unconstitutional under the Constitution of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation, contrary to and in violation of Article I, Section 16 of the Constitution of the State of New Jersey.

40 (2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and take its private property for public use without just compen-

Reasons of Passaic Water Company.

sation and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property, and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of New Jersey. 10

(4) Said order and statute are contrary to and in violation of the Constitution of the State of New Jersey, in so far as they deprive the Court of Chancery of said State of its exclusive jurisdiction over the regulation of the use of easements, as provided in Article III, Section 1, and Article VI, Section 1, of said Constitution. 20

(5) Said order and statute are contrary to and in violation of Article I, Section 10, paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(6) Said order and statute, in so far as they require changes in or the removal of property or constructions of the prosecutor consisting of water pipes, water mains and the appurtenances thereof, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its said property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitutions of the State of New Jersey and of the United States, in the respects hereinbefore set forth. 30

(7) Said order is invalid and beyond the jurisdiction of said Board, in so far as it purports to command the prosecutor to proceed with due diligence 40

Reasons of Passaic Water Company.

to the execution thereof and to comply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the laws of New Jersey.

10 (8) Said order is invalid and beyond the jurisdiction of said Board in so far as it arbitrarily interferes with the judgment and discretion of the Board of Directors of the prosecutor and deprives it of the right given said directors by law to exercise their judgment and discretion in the management of prosecutor's business.

20 (9) Said order is invalid and beyond the jurisdiction of said Board for the reason that in carrying out the command thereof it will be necessary for the prosecutor to take, occupy, or use, or interfere with the property of other persons or corporations, in order to comply therewith, whereas said prosecutor is not now required or empowered by law, nor has said Board power to command it to take such property for such purposes.

30 (10) Said order, in so far as it requires changes in the grade or location of the prosecutor's water pipes, water mains and the appurtenances thereof, and the relocations, reconstruction or relaying thereof, in whole or in part, is invalid and beyond the jurisdiction of said Board for the following reasons:

(a) Said changes, reconstructions, relocations and relayings are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions, relocations and relayings, or any or either of them.

Reasons of Passaic Water Company.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said changes, reconstructions, relocations and relayings are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said changes, reconstructions, relocations and relayings are no part of the duties or obligations imposed by law upon the prosecutor. 10

(f) It does not appear that said changes, reconstructions, relocations and relayings, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway grade crossings named in said order, or any or either of them.

(g) Said order, and the statute upon which same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company, "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company, and Public Service Railway Company, or one or more of them. 20

(11) Said statute (being Chapter 57, Laws of 1913), is in violation of and contrary to Article IV, Section VII, paragraph 4, of the Constitution of the State of New Jersey, in that the object of the said statute is not expressed in the title thereof, and the said statute embraces more than one object. 30

(12) The property and construction of the prosecutor, referred to in said order, consisting of water pipes, water mains, and the appurtenances thereof, having been constructed and maintained by it under and by virtue of the provisions of a special Act of the Legislature of the State of New Jersey (constituting its charter) entitled "An Act to Incorporate the Passaic Water Company," approved February 13, 1849, and the various supplements and amendments thereto, under and by which said charter it was fully au- 40

Reasons of Passaic Water Company.

thorized and empowered to lay its pipes beneath such public roads, streets, avenues and alleys in the City of Paterson (among other places) as it might deem necessary for supplying the City (then Town) of Paterson (and other places) with water sufficient for extinguishing fires, culinary and other family uses, watering the streets and such other purposes as might conduce to the health and comfort of the citizens of Paterson; and with reference to any of said streets abutting on said crossings, referred to in said order which were laid out and constructed before the tracks and right of way of the President and Board of Directors of the Paterson & Hudson River Railroad Company, and those of the Paterson & Ramapo Railroad Company, now operated by Erie Railroad Company, came into existence, the said railroad company's title being subject to the burden of said streets, with all their incidents such as the public right to lay and maintain sewers, water pipes and gas pipes and electric conduits, etc., and with reference to any of said streets abutting upon said crossings referred to in said order, which were laid out and constructed by the City of Paterson across the then existing tracks and right of way of said railroad company, the said railroad company having received compensation once for all when said streets were opened, and the prosecutor in laying its pipes under all of said crossings having merely exercised the public easement conferred upon it by its charter, to which the said railroad company, whether it owned the land or had only a right of way, was bound to submit, the said order under review and the statute upon which same is based, in so far as they place the burden upon the prosecutor at its own expense, and not upon the said railroad company or companies, of changing and removing said property and construction, taken the private property of the prosecutor for public use without just or any compensation, and are contrary to and in violation of

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Reasons of Western Union Telegraph Company.

the Constitutions of the State of New Jersey and of the United States in the respects hereinbefore set forth, and the said order is therefore invalid and beyond the jurisdiction of said Board.

HUMPHREYS & SUMNER,
Attorneys for Prosecutor.

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**Reasons
of
Western Union Telegraph Company.**

Filed September 20, 1915.

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

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(1) The order under review and the statute upon which the same is based are invalid and unconstitutional both under the Constitution of the United States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

(2) Said order and statute deny to the prosecutor the equal protection of the law, and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

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(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property, and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed

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Reasons of Western Union Telegraph Company.

to it by Article I, Section 1, of the Constitution of the State of New Jersey.

10 (4) Said order and statute are contrary to and in violation of the Constitution of the State of New Jersey, in so far as they deprive the Court of Chancery of said State of its exclusive jurisdiction over the regulation of the use of easements, as provided in Article III, Section 1, and Article VI, Section 1, of said Constitution.

(5) Said order and statute are contrary to and in violation of Article I, Section 10, paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

20 (6) Said order and statute, in so far as they require changes in or the removal of the property or constructions of the prosecutor consisting of telegraph wires, poles and appurtenances to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitutions of the State of New Jersey and of the United States in the respects hereinbefore set forth.

30 (7) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to proceed with due diligence to the execution thereof and to comply with all of the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the Laws of New Jersey.

40 (8) Said order is invalid and beyond the jurisdiction of said Board in so far as it arbitrarily interferes with the judgment and discretion of the Board

Reasons of Western Union Telegraph Company.

of Directors of the prosecutor and deprives it of the right given said directors by law to exercise their judgment and discretion, in the management of the prosecutor's business.

(9) Said order is invalid and beyond the jurisdiction of said Board for the reason that in carrying out the command thereof it will be necessary for the prosecutor to take the property of other persons or corporations in order to comply therewith, whereas said prosecutor is not now required or empowered by law, nor has said Board power to command it, to take such property for such purposes. 10

(10) Said order, in so far as it requires changes in the grade or location of the prosecutor's telegraph wires, poles and appurtenances, and the reconstruction, relocation or rebuilding thereof, in whole or in part, is invalid and beyond the jurisdiction of said Board for the following reasons: 20

(a) Said changes, reconstructions, relocations and rebuildings are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or in behalf of municipal or other authorities necessary or required for said changes, reconstructions, relocations or rebuildings, or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law. 30

(d) Said changes, relocations, reconstructions and rebuildings are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said changes, relocations, reconstructions and rebuildings are no part of the duties or obligations imposed by law upon the prosecutor.

(f) It does not appear that said changes, relocations, reconstructions and rebuildings, or 40

any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway grade crossings named in said order, or any or either of them.

10 (g) Said order and the statute upon which the same is based require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company and Public Service Railway Company, or one or more of them.

(h) Said changes, relocations, reconstructions impose a burden upon the interstate traffic of the prosecutor and interfere with and impair its ability to perform its duty as a common carrier of such interstate traffic.

20 (11) Said statute (being Chapter 57, Laws of 1913) is in violation of and contrary to Article IV, Section VII, paragraph 4, of the Constitution of the State of New Jersey in that the object of the said statute is not expressed in the title thereof and the said statute embraces more than one object.

COLLINS & CORBIN,
Attorneys of Prosecutor.

30 **Reasons
of
D. Fullerton & Co.**

Filed September —, 1915.

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case.

40 (1) The order under review and the statute upon which the same is based, are invalid and unconstitutional, both under the Constitution of the United

States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

(2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States. 10

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey. 20

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(5) Said order and statute, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor, consisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutor, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth. 30

(6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command 40

the prosecutor to proceed with due diligence to comply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey.

- 10 (7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term "public utility," as defined in the act entitled,
- 20 "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstructing or relocating its buildings, equipment, sidings and other equipment for the following reasons:—

- 30 (a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations, or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

- 40 (d) Said reconstructions and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

(g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order, or any or either of them. 10

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company and Public Service Railway Company, or one or more of them. 20

(i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preferences or advantages, in violation of the provisions of the Interstate Commerce Act.

HUDSON & JOELSON,

Attorneys for Prosecutor.

**Reasons
of
Meyer & De Vogel.**

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Filed September —, 1915.

The prosecutors file the following reasons upon which they will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based, are invalid and unconstitutional. 40

tional, both under the Constitution of the United States and of the State of New Jersey, in that said order and statute take the private property of the prosecutors for public use without just or any compensation.

10 (2) Said order and statute deny to the prosecutors the equal protection of the law and deprive them of their property without due process of law and abridge their privileges and immunities as citizens of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

20 (3) Said order and statute take the property of the prosecutors without affording them any opportunity to protect their property and thereby deprive them of their right and guaranty of enjoying, defending, possessing and protecting their property given and guaranteed to them by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

30 (5) Said order and statute, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutors, consisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutors, to be made at the expense of the prosecutors, and in so far as they require the prosecutors, at their own expense, to move or change the grade or location of their property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth.

40 (6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to com-

wanted the prosecutors to proceed with due diligence to comply with all the requirements thereof and the duties imposed upon them thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey.

(7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term, "public utility," as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstructing or relocating its buildings, equipment, sidings and other equipment for the following reasons:

(a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations, or any or either of them.

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said reconstructions and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

Reasons of Fullers Express Company.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

10 (g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order, or any or either of them.

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company and Public Service Railway Company, or one or more of them.

20 (i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preferences or advantages, in violation of the provisions of the Interstate Commerce Act.

WILLIAM B. GOURLEY,
Attorney of Prosecutors.

30 **Reasons
of
Fullers Express Company.**

Filed September —, 1915.

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based, are invalid and unconstitutional, both under the Constitution of the United

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Reasons of Fullers Express Company.

States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

(2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States. 10

(3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey. 20

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

(5) Said order and statute, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor, consisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutor, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth. 30

(6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to proceed with due diligence to com- 40

Reasons of Fullers Express Company.

ply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey.

- 10 (7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term, "public utility" as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being
20 Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board.

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstruction or relocating its buildings, equipment, siding and other equipment for the following reasons:

- (a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.
- 30 (b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations or any or either of them.
- (c) Said order was not made after hearing, upon notice, as required by law.
- (d) Said reconstruction and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

Reasons of Fullers Express Company.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

(g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order or any or either of them. 10

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company, and Public Service Railway Company, or one or more of them. 20

(i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preferences or advantages, in violation of the provisions of the Interstate Commerce Act.

(j) Said changes, relocations, reconstructions and rebuildings impose a burden upon the interstate traffic of the prosecutor and interfere with and impair its ability to perform its duty as a common carrier of such interstate traffic. 30

WILLIAM B. GOURLEY,

Attorney for Prosecutor.

1876

Reasons of Morris & Company.

**Reasons
of
Morris & Company.**

Filed September —, 1915.

10 The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

(1) The order under review and the statute upon which the same is based, are invalid and unconstitutional, both under the Constitution of the United States and of the State of New Jersey, in that said order and statute take the private property of the prosecutor for public use without just or any compensation.

20 (2) Said order and statute deny to the prosecutor the equal protection of the law and deprive it of its property without due process of law and abridge its privileges and immunities as a citizen of the United States, contrary to and in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States.

30 (3) Said order and statute take the property of the prosecutor without affording it any opportunity to protect its property and thereby deprive it of its right and guaranty of enjoying, defending, possessing and protecting its property given and guaranteed to it by Article I, Section 1, of the Constitution of the State of New Jersey.

(4) Said order and statute are contrary to and in violation of Article I, Section 10, Paragraph 1, of the Constitution of the United States, in that they impair the obligation of contracts.

40 (5) Said order and statute, in so far as they require changes in or the destruction or the removal of the property or constructions of the prosecutor, con-

sisting of the buildings, equipment, sidings and other facilities now owned or used by the prosecutor, to be made at the expense of the prosecutor, and in so far as they require the prosecutor, at its own expense, to move or change the grade or location of its property or constructions in conformity with said order of said Board, are contrary to and in violation of the Constitution of the State of New Jersey and of the United States, in the respects hereinbefore set forth. 10

(6) Said order is invalid and beyond the jurisdiction of said Board in so far as it purports to command the prosecutor to proceed with due diligence to comply with all the requirements thereof and the duties imposed upon it thereby, and by the said act under which said order is made and the laws of the State of New Jersey, and that to that end it exercise in good faith all the powers conferred upon it by the laws of the State of New Jersey. 20

(7) Said order and the statute upon which the same is based, in so far as they require changes in or the destruction or the removal of the property or construction of the prosecutor (or changes in the grade or location of said property or constructions), are unconstitutional and invalid for the reason that the prosecutor is not included within the description of the term "public utility" as defined in the act entitled, "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," approved April 21, 1911 (being Chapter 195, Laws of 1911), nor is the prosecutor otherwise subject to the jurisdiction of said Board. 30

(8) Said order is invalid and beyond the jurisdiction of said Board in so far as it imposes upon the prosecutor the duty or obligation of reconstructing or relocating its buildings, equipment, sidings and other equipment for the following reasons: 40

Reasons of Morris & Company.

(a) Said reconstructions and relocations are not included within the prayer of the petition upon which said order is based.

(b) No appropriate action has been taken by or on behalf of municipal or other authorities necessary or required for said changes, reconstructions and relocations or any or either of them.

10

(c) Said order was not made after hearing, upon notice, as required by law.

(d) Said reconstructions and relocations are not, nor is any or either of them, included within the powers conferred by law upon said Board.

(e) Said reconstructions and relocations are no part of the duties or obligations imposed by law upon the prosecutor.

(f) The prosecutor has no legal power or authority to make said reconstructions or relocations, or any or either of them.

20

(g) It does not appear that said reconstructions and relocations, or any or either of them, are reasonably necessary or required or appropriate for the elimination of the highway crossings named in said order or any or either of them.

(h) Said order and the statute upon which the same is based, require or permit the property of the prosecutor to be taken for the private use of Erie Railroad Company and "The President and Board of Directors of the Paterson and Hudson River Railroad Company," Paterson and Ramapo Railroad Company, and Public Service Railway Company, or one or more of them.

30

(i) Said reconstructions and relocations, if made by the prosecutor as required by said order, would compel the prosecutor to accept or receive unjust discriminations, preference or advantages, in violation of the provisions of the Interstate Commerce Act.

WILLIAM B. GOURLEY,
Attorney of Prosecutor.

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Petition for Rehearing.

Petition for Rehearing.

Filed June 15, 1915.

BEFORE THE BOARD OF PUBLIC UTILITY
COMMISSIONERS OF THE STATE OF NEW
JERSEY.

IN THE MATTER OF THE APPLICATION
OF THE CITY OF PATERSON TO
ALTER GRADE CROSSINGS ON LINE OF
THE PATERSON AND HUDSON RIVER
AND PATERSON AND RAMAPO RAIL-
ROADS.

10

Petition of Erie Railroad Company, respondent, for
rehearing on order of said Board dated April 20, 1915.

20

*To the Honorable, the Board of Public Utility Com-
missioners of the State of New Jersey.*

Erie Railroad Company, one of the respondents to
the above proceedings, respectfully shows as follows:

1. On the eleventh day of January, 1915, this
Board filed its report in which it concluded that the
crossings involved in this proceeding are such that
the grades thereof should be changed in accordance
with the prayer of the petition of the Board of Fi-
nance of the City of Paterson, as provided by the stat-
ute.

30

2. Said Board further ordered that said crossings
should be eliminated in accordance with the plan de-
scribed in the proceeding as Plan No. 2 of the City
of Paterson, with certain modifications thereof and
that the work should be permitted to be done in sec-
tions as specified by said report.

3. Thereafter, on February 5th, 1915, a hearing
was had before said Board on the question as to the

40

Petition for Rehearing.

time within which said work should be commenced and completed; on the said date this respondent submitted a petition for further hearing in which it urged, among other things, that an opportunity be given it to present plans whereby the number of train or engine movements or the manner of the same, or both, over said crossings might be changed so as to remove the danger and impediment to public travel; and in which it prayed that a further hearing be granted it for the purpose of considering, among other matters, the following:

“(f) If the Board reached the conclusion that under existing circumstances an order must be made requiring this respondent to eliminate the grade crossings in question, whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossings, or some of them, in accordance with plans which this despondent will submit.”

Thereafter, on April 20th, 1915, this Board filed an order to take effect May 20th, 1915, in which it ordered this respondent to alter said crossings and each of them, according to a certain plan described in said order and annexed thereto; and in which it further ordered that this respondent and the other parties to the proceeding proceed with due diligence to the execution of said order and that they exercise in good faith all of the powers conferred upon them by the laws of this state; and in which it further ordered that this respondent begin the actual work of construction required in the performance and execution of this order, on or before the first day of August, 1916, and complete all of the work required thereunder within eight years from the date of said order and that in the prosecution of said work it take up the divisions thereof in certain sections and complete the same within certain periods of time as specified in said order.

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5. On April 20th, 1915, the said Board filed its report and order denying the prayer of the respondent for the further hearing requested in its said petition filed February 5th, 1915; and as to the prayer of the respondent for leave to submit evidence on the point whether the danger to public safety and the impediment to public travel could not be removed by reducing the number of train movements over said crossing or some of them it concluded in said report that the respondents offer on this subject was so indefinite that it did not appear reasonable to delay the proceeding for that purpose. 10

6. Since the making of said order of April 20th, 1915, and the denial of respondent's petition for further hearing, this respondent has conducted a further investigation to show the feasibility of removing the danger and impediment to public safety and travel by reducing the number of train movements over said crossings. 20

7. Respondents submit the following plan :

A connection to be constructed between the Erie Railroad Company and the New York, Susquehanna and Western Railroad at Market street and Straight street, Paterson, the construction of which will involve the elimination of the Market street grade crossing of the Erie Railroad and the Straight street grade crossing of the New York, Susquehanna and Western Railroad by an elevation of the tracks of the railroads and a slight depression of the grade of the streets, such depression at Market street being the same as that provided for in the plan approved by the Board in its order of April 20th, 1915, also the closing of Ellison street across the tracks of the Erie Railroad. The existing station of the New York, Susquehanna & Western Railroad at Straight street, Paterson, will be abandoned as a passenger station, and the existing station of the Erie Railroad Company at Market 30 40

Petition for Rehearing.

street, Paterson, raised and reconstructed to conform to the new elevation of the railroad tracks. A track connecting the Paterson City Branch and the main line of the New York, Susquehanna and Western Railroad will be constructed immediately north of the Broadway (Paterson) station of the New York, Susquehanna and Western Railroad. A connection will also be constructed between the New York, Susquehanna and Western Railroad and the Erie Railroad at Hawthorne.

8. These connections will make it possible for a westbound train to pass from the main line of the Erie Railroad at Market street over the present Paterson City spur of the New York, Susquehanna and Western Railroad and the main line of the New York, Susquehanna and Western Railroad, returning to the tracks of the Erie Railroad at Hawthorne, and for an eastbound train to pass from the tracks of the Erie Railroad at Hawthorne to the tracks of the New York, Susquehanna and Western Railroad and thence over the Paterson City spur to the main line of the Erie Railroad at Market street, Paterson. Likewise it will be possible to run trains from Jersey City to Market street, Paterson, via the Erie Railroad, returning to Jersey City via the New York, Susquehanna and Western Railroad or *vice versa*, none of these movements involving any backing or switching, but all being under the proposed plan direct forward movements.

9. As soon as these connections are ready for use it is proposed to reduce the passenger train movement over the tracks of the Erie Railroad north of Market street from the present number of one hundred eighteen per day to seven per day. The seven trains referred to can, if desired, also be removed from the Erie Railroad north of Market street and run over the New York, Susquehanna & Western Railroad through Paterson.

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The proposed changes will be made without impairing the passenger train service to and from the City of Paterson via either railroad, and it is believed that by the rearrangement of schedules and the utilization of the proposed connections an improvement of service can be effected.

10. The proposed plan will afford direct railroad connection between points on the Erie Railroad south of Market street, Paterson, and north of Hawthorne, and points on the New York, Susquehanna & Western Railroad between Hawthorne and Jersey City. Tickets between Paterson and New York and Jersey City will remain interchangeable as to use on the two railroads, as at present. The removal of passenger trains from the Erie Railroad between Market street and Hawthorne will avoid the present interference with freight switching work in that territory and enable the company to very greatly decrease, certainly over 20 per cent., the present switch engine movements over the street crossings in that territory. The plan will largely increase the passenger train facilities available to the eastern section of the City of Paterson without impairing those available at Market street. The proposed plan will practically avoid interference with private side track facilities, the only side tracks affected at all being those between Van Houten street and Market street.

11. The proposed construction and routes are shown on maps attached hereto and marked Exhibits 1 and 2.

12. This respondent proffers itself as willing to undertake the necessary construction and to make the necessary arrangements for the purpose of carrying out the foregoing plan under the terms and provisions of the statute, if ordered so to do by this Board; and as willing to begin work thereunder not later than August 1st, 1916, and to complete the same

Petition for Rehearing.

within the length of time allowed by said order of April 20th, 1915, for the completion of the work designated therein as Section A.

10 Wherefore, this respondent respectfully prays that a rehearing of the order of April 20th, 1915, be granted for the purpose of considering the foregoing plan in lieu of the plan described in said order and for the taking of testimony thereon so far as may be necessary; and that pending consideration of this petition and the granting of rehearing on said order (petitioner's time to apply for writ of *certiorari* to review said order of April 20th, 1915, being about to expire) the effective date of said order be extended for such reasonable time as will permit a full consideration of this petition.

ERIE RAILROAD COMPANY,

20 By A. J. STONE,
Vice-President.

H. A. TAYLOR,
G. S. HOBART,
DUANE E. MINARD,

Attorneys for Erie Railroad Company.

Dated June 15th, 1915.

(Attached were copies of maps referred to in paragraph 11.)

30

1885

F. B. Lincoln, direct.

**Testimony
on
Petition for Rehearing.**

BOARD OF PUBLIC UTILITY COMMISSIONERS.

Newark, N. J., Monday, June 28th, 1915.

PETITION, ERIE RAILROAD, FOR RE-
HEARING IN MATTER OF APPLICA-
TION OF CITY OF PATERSON FOR
ALTERATION OF GRADE CROSSINGS
OF LINE OF ERIE RAILROAD.

10

Before the following commissioners: R. W. E.
Donges, Esq., J. J. Treacy, Esq., J. W. Slocum, Esq.

For the Erie Railroad Company appear G. S. Hob-
art, Esq., H. A. Taylor, Esq., D. E. Minard, Esq.

20

For the City of Paterson appears E. F. Merrey,
Esq.

For the Paterson & Hudson River Railroad and
Paterson & Ramapo Railroad appears W. I. Lewis,
Esq.

F. B. LINCOLN, sworn on behalf of Erie Railroad.

Direct examination by Mr. Hobart.

Q Mr. Lincoln, you are general superintendent of
the Erie Railroad Company, general manager of the
Erie Railroad Company?

30

A Yes.

Q You have examined this plan for the rearrange-
ment of tracks and for the elimination of the grade
crossing at Market street, as shown more in detail in
the petition of the Erie Railroad Company, for a re-
hearing of the order of this Board, dated April 20th,
1915, have you not?

A I have.

40

F. B. Lincoln, direct.

Q Will you kindly state in a general way, and by reference to such plans as you may have, what the proposed plan of the company is?

10 A The plan is to construct a connection between the existing main line of the Erie at Market street and the Paterson city spur of the New York, Susquehanna & Western, and the construction of a connection, a Y connection between the Paterson city spur and the main line of the New York, Susquehanna & Western near Broadway, Paterson, and a connection between the main line of the New York, Susquehanna & Western and the main line of the Erie west of the Passaic River near what we call Hawthorne station to permit the running of passenger service in looped lines. The construction of the connection between the main line and the Paterson city spur at or near Market street will eliminate the Market street grade crossing.

20 Q Eliminate it in what way, by raising the tracks?

A Raising the Erie tracks overhead and very slightly depressing Market street.

Q To the extent of about what, have you figured it out in detail?

A I cannot say.

Q A very slight depression?

A Very slight, as figured now. That is a matter that would have to be worked out by the detailed plans.

30 Q Would that involve the closing of the street known as Ellison street?

A Yes, in order to come down from this proposed elevation along the main line of the Erie we necessarily close Ellison street.

Q How would you go from the present main line of the Erie Railroad at or near the present Market street station to the spur of the Susquehanna Railroad?

40 A By constructing a connection around the corner overhead of Market street, swing in to the exist-

F. B. Lincoln, direct.

ing tracks of the Susquehanna easterly from the station.

Q What effect would that have on the present grade crossing of Straight street on the Susquehanna tracks?

A It would eliminate that.

Q The plans for this appears as shown on the blue print, copy of which is attached to the petition.

10

A Does that coincide with this?

Q Yes, substantially?

A Yes.

Q Have you other maps before you which show, on a somewhat larger scale and somewhat different illustration?

A That map shows the connection near Broadway between the Paterson city spur and the main line of the New York, Susquehanna & Western.

Q The map to which you refer is entitled Erie Railroad Co., proposed joint operation on main line and N. Y. S. & W. Railroad, Y connection at Paterson, Broadway, dated June 11th, 1915?

20

A Yes.

Q The proposed connection, as I understand it, is shown in red?

A Shown in red.

Mr. Hobart. I would like to offer this print.

Commissioner Donges. No objection. It will be admitted and marked.

30

(Map entitled, "Erie Railroad Co. proposed joint operation on main line and N. Y. S. & W. Railroad, Y connection, at Paterson, Broadway, dated June 11th, 1915," received and marked Ex. E-1.)

Q This map E-1 shows only the connection at Broadway with the Susquehanna Railroad?

A Yes.

Q Have you another map which shows the connection at Hawthorne?

40

F. B. Lincoln, direct.

A I have.

Q This plan is marked in red, proposed joint operation, main line and N. Y. S. & W. R. R. connection at Hawthorne, June 8th, 1915?

A Yes.

Q Hawthorne is west of the Passaic River is it not?

A It is.

10

Q According to the compass north, but according to the railroad west, of the Passaic River?

A West.

Q These two plans, as I understand it, Mr. Lincoln, simply show on a somewhat larger scale and little different manner the same plans, the same connections, as appear on the maps attached to the petition?

20

A Exactly the same thing, drawn to larger scale and more in detail.

Mr. Hobart. I would like to ask this second map of the Hawthorne connection be marked.

(Map entitled, "Proposed joint operation, main line and N. Y. S. & W. R. R. connection at Hawthorne, June 8th, 1915," received and marked Ex. E-2.)

Q What does this proposed plan contemplate, as to the Market street station and the Straight street station of the Susquehanna Railroad?

30

A It would necessarily involve remodeling and raising the Market street station, and it is proposed to abandon the Straight street station, consolidating the business in the one station.

Q That is, consolidating both stations at or near the present Market street station?

A Exactly.

Q Will you kindly state the method of operation that can be adopted, or that it is proposed to adopt if this plan is carried out?

40

F. B. Lincoln, direct.

Commissioner Donges. What was the question?

Mr. Hobart. The method of operation of the trains I meant particularly.

A The main line passenger trains, instead of going west from the Market street station on the main line, will be diverted to the city spur of the N. Y. S. & W. and a very considerable number of these trains would return to Jersey City over the line of the N. Y. S. & W. On the other hand, the N. Y. S. & W. trains from Jersey City to Paterson— 10

Commissioner Donges. I didn't get that.

Witness. The N. Y. S. & W. trains from Jersey City to Paterson would return via the main line of the Erie, going around the loop. In order to provide the necessary service west of Paterson some of the local trains would be turned through the Y connection at Broadway and go west over the main line of the N. Y. S. & W. through what is now Riverside station and back to the main line of the Erie at Hawthorne over the proposed connection, giving the service to Glen Rock and Ridgewood and points west of there that now obtains. 20

Eastbound trains from the main line of the Erie originating west of Ridgewood would come in at Hawthorne on the main line of the N. Y. S. & W. and pass through the Y connection at Broadway to Market street as they now do, and then east on the main line of the Erie. N. Y. S. & W. main line eastbound trains would follow the present route without interference, unless some operating requirement, or the passenger service requirements, necessitated their being diverted to the main line of the Erie. It makes a very much more flexible operating arrangement than exists now. For example, passengers from North Paterson or points west of there on the N. Y. S. & W. 30 40

F. B. Lincoln, direct.

would be taken into the Market street station in some event—

Q (*By Commissioner Donges.*) Down the main line?

A And go down the main line of the Erie. Such passengers for Passaic, for instance, would not have to change cars and be diverted from their route. They
10 would land at Passaic. Some of the through trains of the Susquehanna would probably, in the process of working this thing out, be run through Market street station. In diverting this traffic it would practically eliminate all of the passenger train movement on the main line of the Erie west of Market street.

Q West?

A West of Market street.

Q All west of Market street?

A All trains could be eliminated west of Market
20 street. That, of course, would depend on—

Q You mean in the city?

A In the city, in the working out of the details of the distribution of the trains. It would seem entirely practicable to consolidate River street and Riverside stations.

Q (*By Mr. Hobart.*) River street is on the main line?

A River street is on the main line of the Erie and Riverside on the main line of the N. Y. S. & W.

30 Q (*By Commissioner Donges.*) How far apart are they?

A I don't recall.

Mr. Hobart. The Riverside station on the Susquehanna is between Fourth and Fifth avenue on the map and River street on the main line of the Erie.

Commissioner Donges. About seven or eight blocks apart.

Witness. About seven or eight blocks apart.

F. B. Lincoln, direct.

Mr. Taylor. The two railroads opposite the River street station are shown by the map to be only four blocks apart.

Witness. The relocation of the Riverside station would probably put it in a situation where it could acceptably serve that territory as one station instead of two.

Q (*By Mr. Hobart.*) So that the River street station on the main line of the Erie could be abandoned entirely and the passenger service to that station— 10

A Be taken care of by the relocation of the Riverside station of the N. Y. S. & W. If that were done it would be possible to entirely eliminate all passenger service west of Market street in Paterson on the main line.

Q The result of that would be, it would be used for industrial siding for switching movements?

A That is all. 20

Q Would it be possible to regulate those switching movements so as to eliminate to a large extent the danger of the grade crossings as they now are?

A Yes, that could be regulated so that there would be no danger in the operation.

Q Will you state generally what effect upon the passenger service this proposed plan would have, so far as it affects the City of Paterson, would it improve it or otherwise?

A In my judgment it would be made to materially improve the service. There is such a flexibility of movement there that even with the existing number of trains in operation I believe a very much better service could be rendered, and of course it makes so many ways of train movement that almost any number of additional trains could be supplied as the growth of the passenger requirements necessitates. In a preliminary way, as we have made a study of it, there is no decrease in the number of trains in either direction serving the city. On the other hand, there 30 40

F. B. Lincoln, direct.

are more trains at Broadway and Market street, because the crossing over of the trains gives more service at those two points.

Q Have you also examined into this plan with a view to seeing what effect it would have upon the existing side track facilities?

A Well, it would have no particular effect except
10 one or two of those right close to Market street would have to be revised in some way. We could not get into the present Fullers express station, and I think Morris & Company would be affected. Except for that there would practically be no change.

Q (*By Commissioner Doughty.*) The present grade is maintained at all points?

A How is that?

Q The present grades are maintained?

A The present grade would be maintained west
20 of—

Q West of Broadway?

A Yes, on the Susquehanna, yes.

Q And on the Erie?

A On the Erie west of—well, Ellison street, about half a block west of Ellison street it would come down to grade.

Mr. Hobart. Near Van Houten street.

Witness. That is a matter of detail that has not been fully worked out. We have not had
30 time to make definite surveys on this, but in a general way that would be the result.

Q Market street would be crossed on an elevation?

A Yes.

Q And the connection across the city spur would be elevated between the main line and the Susquehanna tracks?

A Yes. As the line has been plotted, it would swing across about where the existing N. Y., S. & W. station is, and cross overhead of Straight street, and
40

F. B. Lincoln, cross.

come down to the existing grade about—well, in the cut, about a block west of Straight street.

Q A block west?

A A block north, really, it is on the map.

Q Of Straight street?

A Yes.

Q So it would cross—

A There would be no disturbance of the overhead crossings of the streets on the N. Y., S. & W. cut through there. 10

Mr. Merrey. At present there is a cut on the Susquehanna. It is only at grade at Eighteenth street.

Q (*By Mr. Hobart.*) All other streets at that point cross the tracks above grade?

A Yes.

Commissioner Donges. Graham avenue. 20

Mr. Merrey. All cross on bridges; I think all except Eighteenth street and Straight streets, the two ends.

Cross examination by Mr. Merrey.

Q Mr. Lincoln, what is your position?

A General manager, Erie Railroad.

Q Have you charge of operation or construction?

A I have operation.

Q Have you any control over construction?

A None. 30

Q You say that you have not had time to make definite surveys or work out detailed plans. Do you know whether this plan is feasible or not, can be operated?

A Yes.

Q I notice you have a fifteen per cent. curve marked in near the Market street station?

A You mean a fifteen degree curve.

Q A fifteen degree curve?

A Yes. 40

F. B. Lincoln, cross.

Q That is a rather stiff curve, isn't it?

A Yes.

Q Have you any others on your road?

A Yes.

Q At that point also there is a one and one-half per cent. grade?

A Yes.

10 Q Would it be possible to operate trains from the cut into the station, heavy trains?

A Yes.

Q Did you read the testimony of Mr. Paterson, given in the original case?

A Yes.

Q That is a one and a half per cent. grade, is very heavy, isn't it, for your road?

A Not particularly. It is not a very satisfactory grade to operate over, the less grade you have the
20 better operation, but a one and half per cent. grade is not a prohibitive grade at all.

Q But your engineer, when the city offered a plan said you did not want to go over one per cent.

A We would prefer not to, naturally.

Q He said it was almost impossible to operate.

A That was largely based on the freight.

Mr. Minard. Suppose you refer to his testimony.

30 *Witness.* The freight movement, I think, Mr. Merrey.

Q I understood you don't move your heavy freight over this main line.

A We don't.

Q You send it over the Bergen County Railroad?

A That is the reason I say that is a practical operation for passenger train movement only.

Q You have in mind then only the same passenger train movement at the time this former plan was offered?

F. B. Lincoln, cross.

A I was not here at that time.

Q You don't know whether you can get it in with as light a grade as one and a half per cent., do you?

A Yes, I think that has been practically determined.

Q Have profiles been made and plans worked out?

A Preliminary profiles, yes. The detailed plans have not been worked out, Mr. Merrey, but I should say offhand it is practicable to get such construction in there. 10

Q You are not sure?

A Why, not absolutely sure from having made the survey myself, but based on the best judgment of the men, the engineers whom we have had go into the matter again, I believe it is practical.

Q You don't know yourself?

A I have not made the survey myself, no.

Q Do you know whether the Vine street bridge can remain, the Summer street bridge, marked Vine street on this plan? 20

A Yes, as the plan is worked out now there would be no disturbance of that bridge.

Q Has the plan been worked out?

A The preliminary plan has been canvassed, yes.

Q We haven't it before us?

A No, it has not been gone into with sufficient detail that it would be practicable to submit it as a working drawing. 30

Q How many trains will be changed, so that instead of going north of Paterson, will sort of make a loop and turn into Jersey City?

A I believe we set forth in the petition one hundred and eighteen trains would be discontinued north of Market street, west of Market street.

Q Those same trains will be run over the Broadway crossing of the Susquehanna, will they not?

A No.

F. B. Lincoln, cross.

Q Not all?

A No.

Q How many will not, that is the point I am getting at?

Q How many will not run over Broadway?

Q Yes, Broadway on the Susquehanna.

A That is figured out sixty-one trains, I think.

10 Q That is the answer, sixty-one trains?

A Sixty-one.

Q (*By Commissioner Donges.*) Sixty-one trains will stop at Market street?

A Will not go over Broadway.

Q Will not be operated west of Market street station?

A Yes, not be operated west of Market street on the main line.

Q On either?

20 A No. We discontinue a hundred and eighteen trains west of Market street on the main line. They are all diverted to the Paterson City loop, sixty-one of those will go back over the N. Y., S. & W. main line and not pass over Broadway going west.

Q Will not be operated west of the junction point?

A Yes.

Q (*By Mr. Merrey.*) How many will be operated over Broadway on the Susquehanna line in addition to what are now operated there?

30

Commissioner Donges. The difference between sixty-one and one hundred and eighteen, I suppose.

Q There may be some other changes.

A It will be impossible for me to answer that question, because that is a matter of working out very considerable detail of the time-table and distribution of trains. I don't think we could say now how many trains we would cut off west of Broadway or crossing Broadway. We have made up this tentative plan

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F. B. Lincoln, cross.

showing a practical distribution of this service, but it is a matter that will have to be worked out, depending on the requirements of the people. As a general proposition, all of the—practically all of the local trains which now terminate at Waldwick or North Paterson on the two lines will not go over Broadway. In other words, they will turn through this loop and go back via the alternate line, the Susquehanna trains going out will come back over the Erie and the Erie trains going out will come back over the Susquehanna, and that will be practically all of the local trains which terminate at North Paterson or Waldwick. We will have to get some service for the Riverside station, Glen Rock, Ridgewood, Hawthorne and North Paterson. That would be adjusted, some of these trains will go on through some of the Susquehanna trains will go on through as they do now, to North Paterson, those that terminate there. Some of the trains turning at Waldwick would have to go on through to Waldwick on the main line of the Erie, and they would cross Broadway. That wouldn't be additional movement over Broadway, above what now crosses Broadway, because as a whole the number of trains crossing Broadway on the Susquehanna would probably be quite materially decreased.

Q (By Commissioner Donges.) But not to the number of sixty-one?

A No, I don't think that.

Q As a matter of fact, the train movement, passenger train movements over the Broadway crossing of the Susquehanna would be very materially increased by this plan?

A No, I should not say that. I don't think it will make very much difference.

Q From the present conditions?

A Of course, there the main line trains come in there.

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F. B. Lincoln, cross.

Q From the present conditions?

A From the present conditions, yes.

Q I don't mean Susquehanna trains; I mean all trains.

10 A I know. There are a great many Susquehanna trains now crossing Broadway going to North Paterson and tying up there, which would be diverted to this new route and not cross Broadway. On the other hand there would be the addition of a number of main line trains which would go in that way by the Hawthorne connection.

Q How many train movements over Broadway are there now on the Susquehanna?

A I don't know.

Q Would you say in the neighborhood of forty?

A I don't know.

20 Q How many are there over Market street, passenger train movements every day?

A One hundred and eighteen I think we set up in our petition. This has all been figured out. I didn't do the figuring. The details are shown in our report.

Q Unless you loop these trains and send some of them back to Jersey City, there will be one hundred and eighteen more train movements over the Broadway crossing than there are at present?

30 A Yes, if you did not loop them, but it is proposed to do that; that is what this is for.

Q There is a possibility of saving about sixty of those movements; you can arrange it that about sixty of those movements will not take place over the Broadway crossing of the Susquehanna?

A I might say it is pretty hard to determine off-hand.

Q (*By Commissioner Treacy.*) You said sixty-one.

40 A Sixty-one, in a preliminary way that was the thought in getting up the tentative schedule. Just how that will work out I am not prepared to say.

F. B. Lincoln, cross.

Q (*By Mr. Merrey.*) Then there is a possibility of from fifty-seven to one hundred and eighteen additional train movements over this Broadway crossing of the Susquehanna road than now made?

A I should not care to make that statement. I would rather see how that worked out in detail. I do not think we can give those figures with any degree of accuracy until we have made a further study of this proposition. 10

Q You will increase the number of train movements over the Park avenue crossing in Paterson?

A No, not at all, or a very little. The New York, Susquehanna trains, which now return via the Susquehanna, which follow that line only, would be going back via the Erie, and in turn their movement would be supplanted by trains going around from the Erie, so as to Park avenue, the train movement should be practically identical. We don't propose to decrease the service on the Susquehanna east of the Broadway station. There will be just as many trains to serve the people and fill the requirements of the time-table. Say half of those over the Susquehanna and the other half Erie, as it may work out, but it is not proposed to— 20

Q How many trains do you run over the Susquehanna into New York every day?

A How many do we?

Q Yes. 30

A I would have to look that up. Don't know, Mr. Merrey, without reference to the time-table, which I don't happen to have a copy of. You want what, from Paterson to Jersey City?

Q From Paterson to Jersey City, we will take that first.

A Twenty-six regular trains, except on holidays.

Q How many run from Jersey City through Paterson?

A The same number, they all have to go back. 40

1900

F. B. Lincoln, cross.

Q They may go back over the Erie?

A No, not now.

Q So there are twenty-six trains each way now on the Susquehanna from Jersey City to Paterson?

A Yes, to or through Paterson, as the case may be. They all serve Paterson.

10 Q What is the maximum that you can run through the loop, that is, running jointly over the new line without going north of Paterson?

A How is that?

Q That is the maximum movement that you could save over the Broadway crossing?

A Yes.

Q And to do that you would have to discontinue all service north of Paterson on the Susquehanna?

A Yes, to take them off the Broadway crossing.

20 Q Taking that into consideration, can you really save more than about thirty train movements over the Broadway crossing of the Susquehanna by this branch, that is thirty less than the combined movement at present over the Erie, over the Susquehanna?

30 A Well, I don't know. I am not prepared to answer any detail question, on the adjustment of that timetable, because, as I say, it is a matter that will have to be very carefully studied. It has been gone over in a preliminary way, but I don't consider we have exhausted the subject at all, or made any reasonable, any practical determination of what we could do there.

Mr. Merrey. I was inclined to think you have only scratched it. You haven't at all got the information we need.

Mr. Minard. I think we understand now we are simply holding a hearing as to whether we should go into this matter, at which time we would be prepared to show all the details, or are we now in our rehearing?

40 *Commissioner Donges.* No. You are now asked to support your plan sufficiently to appeal

F. B. Lincoln, cross.

to the discretion of this Board to give you a re-hearing.

Mr. Minard. Let me say on that, if that is the situation; I went away to Buffalo as soon as we were through that hearing on Wednesday, and I then had a case to try in Scranton, got there Friday afternoon and got home Saturday. Mr. Hobart was in the Adirondacks not intending to come back and came back last night purposely for this hearing, and Mr. Taylor was away and got back this morning, so the Board will have to excuse us a little bit if we haven't our case prepared to go on to-day. 10

Commissioner Donges. How long will it take you to prepare your case?

Mr. Minard. I don't know; we can get at it right away.

Commissioner Donges. The Board assumed 20 when you filed your petition that you were prepared to support it.

Mr. Minard. Which we are prepared to support it, and we could have gotten along better to-day if we could have gotten the notice a little earlier or if we had been home at the time the notice came.

Commissioner Donges. You had at least six days' notice.

Mr. Minard. I received notice Saturday morning. 30

Commissioner Donges. It was sent to your company, however.

Mr. Taylor. The company received the notice on Friday from Collins & Corbin.

Commissioner Donges. It was sent to your attorneys certainly not later than Tuesday of last week.

Mr. Merrey. June 22nd is the date that notice must have gone out. 40

F. B. Lincoln, cross.

Commissioner Donges. I think it was last Tuesday the notices went out. However, there is no disposition to limit you in presenting your proof.

10 *Mr. Minard.* And there is no disposition on our part to postpone the matter in any way. Mr. Lincoln will have to admit he got a hurried call Saturday afternoon to come over here. That is about the situation. This data that was prepared was all prepared before the petition was filed, in order to give us a general picture of what could be done.

Commissioner Donges. If you are not prepared to-day, will you be prepared, what day this week?

20 *Mr. Merrey.* It seems to me if they are going to prepare, they should prepare plans, and evidently there are no detail plans prepared. That will take them a month or two months.

Commissioner Donges. The Board has not suggested what they should do to prepare their case. The Board fixed to-day to take testimony in support of the petition to determine whether the rehearing should be granted.

30 *Mr. Minard.* Then the question arises, what further have we to prepare? The Board's order never would include the number of trains we should run one way or another, of course, we have presented a *prima facie* of what we propose to do, and the only reason I mentioned what I did was because Mr. Merrey has crowded us now for what trains we should run one way or another.

Commissioner Donges. No, it was because of your suggestion, Mr. Minard, that you were not prepared to-day.

40 *Mr. Minard.* We are not prepared to go into that problem.

1903

F. B. Lincoln, cross.

Commissioner Donges. The Board is not outlining or pretending to say to you what you should submit. You submit whatever you think you ought to submit in support of your petition. That is all. You may proceed, Mr. Merrey.

Q Mr. Lincoln, that will increase materially the number of train movements over East Eighteenth street, will it not, that is the one just before the Y? 10

A Yes.

Q The number of passenger train movements will be increased by at least 118 per day, will it not?

A It will be increased by whatever number are diverted from the main line of the Erie at Market street or Hawthorne.

Q You propose to divert all of your trains, do you not, from the main line of the Erie?

A Yes.

Q There will be a new grade crossing at Ellison Place, will there not? 20

A Yes.

Commissioner Donges. Just a moment. What do you mean by a new grade crossing? You mean at the junction with the Susquehanna?

Mr. Merrey. Yes, on that curve.

Witness. Where the Y crosses.

Q That will be a new grade crossing over Ellison Place? 30

A Yes.

Q And the same number of trains will cross there that cross just beyond at Broadway?

A No, not as many as cross Broadway, because some of the trains that go up the Susquehanna main line will follow the present route and not go through the Y.

Q Yes, another grade crossing on the Susquehanna at Hamilton avenue?

A Yes. 40

F. B. Lincoln, cross.

Q One at Godwin street?

A Yes.

Q And Governor street? There is a trolley crossing there?

A Yes.

Q At grade. There is a crossing at Harrison street at grade?

10

A Yes.

Q And Fulton?

A Wait a minute. I don't know whether all those streets cross in there or not. I am not familiar with all of them. Not all of those streets cross the railroad.

Q Not all of them are actually used and opened?

A No. My recollection is that all told I counted thirteen crossings the last time I went over there, between Broadway station and the river.

20

Q Grade crossings?

A I think there are thirteen streets cross the railroad in that distance.

Q At grade?

A At grade. I think that is all there are. The map shows some twenty odd streets here, so it would not be correct for me to answer yes at every one of these crossings as you named them.

Q There are about thirteen streets cross the Susquehanna grade north of the Broadway station?

30

A Yes.

Q And this plan would put a very materially increased train movement over every one of those grade crossings?

A Yes—no. Not a very materially increased train movement. There would be some increase.

Q Something between sixty and a hundred and eighteen.

A A very considerable number of these short haul trains are diverted to the other route.

40

Q Not more than fifteen each way probably?

1905

F. B. Lincoln, cross.

A Possibly not.

Q It is limited by the number of trains over the Susquehanna, the number you can divert, and you cannot divert all of them?

A No.

Q So that about half of them—you cannot divert more than half of them—that would be thirteen train movements each way. This plan then practically transfers the grade crossing trouble from the main line of the Erie and puts it on the Susquehanna, does it not? 10

A Well, no; I don't think you can exactly express it that way. It increases some of the train interruptions on the crossings west of Broadway on the Susquehanna, and it does or can eliminate all of the train movement, passenger train movement west of Market street on the main line.

Q (*By Commissioner Donges.*) All of it? 20

A I say it can do that. We have figured in this tentative plan to leave, I think, seven trains, local trains to serve River street, but it is entirely practicable in my mind to eliminate that entirely and serve that section up there from the Susquehanna, as I said before, by the rearrangement of the Riverside station on the Susquehanna, so that would leave nothing but switch engine movements in that territory.

Q The Straight street crossing on the Susquehanna is eliminated by this plan? 30

A Yes.

Q That isn't a very dangerous crossing, is it?

A I don't know whether it is any different from any other.

Q I will call your attention to the—

A Why is it any different from any other?

Q Because the train movements must necessarily be slow, it is so near the end of the Susquehanna route. 40

F. B. Lincoln, cross.

A No slower than the train movements on the main line.

Q Every train crossing Straight street is about coming to a stop, is it not?

A Yes, sir.

Q For the Straight street station?

A Yes.

10 Q And as a matter of fact, a great many of them stop right on the street?

A Yes.

Q So the movement must necessarily be slow?

A All trains on the main line stop at Market street.

Q Yes, but they cross Market street at a faster rate of speed?

A Not any faster than they pass Straight street. I don't believe they are in approaching—the eastbound
20 trains crossing Market street are all coming in prepared to stop at the station right across the street. Practically the same condition obtains as approaching Straight street.

Q How many trains per day have you into the Straight street station?

A That I would have to check up.

Q Something less than twenty-six?

A Yes, a number of the trains do not come in there.

30 Q Will not the situation at the Broadway station be an extremely dangerous one under this plan, because of the tracks being on three sides of the station, practically surrounding it?

A I should not consider it was. I don't see any particular increased element of danger. It is not an uncommon condition.

Q Vehicles passing up Ellison place will be in the center of a triangle on which trains are being run?

A Yes.

40 Q Isn't that a rather dangerous situation, confusing?

F. B. Lincoln, cross.

A I don't know why it should be, sir.

Q Don't you think it is rather confusing to a driver to have bells ringing behind him and in front of him, not knowing just where the train is coming from?

A I don't see why there should be any confusing or element of risk if he pays attention to his business and watches the gate crossings and the crossing watchman and the gates. It is reasonable to assume we would have proper protection at that point. 10

Q Do you know whether it is possible under this plan to make an undergrade crossing at Broadway and Ellison Place instead of a grade crossing?

Commissioner Donges. On the Susquehanna you mean?

Mr. Merrey. Yes.

A Why, it is possible to put the railroad over the streets. 20

Q Over or under at Broadway and at Ellison place?

A Why all things are possible, Mr. Merrey, but I should consider it a very impracticable piece of operation and a very difficult piece of engineering to get the railroad under Broadway as it exists on its present grade. I am not thoroughly familiar with the ground around Broadway, except as I have seen it from the train. It would probably be possible from an engineering standpoint to get Broadway over the railroad leaving the railroad on its existing grade but it would be pretty difficult to work in that Y connection and change the grade of the railroad, within a reasonable expense. All things are possible in that line. 30

Q (*By Commissioner Donges.*) I understand, Mr. Lincoln, that there will be some changes in the grade of tracks in the main line east of Market street under this proposed plan?

A Yes.

Q What changes? 40

F. B. Lincoln, cross.

A We would have to go back two or three blocks, three or four blocks, and commence to rise in order to get up over Market street.

Q Will it eliminate any—or separate the grades of any streets and the railroad, east of Market street?

A No, that is not contemplated in this plan.

10 Q (*By Mr. Merrey.*) As I understand, you start to elevate as shown on the plan on Section A of the order of the Commission?

A Yes, substantially so.

Q (*By Commissioner Donges.*) And you carry that elevation to a point west of Market street?

A Yes.

Q No other changes in grade on either the Susquehanna line or the main line of the Erie?

20 A No, except coming off of this rise down to the west, coming down past Ellison street, we have to come off of that elevation down to the existing railroad west of Market street by a descending grade, and that would necessarily under this scheme, close up Ellison street as we came down. We would strike the existing grade about Van Houten street.

Q You mean on the Susquehanna?

Mr. Merrey. On the Erie.

Q On the Erie, you mean?

A Yes, on the Erie.

Q Close Ellison and leave Van Houten as it is?

30 A Yes. In other words, we would be able to come down off of this elevation in that distance.

Q (*By Mr. Hobart.*) The rise, Mr. Lincoln, as you approach Market street from the east, would be, according to this plan, a one per cent. grade?

A Would be what?

Q A one per cent. grade?

A Yes, that is the working out of it so far.

40 Q And that would not involve, as I understand, any change in the location of the streets or crossings to the east of Market street?

F. B. Lincoln, cross.

A No.

Q There is already an undergrade crossing at Essex street, the first street east of Market?

A Yes.

Q This two per cent. grade, to which reference was made, would be a grade west of Market street?

A To come down off the elevation.

Q And on that there would be only these switching movements or perhaps the train movements that have been suggested? 10

A There might be some passenger train movement there probably.

Mr. Lewis. My appearance has been entered for the Paterson & Hudson River Railroad and the Paterson & Ramapo Railroad, and I would like to ask one question.

Q (*By Mr. Lewis.*) Mr. Lincoln, as I understand it, the contemplated plan does not involve in any way the abandonment of any part of the existing right of way of the Erie Railroad? 20

A None whatever.

Q (*By Mr. Hobart.*) Reference has been made to that fifteen degree curve; is that curve itself on the grade, or does the grade cease before the curve begins?

A Both. The curve would be partly on the grade in all probability. Working that out, I doubt if we could begin—I think we would have to begin to turn off from the main line before we got to the top of the rise, as the thing looks now. A small portion of the curve might be on the grade. 30

Q But it would be only a small portion?

A Just a small portion.

Q With regard to these trains on the Susquehanna that now run to North Paterson; is North Paterson a terminal point where you have a round house and some side tracks, and so on, for trains to lay up?

A Yes. 40

H. B. Lincoln, cross.

Q In itself it is a comparatively small place, is it not, a small station?

A Yes.

Q So that trains running to that point run only because that is the terminal point?

A That is all.

Q Not to accommodate people necessarily?

10 A That is all, to our roundhouse.

Q Is the same thing also true of this place called Waldwick on the main line of the Erie?

A Yes.

Q That is a terminal point, a comparatively small station, isn't it?

A Yes.

Q (*By Commissioner Treacy.*) How about Ridgewood, Ridgewood is a pretty fair-sized place?

20 A Yes. Ridgewood would be served by practically the same number of trains as now.

Q I understood you to say that sixty-one of the regular trains that now go west of Market street will be cut off, even on the Susquehanna line; am I correct?

A They will go around the loop and go back the other way.

Q (*By Mr. Hobart.*) Sixty-one includes both?

A Yes.

30 Q (*By Commissioner Treacy.*) West of Market street, those are movements that would supply North Paterson, Hawthorne, Riverside, Ferndale, Ridgewood and Waldwick, aren't they, Hohokus?

A Not to any extent. Quite a considerable number of our trains are run as equipment trains from Paterson to Waldwick.

Q How many trains do you propose to take off that are now running to Ridgewood?

A You mean how much would we decrease the Ridgewood service?

40 Q Yes, the Ridgewood service?

F. B. Lincoln, cross.

A Very little. I cannot say just how many. I don't know as we would make much difference in that Ridgewood service. A number of these trains that go up through there now are empty trains, simply equipment trains run out of schedule at Paterson on Fern-
dale or River street, as the case may be, and run up
over the third track to Waldwick, don't carry any
passengers west of River street. Some of them don't
carry any passengers west of Glen Rock, run up the
other track. Those are the character of trains that
would be turned and sent back over the Susquehanna.
They go up to Waldwick, turn and go back. Instead
of doing that we would run them around the loop and
run them back to Jersey City.

10

Q Trains that don't furnish service west of Market street?

A Yes. We could not decrease the service up in that Ridgewood territory. We could not take off any
trains to amount to anything that now serve them, so
we would have to utilize these trains that are simply
dead-heading up there for this service.

20

Q You say there are sixty-one such trains?

A No, I didn't say how many there were. I don't recall how many equipment trains we do run in there.

Q (*By Mr. Merrey.*) You cannot take off any more of those trains than there are now trains over the Susquehanna; that is the way you are limited, by the movement over the Susquehanna which is twenty-
six trains each way?

30

A Yes.

Q And you cannot do that without taking off all the service up the Susquehanna, so if you interfere with half the Susquehanna service, then you just gain about thirteen trains each way?

A Yes.

Q That is what limits you?

Mr. Minard. Why can't we run more trains over the Susquehanna than we do?

40

P. M. Linceda, cross.

Mr. Herrey. Because you don't need them.

Mr. Minard. But if we use them for the Erie then we will need to run more. I don't see the point in your suggestion.

Mr. Herrey. The point is, you won't increase the Susquehanna business over what you need. To Paterson it is five miles longer to Jersey City over the Susquehanna.

10

Mr. Minard. I don't know.

Mr. Herrey. Nearly five miles by your map.

Commissioner Dongra. Five miles what?

Mr. Herrey. Five miles more by the Susquehanna from Paterson to Jersey City than by the Erie, nearly that, not quite. It shows on the little map annexed, 20.15, and the other is 15.7

20 *Q (By Mr. Hobart.)* One other question about Ridgewood. Doesn't Ridgewood have the advantage of being on what is called the Bergen County short-cut?

A On the main line, but all the Bergen County trains go through there.

Q And there is service now from Ridgewood to New York over the short-cut?

A Yes.

Q Trains which don't pass Paterson at all, but which run direct to New York to accommodate the commuter service?

30 *A* In rush hours considerable of the traffic is handled that way.

Q (By Mr. Herrey.) Four trains a day?

A In the rush hours, I say, most of the travel from Ridgewood is taken care of in that way.

Q There are five trains a day?

A Each way, four one way and five the other.

Q Five and three, isn't it, five one way and three the other way, over the Bergen County cut?

40 *A* That is strictly Bergen County service. They have got the main line?

F. R. Lincoln, cross.

Q (By Mr. Hobart.) Of course, that could be increased, if necessary, to accommodate Ridgewood?

A Yes.

Q Your attention was called by Mr. Merrey to the fact that there are, as you counted then, thirteen grade crossings now existing between the Broadway station on the Susquehanna and Hawthorne?

A Yes.

Q You are familiar generally with that section of the city, from observation?

A From riding through there on the trains, that is all. I never lived there or never walked there.

Q Is it built up or used to the same extent as some of these crossings on the Erie main line, like Market street?

A No.

Q A comparatively small amount of traffic, street traffic?

A As compared with Market street, yes.

Q (By Commissioner Donges.) Where is this?

A The intermediate crossings west of Broadway, between there and the river, on the N. Y., S. & W.

Q When did you make your observations?

A I am up and down frequently, sir. I was over that line on an inspection trip within a week.

Q How long did you remain at these crossings?

A We didn't stop at the crossings on this last trip. Two weeks ago I was up in a motor car, inspection trip, and was around there for an hour at the different crossings, looking at the gates, looking over the situation generally.

Mr. Hobart. That is all.

Commissioner Donges. If there is nothing further we will take the matter into conference.

Mr. Lewis. As I understand it, the present application is merely one affecting the plan. It does not effect, it is not an application for a rehearing upon any of the matters adjudicated by the Commission,

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Discussion.

except as to the plan fixed by such adjudication, as I read the prayer.

10 *Commissioner Donges.* Of course, the application speaks for itself, but the prayer is, wherefore, this respondent respectfully prays that a rehearing of the order of April 20th, 1915, be granted for the purpose of considering the foregoing plan in lieu of the plan described in said order, and for the taking of testimony thereon so far as may be necessary, and that pending consideration of this petition and the granting of rehearing on said order—this relates to the *certiorari*, but it is simply that this plan be considered in lieu of the one heretofore.

Mr. Lewis. Yes, so I need not put my clients to the expense of further attendance.

20 *Mr. Taylor.* From the course of the cross examination and some questions asked by the members of the Commission, I anticipate that perhaps they would feel they should have in considering even this preliminary application of ours, which is preliminary in a sense because we merely ask for a rehearing, more detailed information about these train movements just how it is proposed to change them around. Mr. Minard stated a few moments ago some of the reasons why we are not prepared at this time to go into great detail on that point, and I would like to suggest, if it is agreeable to the Board and to Mr. Merrey, that
30 this record be held open for the balance of this week, say, or for such time as the Board may direct, so if we find it practicable in the next few days to work up some more definite statement on that subject we may be permitted to file it and send a copy to Mr. Merrey, and if he wants to send anybody to cross examine on the subject, if we file such a statement we will be glad to produce a man at the proper time.

40 *Mr. Merrey.* I think the situation is made very clear by Mr. Lincoln. He must realize the question of these train movements. It cannot be claimed you

Discussion.

can divert more trains over this proposed loop than now run over the Susquehanna, and you cannot divert all of them, so that brings it down to a matter of less than thirty trains.

Mr. Taylor. I don't quite understand your statements. As I understand it, we have say 118 trains to take off the Erie line north of Market street. We propose to make no substantial decrease in the traffic. That means that those trains must be run over the Susquehanna north of Broadway except in so far as they are taken around the loop, but there are also some Susquehanna trains which can be taken off the line north of Broadway, and run around the loop so that makes a difference in the net increase of traffic north of Broadway. We all agree to that. It is only a question as to just how much the precise number of trains is to be affected. 10

Commissioner Donges. Mr. Merrey, it is scarcely worth while to discuss now the effect of any such testimony. The point is whether the company ought to be afforded an opportunity to put in any supplemental information that it desires and whether you require the production of a witness, or whether you will agree that it shall be put in in the form of a statement subject to your right to cross examine if you desire. 20

Mr. Merrey. I am arguing now it is not necessary, because it sufficiently appears to the Commission, that situation is sufficient for the purpose. Here is the situation: There are 118 trains run out of Jersey City into Paterson. Those trains would be diverted into the present Susquehanna cut, and then run north on the Susquehanna, except so many of those as can be turned and run down on the Susquehanna to Jersey City. 30

Mr. Taylor. Then there would be a further decrease of those trains, which can be taken off the Susquehanna. 40

Discussion.

10 *Mr. Merrey.* Pardon me. Let me get through. Then there are a certain number of other trains which will go up the Susquehanna and be diverted on the Erie. The amount of that service will not exceed the present service over the Susquehanna without taking trains from Ridgewood and taking trains from the main Paterson station. That will not increase the
 20 Present service over the Susquehanna, which is twenty-six trains each way, and every train that is operated under this plan, instead of running it out to the Susquehanna and running it down to Paterson and that way over the main line, is a train which is taken away from the service above. I say they cannot take more than half of them, which is thirteen trains each way, or twenty-six so the number of movements which they can save is twenty-six out of the 118 at the maximum, probably in that way. The point I am making, it is sufficiently clear to the Commission now
 30 that there will be at least ninety additional train movements over everyone of these thirteen crossings, and so far as the Eighteenth street crossing is concerned there will be at least 118 more over that, and the new crossing at Ellison Place, over which there will be about ninety passenger train movements every day. I think that is sufficiently clear, and I don't think there is any need of taking any more testimony. They may prove there will be five or six or ten movements, more or less from that, but that is the limit.

30 *Mr. Taylor.* I made the suggestion about furnishing more detailed information of this sort because it seemed to me that Mr. Merrey was looking for it, by the questions he asked. It seems to us, from the character of the application which we have made, that we have gone as far as necessary. While we are perfectly willing to furnish this information, if Mr. Merrey don't want it, we don't care about—

40 *Commissioner Donges.* Then you don't care to supplement your proofs?

Discussion.

Mr. Taylor. Not unless the Board wants it.

Commissioner Donges. It is a matter for your judgment, Mr. Taylor. If there is nothing further then—

Mr. Merrey. The position of the city is distinctly against this plan as it stands now. Our position is—

Commissioner Treacy. The proposed plan, the new plan?

Mr. Merrey. Against the proposed plan. We realize it will give a better train service, but it is transferring the danger from grade crossings from one part of the city to another, and it is creating a situation which we think materially increases the danger. 10

Commissioner Donges. Why?

Mr. Merrey. Because of the peculiar triangle arrangement which they have in the vicinity of the Broadway station, where there is a great deal of traffic. It will put a man in the position where there may be trains in front of him, in back of him, and off to the side. 20

Commissioner Donges. At Ellison place?

Mr. Merrey. At Ellison place it will make a particularly bad situation. The Broadway crossing will be just as bad on the Susquehanna as it is at the Erie, with very little difference—not quite as bad, but nearly as bad. This whole section the Susquehanna traverses is a rapidly growing section, a great deal of traffic over it, and with this plan, it is probable we won't get much relief in the future when it will be badly needed. We would have been willing to consider a plan which would have eliminated Broadway, with some others, Ellison place and Eighteenth street. If this plan could be so modified that it would eliminate these crossings, I think we would be glad to have it, with the prospect of some time in the future having the other crossings eliminated, but for the present it would do that. But our position now is that the situation would be probably worse; it would probably be worse than it is today. 30 40

Discussion.

Commissioner Donges. You say that the section of the city through which the Susquehanna runs is as thickly populated—

Mr. Merrey. No.

Commissioner Donges. And that the crossings over the Susquehanna have as much traffic, pedestrian and vehicular traffic over them as the main line?

- 10 *Mr. Merrey.* No, they have not, but there are more crossings, on the Susquehanna north of Broadway than there are on the Erie north of Market street, and although the section is not as thickly populated, yet it is growing very rapidly; it is the growing section of the city. So far as the Broadway crossing is concerned, the use of that is very nearly the use of the present Broadway crossing on the Erie, a great deal of automobile traffic coming in from Hackensack and New York uses Broadway, and the same trolley line
- 20 as crosses down at the Erie station, and there are more cars run over the lower crossing than there are this. There is the Governor street line which crosses at the Erie, crossing at Broadway, and does not cross the Susquehanna, but does cross over on Governor street at another point.

Commissioner Donges. It turns up Eighteenth street?

- Mr. Merrey.* No, it crosses at Governor and then goes up Eighteenth street, so there are just as many trolley cars crossing Broadway across the Susque-
- 30 hanna at grade as do now. That is at Broadway, not counting the Market street ones, and there isn't much difference in the vehicular traffic at the Susquehanna Broadway crossing and the Erie Broadway crossing.

Mr. Hobart. Do I understand the city's position to be that they will be satisfied with this plan except for the difficulties you suggest at Broadway and Ellison place?

- Mr. Merrey.* We would be willing to agree with the
- 40 Company, I think, about this, if we could at the pres-

Report on Rehearing.

ent time have eliminated the proposed crossings at Ellison place, Eighteenth street and Broadway.

Mr. Hobart. Eighteenth street, too?

Mr. Merrey. Yes, and then with the expectation that in the future some time these other crossings, of course, would be eliminated.

Commissioner Donges. We will take the matter into conference.

10

(Matter taken into conference.)

Report on Rehearing.

(Filed July 9, 1915.)

STATE OF NEW JERSEY.**BOARD OF PUBLIC UTILITY COMMISSIONERS.**

20

IN THE MATTER OF THE APPLICATION OF ERIE RAILROAD COMPANY FOR REHEARING OF THE APPLICATION OF THE CITY OF PATERSON TO ALTER GRADE CROSSINGS ON THE LINE OF ERIE RAILROAD COMPANY.

Report.

30

George S. Hobart, Herbert A. Taylor, and Duane E. Minard, for Erie Railroad Company.

E. F. Merrey, for the City of Paterson.

W. I. Lewis, for Paterson & Hudson River Railroad Company and Paterson & Ramapo Railroad Company.

L. D. H. Gilmour, for Public Service Railway Company, Public Service Gas Company and Public Service Electric Company.

Application is made by Erie Railroad Company for a rehearing of the proceeding, which resulted in an

40

Report on Rehearing.

order of the Board, dated April 20th, 1915, approving plans for the separation of the grade of certain public highways, in the City of Paterson, and the tracks of the Erie Railroad, for the purpose of considering a plan suggested in said application for rehearing, in lieu of the plans approved by the Board.

10 The Board has carefully considered the petition, the exhibits attached thereto, and the testimony, exhibits and reasons submitted in connection therewith, and concludes that the application should be denied.

Dated July 9th, 1915.

BOARD OF PUBLIC UTILITY COMMISSIONERS,

By

(Signed) RALPH W. E. DONGES,

(SEAL.)

President.

Attest:

20

(Signed) ALFRED N. BARBOUR,

Secretary:

I hereby certify the foregoing to be a true copy of report, made and filed by the Board of Public Utility Commissioners, at a meeting held Friday, July 9th, 1915.

ALFRED N. BARBOUR,

Secretary.

30

1921

Writ of Certiorari on Rehearing.

Writ of Certiorari.

(On Rehearing.)

NEW JERSEY, ss.

The State of New Jersey to the Board
(L. S.) of Public Utility Commissioners, GREET-
ING:

We being willing for certain reasons to be certified
of a certain report, determination or order of said
Board dated July 9, 1915, denying an application by
Erie Railroad Company for a rehearing of the pro-
ceeding entitled "In the matter of the application of
the City of Paterson for alteration of grade crossings
on the line of the Erie Railroad," which resulted in an
order of said Board dated April 20, 1915, whereby
said Erie Railroad Company was ordered to alter cer-
tain crossings and each of them named in said order
according to the plan therefor thereto annexed and
made part thereof by substituting therefor crossings
not at the grade of said streets, which application for
rehearing was for the purpose of considering a plan
suggested in said application in lieu of the plans ap-
proved by said Board, do command you that the said
report, determination or order, together with the said
application for rehearing, the testimony and exhibits
offered before said Board, and all other proceedings
by or before said Board concerning the same, as
fully and entirely as before you they remain or are in
your custody or control, you do certify and send, to-
gether with this writ, to our Supreme Court at Tren-
ton on the eleventh day of August, nineteen hundred
and fifteen, that we may cause to be done thereupon
what of right and according to the law ought to be
done.

Witness, William S. Gummere, Esquire, Chief Just-
ice of our Supreme Court at Trenton, this twenty-sec-

1922

Writ of Certiorari on Rehearing.

ond day of July, A. D., nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

COLLINS & CORBIN,
Attorneys of Prosecutors.

10

Endorsed :

NEW JERSEY SUPREME COURT.

Erie Railroad Company,
Prosecutor,

vs.

20 The Board of Public Utility Com-
missioners, City of Paterson and
Board of Finance of said city,
Defendants.

WRIT OF CERTIORARI.

COLLINS & CORBIN,
Attorneys for Prosecutors,
243 Washington Street,
Jersey City, N. J.

30

I allow this writ. Let it be sealed. July 22, 1915.

JAMES F. MINTURN,
J. S. C.

*Return.***Return.**

*To the Honorable the Judges of the Supreme Court of
Judicature of the State of New Jersey:*

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey a certain report made by said Board on the ninth day of July, one thousand nine hundred and fifteen, together with the record and proceedings of said Board, and all things touching and concerning the same, as fully and entirely as before said Board they remain, as it is within commanded. 10

In witness whereof the seal of said Board is hereto affixed and certified by the subscriber.

ALFRED N. BARBER,
*Secretary of the Board of Public
Utility Commissioners
of New Jersey.* 20

(Return includes petition for rehearing, testimony thereon, and report of Board, denying same, as printed in Vol. IV.)

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Reason on Rehearing.

**Reasons
on
Rehearing.**

(Filed September 15, 1915.)

NEW JERSEY SUPREME COURT.

10

<p>ERIE RAILROAD COMPANY, <i>Prosecutor,</i></p> <p style="text-align: center;">vs.</p> <p>BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, <i>Defendants.</i></p>	}
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*On Certiorari.
(Re Application
for re-
hearing of
order of
April 20,
1915.)
Reasons.*

20

The prosecutor files the following reasons upon which it will rely for a reversal of the proceedings under review in this case:

1. The action of the Board of Public Utility Commissioners in denying the application of the prosecutor for a rehearing of the order of said Board, dated April 20, 1915, was arbitrary and unjustified, and was not supported by the evidence taken before said Board.
2. Said application for a rehearing of said order of April 20, 1915, should have been granted for the purpose of considering the plan proposed by the prosecutor in said application for a rehearing, in lieu of the plan described in said order, and for the purpose of taking testimony thereon so far as might be necessary.
3. The application of the prosecutor that the effective date of said order of April 20, 1915, be extended for such reasonable time as would permit a full con-

40

Reason on Rehearing.

consideration of said petition for a rehearing, should have been granted.

4. The evidence shows that the action of said Board in denying said application for a rehearing, was:

- (a) Purely arbitrary.
- (b) Without any reasonable basis upon which to rest.
- (c) Unsupported by the facts laid before said Board.

10

5. The action of said Board in denying said application for a rehearing was contrary to the undisputed testimony taken before said Board upon said application.

6. Said application of the prosecutor for a rehearing should have been granted for the reason that the undisputed testimony before said Board taken on such application showed that it was feasible and practicable to remove the danger to public safety and the impediment to public travel at the highway crossings, and each of them, involved in this proceeding, by adopting the plan proposed by the prosecutor in said application, in lieu of the plan described in said order, dated April 20, 1915.

20

COLLINS & CORBIN,
Attorneys of Prosecutor.

30

1926

Order for Affidavits.

Order for Affidavits.

Filed September 27, 1915.

On application of the prosecutor and on due notice to attorneys of defendants and against their objection,

10 Ordered that either party in the above entitled cause have leave to take affidavits on two days' notice to the other.

This order is made without prejudice to the right of said defendants to object to the reading of the affidavits taken hereunder.

Let the above rule be entered.

JAMES F. MINTURN,
J. S. C.

20 Rule entered this 27th day of September, A. D. 1915, on motion of

COLLINS & CORBIN,
Attorneys of Prosecutor.

30

40

George H. Palmer, direct.

Affidavits for Prosecutor.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY,
Prosecutor,

vs.

THE BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

Defendants.

On
Certiorari.
Depositions.

10

Depositions taken before me, David A. Newton, a
Supreme Court Examiner, of the State of New Jersey,
on Thursday, September 30, 1915, at 11.30 a. m., at No.
243 Washington street, Jersey City, New Jersey.

20

Appearances:

George S. Hobart, Esq., of Messrs. Collins & Cor-
bin, for the prosecutor.

Frank H. Sommer, Esq., for the Board of Public
Utility Commissioners.

Edward F. Merrey, Esq., for the City of Paterson
and the Board of Finance of said city.

It was stipulated and agreed by the respective coun-
sel that the depositions be taken stenographically by
the examiner, by him transcribed, and the signatures
of the witnesses thereto were waived.

30

Mr. Sommer. Enter the objection by myself, in be-
half of the Board of Public Utility Commissioners, to
the giving of notice by the prosecutor, and that at the
hearing we will object to the reading of the depositions
upon the ground that there is no authority for the
making of the order under which these depositions are
taken; and state that Mr. Merrey joins in the objec-
tion.

Mr. Merrey. Yes, state that I join on behalf of the
city.

40

George H. Palmer, direct.

GEORGE H. PALMER, a witness produced in behalf of the prosecutor, upon being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

Q You are the assistant land and tax agent of the New York, Susquehanna & Western R. R.?

A Assistant general land and tax agent.

10

Q Have you examined the records of the company with a view to determining what the records show as to the title of certain land commonly called Crosby Place in the City of Paterson?

A I have.

Q Have you the deeds and other instruments affecting that title so far as they relate to the New York, Susquehanna and Western Railroad Co. and its predecessors?

20

A Yes, sir.

Q Have you prepared a blue print on which appears the property in question?

A Yes.

Q Please produce the deeds and agreements?

A You just merely want the name of the deeds or do you want to explain what they cover?

Mr. Hobart. First I will offer the blue print which the witness produces.

30

The Witness. I beg pardon, I think I have got a better blue print here; it is a better one than that.

(Blue print marked Exhibit Erie 1.)

Q Does this blue print show by various colored markings as indicated in the legend thereon the title to the land commonly called Crosby Place?

A It does.

Q And have you the deeds and instruments which are referred to on the blue print?

40

A Yes. The deeds or copies of deeds I have.

George H. Palmer, direct.

Q Please identify them in some way and read them into the record sufficiently to identify them?

A The tracts of land designated by blue shaded boundary lines and marked "First," "Third" and "Fourth" were conveyed by Garret A. Hobart and wife to the Paterson Extension Railroad Company by deed dated March 10, 1882, recorded in Passaic County Clerk's office July 29, 1882, in Book E-7 of Deeds, 10 pages 397, etc.

Mr. Hobart. May we use copies?

Mr. Sommer. You may use copies.

(Said deed marked Exhibit Erie 2.)

Mr. Sommer. These are all compared—these copies?

The Witness. Yes, sir.

A (Continuing.) The tract of land designated by yellow shaded boundary lines was conveyed by The Mutual Life Insurance Company of New York to the Paterson Extension Railroad Co. by deed dated May 28, 1881, recorded in Passaic County Clerk's Office May 28, 1881, in Book T-6 of Deeds, page 447. 20

Mr. Hobart. I offer the deed.

(Said deed marked Exhibit Erie 3.)

The Witness. Do you want a statement as to the consolidation?

Q Well, are there any other deeds that should be offered to show the property? 30

A No other deeds to the company.

Q Any deeds or agreements from the company?

A Yes.

Mr. Merrey. Did you put in the tract marked 1?

The Witness. That is all here in blue.

Mr. Merrey. You put in first, third and fourth?

The Witness. Left out second.

Q Please put in any deeds or agreements you have from the company? 40

George H. Palmer, direct.

A The portion of the yellow tract designated C was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated August 30, 1883, recorded in Passaic County records—in Passaic County Clerk's office, I should say—September 1, 1883, in Book 202 of deeds—I mean in Book M-7 of deeds, page 202.

10 *Mr. Hobart.* Offered.

(Said deed marked Exhibit Erie 4.)

Mr. Merrey. That is one cut off by the red line?

The Witness. Yes.

A (Continuing.) The triangular parcel of land enclosed in red lines, being a portion of the first tract of land, was conveyed—

Mr. Merrey. Conveyed by the Mutual Life.

20 *The Witness.* No, I mean this little triangle in here.

A (Continuing)—being a portion of the first tract of land conveyed by Hobart and wife to the Paterson Extension Railroad Co. was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated September 7, 1883, recorded in Passaic County Clerk's office in Book M-7 of Deeds, at page 311.

(Said deed marked Exhibit Erie 5.)

30 The tract of land designated by red shaded lines and marked E, being a portion of the two tracts of land, one conveyed by Mutual Life Insurance Co. of New York and the other of the first parcel of land conveyed by Hobart before referred to was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated October 30, 1884, recorded in Passaic County Clerk's office in Book U-7 of Deeds, page 618.

(Said deed marked Exhibit Erie 6.)

George H. Palmer, direct.

The tract of land bounded by red lines and marked F, which is a portion of the two tracts of land conveyed by the deeds from the Mutual Life Insurance Co. of New York and Hobart and wife, above referred to, was conveyed by the New York, Susquehanna and Western Railroad Co. to Henry B. Crosby by deed dated August 7, 1886, recorded in Passaic County Clerk's office in Book U-8 of Deeds, page 392.

10

(Said deed marked Exhibit Erie 7.)

By agreement between the New York, Susquehanna and Western Railroad Co. and Henry B. Crosby dated November 1, 1884, recorded in Passaic County Clerk's office May 6, 1903, in Book X-15 of Deeds, pages 470, etc., the New York, Susquehanna and Western Railroad Co. granted to Crosby the right to lay and maintain for a period of ninety-nine years from the date of the agreement a flag sidewalk upon these lands.

20

(Said agreement marked Exhibit Erie 8.)

The Witness. Better say upon the driveway.

Mr. Hobart. Well, the whole thing will be printed anyway.

Q These deeds and agreements to which you have referred, are they all the papers on record that affect the title to the lands in question?

A Yes.

Q Some of these papers referred to the Paterson Extension Railroad Co., do you know whether that company is a predecessor of the New York, Susquehanna and Western Railroad Co.?

30

A It is, or was.

Q Have you before you a summary showing the chain of title leading into the present New York, Susquehanna and Western Railroad Company?

A Yes.

Mr. Hobart. Of course, Mr. Merrey, I can put in evidence, if you want, all of these—about a dozen different consolidation agreements; but I

40

George H. Palmer, cross.

do not see any objection, unless you want them, and I thought I would have Palmer state it just as he did in the main case.

Mr. Merrey. Probably that is all right.

Q Proceed, Mr. Palmer.

A The Paterson Extension Railroad Co. was consolidated with the Midland Railroad Co. of New Jersey and other companies to form The New York, Susquehanna and Western Railroad Co. by articles of consolidation dated May 26, 1881, acknowledged June 16, 1881, filed in the office of the Secretary of State of New Jersey June 17, 1881.

The New York, Susquehanna and Western Railroad Co. was consolidated with the Blairstown Railway Co. by agreement dated December 22, 1882, the name of the new company being New York, Susquehanna and Western Railroad Co. New York, Susquehanna and Western Railroad Co. was consolidated with the Hudson River Railroad and Terminal Company by agreement dated April 5, 1893, the name of the new company being the New York, Susquehanna and Western Railroad Co., which is the present company.

Cross examination by Mr. Merrey.

Q Are you familiar with this roadway known as Crosby Place?

A Yes, that is I have not been up there recently. I have been there a good many times in the past.

Q You know that it is lighted by the City of Paterson?

A I do not know.

Q You know there is an electric light there—city light?

A I do not recollect.

Q It is an open, traveled, public thoroughfare?

A It is an open way apparently traveled by the public.

Q Generally?

George H. Palmer, re-direct.

A Generally.

Q And has been for more than twenty years?

A Yes. It is also used by patrons of the Railroad Company.

Q The Paterson City station of the railroad company is located upon this thoroughfare and also on Straight street?

A Yes.

10

Q The general public coming from Straight street to Park avenue frequently cross along this roadway?

A Yes.

Q And on the east and south sides it is entirely built up?

A Yes.

Q With stores located right along the entire front?

A Yes.

Q And patrons of those stores go in and out over it as a public street to Park avenue and to Straight street?

20

A They use it in going to and from the stores.

Q As a matter of fact there is no other means for the patrons of those stores to reach Park avenue or Straight street without going over this road?

A The fronts of the stores; I cannot say as to the rear.

Re-direct examination by Mr. Hobart.

30

Q Have you personal knowledge of the use of that so-called street for twenty years, Mr. Palmer?

A Yes.

Q Do you know whether there is any other way for passengers and other patrons of the Susquehanna Railroad to get to the Paterson City station except by way of Crosby Place?

A They can go around through Park avenue and Straight street.

40

Albin M. Smith, direct.

Q They could get in through Straight street and Crosby Place, but they cannot get in from the north?

A No, or the west.

Mr. Merrey. You mean they cannot get in now?

The Witness. Yes.

Re-cross examination by Mr. Merrey.

10 Q How long have these deeds been in your possession?

A Ever since 1896 or 1897.

Q Where did you find them?

A To-day?

Q Yes.

A They are in our records.

Q When they originally came into your possession in 1896 or 1897, how did they come into your possession?

20 A They were sent to us by the secretary.

Q Secretary of what?

A Either the secretary or the chief engineer they called him at that time.

Q You have had them since 1896 or 1897 in your own possession?

A Yes, that is, they have been in the office.

Q They are all recorded, too?

A Yes; some of them are copies I brought here.

30 ALBIN M. SMITH, a witness produced in behalf of the prosecutor, upon being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

Q Are you the agent of the New York, Susquehanna & Western Railroad Co. at its Paterson City station?

A Yes.

Q That is the station located near Straight street in that city, is it not?

40 A Yes, sir.

Albin M. Smith, direct.

Q How long have you been such agent?

A Twenty-three years.

Q Calling your attention to this blue-print, Exhibit Erie 1, are you familiar with the location of the passenger station of the Susquehanna Railroad as indicated on this plan?

A Yes, sir.

Q And you know the street, so-called, described as Crosby Place? 10

A Yes, sir.

Q Have you observed for what purpose that street has been used?

A Yes, it is used to get—it is used to get to our passenger depot from people down in the lower part of—below the Erie tracks.

Q And in order to get to your passenger depot how do persons approaching the station from that direction come; that is, what part of Crosby Place do they cross over? 20

A Well, they cross over at Market street first, as a rule, and come right up Crosby Place to the depot.

Q Do you recall that there is a sidewalk on each side of the street leading up from Market street?

A Yes, sir.

Q And do passengers going to the station use those sidewalks?

A Yes, sir.

Q Where is the freight station of the Susquehanna Railroad? 30

A On the opposite side of Straight street from the passenger depot.

Mr. Merrey. Towards the east?

Mr. Hobart. Towards Jersey City?

The Witness. Towards the east.

Q Is Crosby Place used by persons going to and from the freight station with vehicles?

A Yes, sir.

Albia M. Smith, direct.

Q Is it also used by persons or vehicles going to the passenger station?

A Yes, sir; you cannot get to the passenger station without—with a vehicle unless you do come through Crosby Place.

Q Can you with a vehicle approach the passenger station from any direction except from Market street?

10 A Yes, off of Straight street.

Q But do people in fact approach on the roadway leading up from Market street? —

A Oh, yes.

Q And has that been your observation for a number of years past?

A Yes.

Q Is there an express office located in the passenger station?

20 A Not in the passenger station, but on the opposite corner from the passenger station on Crosby Place.

Q How long has that been there?

A Well, it was there when I first came twenty-three years ago; but it has been transferred down to the Erie depot now.

Q When was that transfer made?

A Within a couple of years.

Q Before it was transferred to the Erie depot did persons coming to and from the express office for express business, did they use Crosby Place?

30 A Yes, sir.

Q In the same way as passengers used it in order to reach the station?

A Yes, express wagons and vehicles could not get to that place unless they did use Crosby Place there—through Straight street or Market street, could not get there at all.

Q The statement you have made as to the use of Crosby Place by passengers going to the passenger station and by vehicles going to the passenger station

Albin M. Smith, director.

or to the freight station or to the express office, is that true generally during the time you have been there?

A Yes.

Q Is there any sign at any point on Crosby Place erected by the railroad company?

A Yes.

Q What sign and where located?

10

A There is one sign located at the end of the path leading down to Park avenue on the corner in that position (indicating on blue-print).

Q Indicating the southerly extremity of Crosby Place?

A Southerly extremity where it connects with Park avenue, where it runs into Park avenue.

Q And is there another sign besides that?

A Yes, there is another sign up here (indicating) on the Straight street corner.

20

Q Near Straight street?

A Right at the corner of Straight street, right alongside the freight siding.

Q And what do those signs say?

A So thoroughfare.

Q And how long have they been there?

A As I remember, it is at least three years and it may have been—may be four.

Q Do the tracks of the Susquehanna Railroad as they run into the Straight street station to which you have referred, do they terminate shortly beyond the end of the station?

30

A Yes, sir; they terminate at the turn of the path or sidewalk leading from Park avenue through to Straight street.

Q Are there two sidewalks, that is one on each side of Crosby Place leading from Park avenue and Market street towards the passenger station?

A No, there is only one sidewalk leading from Park avenue up to the station but there is another on

40

Albin M. Smith, direct.

the other side of Crosby Place which comes up and does not go direct to the station but follows around on to Straight street.

Q Persons using that sidewalk in order to get to the station would have to cross the street?

A Yes.

10 Q Persons using the first mentioned sidewalk can they follow and do they follow that sidewalk all the way along until they reach the Susquehanna tracks and the station platform?

A Yes, sir.

Q And does the sidewalk I have just mentioned, does that run alongside of and parallel with the tracks of the Erie Railroad Company?

A Yes.

Q What is there between that sidewalk and the tracks of the Erie Railroad Co.?

20 A Bar fence.

Q Is there any wall?

A There is a wall; yes, there is a wall, because this pavement or sidewalk is up on top of the wall. There is a bar fence to protect passengers from falling over this wall into the Erie tracks.

Q How high is the wall?

A It starts about three feet, maybe $2\frac{1}{2}$ feet at Park avenue and runs up here opposite this passenger station. It elevates to 5 feet, $5\frac{1}{2}$ probably.

30 Q When the sidewalk reaches that elevation does it then turn or does it strike the Susquehanna platform or how do passengers get the rest of the distance?

A It turns to the station.

Q And then does it connect with the Susquehanna platform?

A Yes, sir.

40 Q Is there any other way of getting to the Susquehanna passenger station except by way of Crosby Place?

Albin M. Smith, direct.

A Not with a vehicle.

Q Well, as to passengers, how else could they get to the Susquehanna station?

A They would be coming in from Straight street to get to the station.

Q As a matter of fact which way do most of them come—from Straight street or from Park avenue?

A That depends upon what part of the city they come from. If they come from anywhere off to Broadway or anywhere from Broadway over to Park avenue— 10

Q Which way do they come then?

A Then they come down; for instance, if they come down Ellison street they go down to Straight and through Straight to this Ellison Place.

Q Crosby Place?

A Yes, and so on down, making a short cut of it.

Q But passengers approaching the station from Market street and that section of the city, can they get to the passenger station any way except by Crosby Place? 20

A No, sir. They could not go across the Erie tracks and they could not come along the Erie track and go up to it in any way. The only way from Market street is right through Crosby Place.

Q Are these sidewalks all in the roadway that you described?

A Yes. 30

Q The railroad tracks of the Susquehanna are located on the northerly side of the station?

A Yes.

Q To the north of the tracks is there any means of access to the station?

A No, sir.

Q What prevents the access?

A Our switches, turning cars; that is the loading and unloading—

Q It is a freight yard? 40

Albin M. Smith, cross.

A Freight yard.

Q And from the westerly side the access is cut off by this fence and wall that you have described?

A Yes.

Cross examination by Mr. Merrey.

Q You are the station agent at Paterson station?

A Yes, sir, and freight agent.

10 Q This passenger station is sometimes referred to as the Straight street station?

A Yes.

Q If Crosby Place was closed up entirely could not passengers get to and from the passenger station over Straight street?

A Yes, sir.

Q Could not vehicles stop on Straight street in front of the station and deliver their passengers there?

20 A Yes, but they've got to walk from the street over to the platform of the station.

Q There is a sidewalk at that point?

A Sidewalk on Straight street.

Q And right adjoining that sidewalk is the platform of the station, is it not?

A Yes.

Q So that it would mean a walk of about 15 feet from the curb at Straight street, would it not, to the passenger station?

30 A Over that. I think there is 28 or 30 feet of space between the station.

Q So that there is no hindrance from people going over Straight street to the station if Crosby Place was closed?

A Well, unless different arrangements was made there for access to the station.

Q What different arrangements would have to be made?

Albin M. Smith, cross.

A Well, there would need to be this vacant space between Straight street and the depot to drive a wagon to it.

Q The wagon could stop right at the curb, could it not, discharge its passengers on this sidewalk, and then they could cross a little open space owned by the railroad and which is part of the station to the station proper?

10

A Yes, sir.

Q That is a paved space now, is it not?

A Well, not exactly, no.

Q Well, it is paved with broken stone?

A Broken stone.

Q People do walk to and fro every day?

A Yes.

Q Crosby place makes it a little more convenient for passengers?

A It does, because the baggage department is on the opposite side and to bring baggage to the baggage department you have got to enter in this Crosby place. 20

Q That could be done from Straight street?

A What?

Q They could enter on from Straight street on to Crosby place?

A Yes, sir.

Q Suppose the part adjoining the Erie Railroad was entirely closed up, could not passengers and vehicles reach the baggage department and all parts of the station? 30

A If it was only partly closed.

Q That is, I mean all the part adjoining the Erie Railroad were closed?

A Yes, then there would be room for to come through this open part of Crosby place to get to the baggage room and discharge baggage.

Q Crosby place has been used for a great many years by the general public in addition to the passengers to the station? 40

Albin M. Smith, cross.

A Oh, yes; there was never any hindrance.

Q As a matter of fact a great many more people use Crosby place who are not going to the station than those who are going to the station?

A Well, I should say yes.

10 Q And many more vehicles that are not to stop at the station or the baggage department and express company cross over Crosby place than those who do stop at those places?

A Yes, sir.

Q It makes a little short cut?

A Yes.

Q It makes it very convenient for the general public?

A For the general public that are going through that part of the city.

20 Q And no hindrance has been made for over twenty years to the passage of the general public over this Crosby place?

A Nothing, but this sign of no thoroughfare.

Q And that sign was put up about three years ago?

A Between three and four years ago.

Q And after the sign was put up no attempt was made to stop anybody from using it?

A No, sir.

Q In appearance it is the same as any public street?

30 A Yes, because it is macadam.

Q Do you know who macadamized it?

A No, I do not.

Q There is an electric light in the center of it?

A Along the sidewalk just off from the Erie tracks.

Q Do you know who maintains that light?

A I do not.

Q Is it not maintained by the City of Paterson?

A I do not know.

Q It is the ordinary street electric light?

40 A Yes.

Albin M. Smith, cross.

Q And one side of this thoroughfare is built up with private houses?

A Yes; stores, buildings.

Q And the express company occupy a building not owned by the company?

A Not owned by what company.

Q By the express company or the railroad company?

10

A Yes.

Q It was on property referred to as being owned by Crosby?

A Yes.

Q What is located in that store now?

A Nothing.

Q Vacant?

A Yes.

Q And adjoining that is a saloon, is there not?

A Yes, sir.

20

Q And a number of other retail businesses in the other stores?

A Only one there.

Q What is that?

A Electric light appliances and fixtures and such as that.

Q And is there a store of any kind on Crosby Place in the vicinity of Straight street?

A Yes, there is a garage there, that is the only one.

Q A large public garage?

30

A It is rather large, I suppose thirty or forty feet front.

Q And they sell automobiles there?

A I don't know whether they sell them.

Q They did at one time?

A I don't know that they ever sold them.

Q But they store them there?

A Yes, they store them.

Q And the patrons of that garage go over Crosby Place into straight street and Park avenue?

40

David Bosman, direct.

A Yes, sir.

Q Ever been any objection on the part of the company to the passage of those automobiles?

A Not through me. I don't know what other officers of the company have had instructions to do anything with regard to that matter; but not through me.

10 DAVID BOSMAN, a witness produced in behalf of the prosecutor, on being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

Q You are the vice-president and secretary of the Erie Railroad Company, Mr. Bosman?

A Yes.

Q And as such have charge of its records and papers of various kinds?

20 A I do.

Q Have you a copy of the certificate of incorporation?

A Yes, sir.

(Said certificate offered in evidence and marked Exhibit Erie 9.)

Q Have you produced at my request copies of the agreements between the Erie Railroad and the Fullers Express Company and the Erie Railroad and Morris & Co.?

30 A You have got the Morris Co. and the other there.

Q These are the originals?

A Yes.

Q They are still in effect, are they, and have been from the date of the respective agreements?

A Yes, sir.

Mr. Hobart. I offer in evidence agreement dated January 24, 1908, between Erie Railroad Company and Fullers Express Company.

40 (Marked Exhibit Erie 10.)

David Bosman, direct.

Mr. Hobart. I offer in evidence lease dated May 14, 1910, between Erie Railroad and Morris & Co.

(Marked Exhibit Erie 11.)

It is stipulated that Exhibit Erie 10, agreement between Erie Railroad and Fullers Express Co., may also be considered in evidence in the *certiorari* proceeding instituted by Fullers Express Co., subject to the same objection heretofore made. 10

It is further stipulated that lease dated May 14, 1910, between Erie Railroad Co. and Morris & Co., Exhibit Erie 11, may also be considered as in evidence in the *certiorari* proceedings instituted by Morris & Co.

Q Mr. Bosman, have you made a search for the original of agreement between Erie Railroad Co. and Jacob Meyer & Kommer De Vogel, partners, etc.? 20

A I have.

Q Have you been able to find the original of any such agreement?

A No, sir.

Q I show you a printed form of agreement entitled on the back "Agreement for construction of siding," is that the standard form of agreement of Erie Railroad?

A Yes, sir. 30

Q Was there any standard form of such an agreement in use in 1897 and 1898?

A Not to my knowledge.

Q I show you another paper, being in the form of a letter dated February 25, 1898, with two collection vouchers attached. This purports to refer to a bill against Meyer & DeVogel for construction of siding. So far as you know, do those papers represent the agreement with Meyer & DeVogel or the understanding with them as to the construction of this siding? 40

David Bosman, direct.

A So far as I know they do.

Q You have not been able to find any original agreement and you have no record of it in your office?

A I have not been able to find it, and have no record.

10 *Mr. Hobart.* By consent I offer in evidence said letter of February 25, 1898, and the collection vouchers attached.

(Marked Exhibit Erie 12.)

It is stipulated that these papers may also be considered in evidence in the *certiorari* proceeding instituted by Meyer & DeVogel, subject to the same objection.

Q Have you the certain agreements between the Erie Railroad or its predecessors and Public Service Railway Co. or its predecessors?

20 A I have got one agreement here of February 6, 1912, between the Public Service Railway Co. and the Erie Railroad Co.

Q That recites the execution of an earlier agreement of February 26, 1892?

A Yes, between the Paterson Railway Co., and the New York—

Q And have you the latter agreement?

A Both of them, yes, sir.

30 *Mr. Hobart.* I offer in evidence the agreement dated February 26, 1892, between Paterson Railway Co. and New York, Lake Erie & Western Railroad Co. Any objection? These—this is for the crossings at Market street, Park avenue and River street and Broadway.

Mr. Sommers. You've got a right to put it in, Mr. Hobart, if you want to.

(Marked Exhibit Erie 13.)

(Copy marked by consent.)

David Bosman, direct.

Mr. Hobart. I offer in evidence the agreement of February 6, 1912, between Erie Railroad Co. and Public Service Railway Co.

(Marked Exhibit Erie 14.)

(Copy marked by consent.)

Mr. Hobart. May I ask you gentlemen to stipulate that the Paterson Railway Co. is the predecessor of the present Public Service Railroad Co., and that the New York, Lake Erie & Western Railroad Co. is the predecessor of the present Erie Railroad Co.; is that agreed? 10

Stipulation made as proposed.

Q Have you with you the forms of the notes or other obligations issued from time to time by the Erie Railroad and referred to in the testimony heretofore taken before the Board of Public Utility Commissioners? 20

A All of them except the real estate mortgage called for on page 1342.

Q That was a small mortgage of thirty or forty thousand dollars?

A \$37,000.

Q As I understand it, that only covers certain property in the freight yard, doesn't touch the main line tracks at all?

A At 28th street. There is just one other annual payment there of \$52,000 in 1917, and one or two other \$52,000 in 1916 I think. Those payments are called for under the agreement with the Grade Crossing Commission of the City of Buffalo. There are no obligations issued, but merely as work is done we bear our proportion of the cost. 30

Mr. Hobart. I offer in evidence the various forms of notes, car trust certificates and other obligations referred to by the witness.

(Marked Exhibit Erie 15.)

William H. Brameld, direct.

Cross examination by Mr. Merrey.

Q These papers which you have offered are all in your possession?

A Yes, sir.

Q And they have been for the last three or four years?

A Yes, sir.

10 Q They were in your possession at the time the testimony was taken before the Public Utility Commission?

A Yes, sir.

WILLIAM H. BRAMELD, a witness produced in behalf of the prosecutor, upon being duly sworn according to law on his oath, testified as follows:

Direct examination by Mr. Hobart.

20 Q Have you made a study of the order under review in this case with the plan and profile thereto attached?

A I have.

Q I call your attention to the provision of the order and plan relating to the increased width of the crossing at Essex street, is there at the present time an undergrade crossing and what is the width of that crossing?

30 A Thirty-two feet as shown on the plans submitted by the City of Paterson.

Q What is the proposed width of that crossing as required by this order and plan forming part thereof?

A Fifty feet.

Q Have you made an estimate of the cost of widening Essex street as required by that order and plan?

A I have.

40 Q In that estimate have you used the same unit prices as in the previous estimates made in the hearings before the Board of Public Utility Commissioners?

William H. Brameld, direct.

A Yes, this estimate is—it is a separation of the items of the work which it will be necessary to do in connection with the widening of this undergrade crossing.

Q That is to say, this estimate is included in the total of the figures as previously given in the testimony before the Board?

A It is merely a separation of the items to show the cost of this particular piece of work. 10

Q Which did not appear in the previous testimony?

A The items in this form do not appear, but they were included in the previous testimony submitted.

Q What is the amount of your estimate for this one item, the widening of Essex street?

A \$80,225.73.

(First estimate marked Exhibit Erie 16.)

Q If the work of eliminating the several crossings involved in this proceeding was carried out as ordered by the Board, but leaving Essex street at its present width of 32 feet, would the company be saved this estimate of \$80,000? 20

A Yes.

Q In other words, this estimate represents the increased cost to the company due solely to the widening of Essex street?

A Yes. 30

Q When you refer to the city plan as showing the present width of Essex street as thirty-two feet what plan did you refer to?

A The plan which is in evidence in this case, being the plan of the present tracks through the City of Paterson.

Q It is not the plan which the city offered to the Board as the plan under which it desired to have the crossings eliminated? 40

A It is not a plan showing the proposed elimination of grade crossings, but simply a map showing the existing conditions.

Q On the city's plan presented to the Board, on the basis of which it requested the elimination, Essex street is shown as fifty feet?

A It is shown as fifty feet.

10 Q And the Board apparently adopted that part of the plan?

A They did.

Q You have made a careful study in connection with this case of the entire scheme of eliminating grade crossings in Paterson, have you not, for some two or three years past?

A Yes.

20 Q Is there any occasion or any necessity to increase the width of Essex street from thirty-two feet to fifty feet in order to eliminate the grade crossings in question in this proceeding?

A I can see no reason for it.

Q According to the plan as ordered by the Board and which you have examined, will you please state whether this increased width of Essex street involves a widening of the street only on one side, or does it involve a widening on both sides?

A According to the plans it involves a widening on both sides.

30 Q The result of which would be that both of the existing abutments or walls at this present under-grade crossing would have to be removed?

A Yes.

Q In this estimate Exhibit Erie 16 have you made any allowance for the value of the old material from those walls?

A No, sir.

Q Would that amount to any considerable sum?

40 A Yes, sir. The present value of those walls is about \$14,000.

1951

William H. Brameld, direct.

Q Would they be worth \$14,000 to the Erie after they were torn down?

A No, sir.

Q Then this estimate of \$14,000, if I understand you correctly, represents the—

A Value of the—

Q Of the walls?

A Yes, sir.

Q Of the walls as they now are which would have to be destroyed? 10

A Yes, sir.

Q And have you also included in an estimate a statement of the value of the existing bridge at Essex street?

A Yes.

Q Would that also have to be destroyed in case the street were widened?

A It would.

Q What does the whole thing amount to, of all the materials? 20

A The walls, the present value of the structure that would be destroyed is \$27,535.

Q And no part of that is included in this estimate of increased cost?

A No, sir.

Q Now turn to the proposed new station at Market street, does the plan of the Board require the relocation and reconstruction of a passenger station at Market street? 30

A It does.

Q Have you prepared an estimate of what it would cost to relocate and rebuild Market street as required by order of the Board?

A I have.

Mr. Sommer. Market street or the station?

Mr. Hubart. Market street station.

Q Does that estimate already appear in the figures you have already presented? 40

William H. Brumeld, direct.

A It does.

Q But not the details or the particular items as I understand it?

A No.

Q Then the present estimate shows the details of that as distinguished from the general figures which were heretofore offered, is that correct?

10 A Yes, this estimate covers the increased cost of the items that we would have to consider in addition to the items that it would be necessary to consider just for raising the tracks and leaving the station where it is. In other words, it is the increased cost due to moving the station from one side to the other of Market street.

Mr. Hobart. I offer the estimate.

(Second estimate marked Exhibit Erie 17.)

20 Q In order to carry out the plan for the elimination of grade crossings as required by this order, is there any occasion or necessity for changing the location of the station at Market street?

A No.

Q Can the present station where it now stands be modified in such a way as to conform to the proposed reconstruction of the tracks?

A It can.

Q In what way?

30 A We could erect platforms elevated to the new level of the track with canopies to protect the passengers waiting for trains and with stairways up from the side of the present station.

Q And would—what would be the approximate cost of so doing?

A The cost of the canopies and elevated platforms are already in the estimate and are not considered in the estimate just submitted, but the cost of building stairways and changing the roof could be done for
40 between six and seven thousand dollars.

William H. Brameld, direct.

Q With particular reference to the station platforms at Market street, is there any way of changing or shifting the tracks when elevated as proposed so that the present station at Market street might still be used without changing it over to the other side of Market street as required by the order?

A I believe there is enough width between the track and Ramapo avenue for a platform. If the width was not sufficient the platform could overhang Ramapo avenue as there is sufficient height to enable vehicles to get underneath, and stairways could be built down from this platform. 10

Q And I suppose as a last resort we could ask the city to vacate Ramapo avenue?

A Yes, we could move the tracks further to the south and get more platform room.

Q Or vacate Ramapo avenue in whole or in part?

A We could; it is possible to do so. 20

Q According to the plan as proposed, as required by the order, what becomes of the present station building?

A It is destroyed.

Q Do you know what the present value of the station building is?

A In the neighborhood of \$21,000. I believe the tax returns show it is \$21,800.

Q Is that a fair estimate, in your judgment?

A It is. 30

Q Have you examined this plan with particular reference to proposed change of location of Market street station with a view to see whether the new location would encroach upon the property of any other railroad company?

A I have.

Q What property would it encroach on?

A The property of the New York, Susquehanna and Western Railroad Company.

Q At what point and to what extent? 40

William H. Brameld, direct.

A Adjacent to the right of way of the Erie Railroad Co. and immediately west of Park avenue it is proposed to build a waiting shed and stairways to the platform on the New York, Susquehanna and Western property, and to move the present sidewalk out into the roadway, narrowing up the driveway on Crosby Place.

- 10 Q You are familiar with the situation at present at Crosby Place, are you not?

A Yes.

Q This new location of the sidewalk which adjoins the present right of way of the Erie Railroad or the Paterson and Ramapo Railroad—

A Yes.

Q Would that sidewalk be interfered with by this new location?

- 20 A It would. It would be entirely used by the new waiting shed and stairway.

Q Would any part of the roadway at Crosby Place be used or interfered with?

A I believe a small portion of it would, but the present sidewalk would be moved out and narrowed up to a four or five-foot sidewalk which will be located in the present roadway.

Q That is to say, the present sidewalk would be entirely occupied by a part of the new station?

A By a part of the new station.

- 30 Q And the plan requires another sidewalk to be constructed which would extend into the roadway four or five feet?

A Yes, sir.

Q Referring now to the part of the order and plan which requires a change of the siding and other facilities of Morris & Co., will you state what the plan as ordered requires to be done in that connection?

- 40 A The present facilities of Morris & Co. will be destroyed to provide a location for the new passenger depot at Market street. The plan proposes to

1955

William H. Brameld, direct.

erect a new building for Morris & Co. on Railroad avenue just opposite the present freight station in the vicinity of Cedar street.

Q Have you made an estimate of what that would cost?

A Yes, \$40,000. That already appears in the testimony.

Q That includes a reproduction, as I understand it, of their present facilities? 10

A Yes, in the new location.

Q Does not include anything for cost of land because Morris & Co. does not own the land where they now are?

A No.

Q Does not include any item for loss of business, if any?

A No.

Q Is there anything on this plan as proposed for the elimination of these crossings which makes it necessary as a part of the plan of elimination to destroy the present facilities of Morris & Co. and to change the location of them and furnish new facilities as required by that plan and order? 20

A No. If the grade crossings were eliminated without moving Market street station, then Morris & Company's facilities could remain where they are, but the track serving them would have to be elevated.

Q Is there anything in the elimination plans as required which make it necessary for the railroad company or anybody else for that matter to relocate the facilities of Morris & Co.? 30

A Yes; the moving of the station—

Q The moving of the station would—

A Would require the destruction and the finding of other facilities for Morris & Co.

Q Provided they wanted to keep on doing business?

A Yes, sir.

William H. Brameld, direct.

Q Is there anything in the elimination of the crossings?—

A No.

Q —which makes it necessary?

A No, the crossings could be eliminated without making these proposed changes in Morris & Company's facilities.

10 Q And without providing new facilities for them?

A Yes.

Q Have you examined the plans with reference to the Fullers Express Co.?

A I have.

Q And what is required by the plan as to that company?

20 A The destruction of their present facilities and the rebuilding of their buildings and additional side tracks in a new location on the side of the present passenger station.

Q What is the estimated cost of doing that work?

A \$12,000.

Q You have included that in the estimate on the same sheet as the estimate of Morris & Co.?

A I have. It is the same figure that was used in the previous testimony taken in the grade crossing case.

Mr. Hobart. I offer this estimate for Morris & Co. and Fullers Express Co.

30 (Marked Exhibit Erie 18.)

Q Is there anything in the elimination plan which makes it necessary to make these changes in the location of Fullers Express Co.?

A No.

Q Can the elimination be carried out properly and successfully without making any change whatever in Fullers Express Co.?

40 A No, there would be some changes to be made to adapt the building to the level of the tracks.

1957

William H. Brameld, direct.

Q Is there anything in the elimination of the crossings which would make it necessary to destroy the building now occupied by the Express Company?

A No, the crossings could be eliminated without doing that.

Q And is there anything in the elimination which would make it necessary to the success of carrying out the elimination scheme which makes it necessary to provide other facilities for Fullers Express Co. as required by this order? 10

A No.

Q I ask you to turn to the River street station, have you prepared an estimate of the cost of the relocation and rebuilding of that station?

A I have.

Q And this estimate is based upon the order under review and the plan?

A It is. 20

Q And what is the amount of that estimate?

A \$24,265.

Mr. Hobart. I offer the estimate.

(Marked Exhibit Erie 19.)

Q This estimate of \$24,265, does that represent the increased cost of relocating and rebuilding the River street station as required by the order as compared with the cost of modifying the present station?

A Yes. 30

Q What would it cost to adapt the present station to the tracks if elevated as required by the order?

A Not over \$1,500.

Q For the purpose of carrying out the elimination plan is there any occasion or necessity for rebuilding or relocating River street station?

A No, sir.

Q Is it necessary as a part of the plan to tear down the old station?

A No, sir. 40

1958

William H. Brameld, direct.

Q What is the present value of that station?

A In the tax returns I find it is valued at \$1,180.

Q Does the plan require the destruction of the existing station?

A It does.

Q And the construction of a new station?

A Yes.

10 Q On a different location?

A Yes.

Q On that relocated station at River street is there any part of the order or plan which requires the relocation or the reconstruction of sidewalks?

A There is.

Q Please state what that is as shown on the plan as ordered by the Board?

20 A The crossing at River street is moved farther west than at present, and where the sidewalk crosses diagonally at the present time it is changed to run parallel to the railroad track on the railroad right of way to the new undergrade crossing.

Q Is the location of the sidewalk shown on the plan?

A The location of the proposed sidewalk is shown on the plan.

Q And it is different from the existing location of the sidewalk at that crossing or as you approach the crossing?

30 A Yes.

Q Shown on that plan by what—dotted lines?

A Dotted lines.

Q Now, I will ask you to turn to the crossings at Clay and Straight streets, does the plan as ordered continue those crossings as they now are?

A The plan proposes to eliminate the crossings by undergrade crossings on the lines of the present streets.

40 Q And to have two undergrade crossings at the lines of the present streets?

1959

William H. Brameld, direct.

A One at each street.

Q Separate crossing at each street?

A Yes.

Q Have you considered the question of eliminating the existing grade crossings at Clay and Straight streets by a consolidation of those two crossings?

A I have.

Q Have you prepared a plan showing how Clay and Straight street crossing could be consolidated? 10

A I have.

Q And is this the blue-print that you have before you?

A Yes.

Q And have you prepared an estimate of the saving to the railroad company?

A I have.

Q How much does that amount to?

A The saving in the plan amounts to \$58,951.13. 20

Q That is the saving in the plan by consolidating the two crossings over what the order of the Board requires, that is to say, to keep each crossing separate as they now are?

A Yes.

Mr. Hobart. I offer the blue-print and the estimate together.

(Marked Exhibit Erie 20, consisting of two sheets and a blue-print.)

30

Q Will you state generally how this consolidation of these two crossings could be made at this saving? Of course the plans speak for themselves, but you may state it in a general way, if you will.

A The plan proposes to lay out new street lines, the center line of the street commencing at the south side of the tracks at the intersection of Clay and Straight streets; thence running across the railroad to a point midway between the intersection of Plum street and Clay street and Peach street and Straight 40

1960

William H. Brameld, direct.

10 street. The highway parallel to the railroad is directly in a line with the intersection of Plum street and Clay street and Straight and Peach street. The plan calls for a 36-foot driveway and two 12-foot sidewalks, making a 60-foot roadway. The grades proposed on the new streets are four per cent., the same as used in the plan ordered by the Board of Public Utility Commissioners, and the track work is just the same as that ordered by the Board of Public Utility Commissioners; in other words, the track is raised and there are only three tracks as shown on the plan. This plan simply proposes a change in the layout of the streets.

Q And of those two streets only?

A Yes.

Q It does not affect the general plan for elimination as ordered by the Board?

20 A No.

Q Have you included in your estimate of the cost of doing the work in this manner any allowance for the real estate that would be required to be taken?

A I have.

Q You put that in at \$45,000?

A \$45,000 land and damages. Damages probably about \$1,000, and \$44,000 for the land.

30 Q I want to call your attention to that part of the order and plan which substitutes for the existing crossing at Cedar street a crossing under the railroad at Taylor street; is there at the present time a crossing at Cedar street?

A Yes, sir.

Q Have you examined the order and the plan to see whether or not it requires the railroad to construct a crossing at Taylor street?

A The order and plan requires the construction of an undergrade crossing at Taylor street.

Q Is there a crossing there at the present time?

40 A There is not.

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William H. Brameld, direct.

Q Never has been?

A To my knowledge, no.

Q Have you made a detailed estimate of the cost of constructing this undergrade crossing at Taylor street?

A I have.

Mr. Hobart. I offer it.

(Marked Exhibit Erie 21.)

10

The Witness. This estimate covers the items that are affected by the building of this undergrade crossing and are included in the estimates as previously submitted in this case.

Q It is not in addition?

A These figures are all in on the old estimate, but this is a separation of them showing the items that are chargeable to this undergrade crossing.

Q Is there anything in the plan for the elimination of these crossings which makes it necessary to construct this new crossing at Taylor street?

20

A No.

Q Can the plan for the elimination of the crossing be carried out just as well without building any such new crossing at Taylor street?

A It could.

Q Now, call your attention to that part of the order and plan which requires the construction of an undergrade crossing at Montgomery street, is there any crossing at grade or otherwise at that street at the present time?

30

A There is not.

Q Does the plan require the railroad to build a crossing at Montgomery street?

A The plan requires the railroad company to build an undergrade crossing at Montgomery street.

Q Have you prepared an estimate showing the cost of that part of the work?

A I have.

40

William H. Brameld, direct.

Q Is that included in the general or total estimates previously offered in evidence?

A It is.

Q And this is merely a separation of the items chargeable to that particular work also?

A It is.

Mr. Hobart. I offer it.

10 (Marked Exhibit Erie 22).

Q Is there anything in the elimination plan which makes it necessary to construct a new undergrade crossing at Montgomery street?

A No.

Q Could the plan be carried out just as well without such a construction?

A It could.

20 Q Now, calling your attention to the crossings at Governor street and Fulton street; at the present time are there undergrade crossings there?

A There are undergrade crossings at both at the present time.

Q And what does this plan of the Board require to be done with those crossings?

A Requires that abutments and bridges be raised, and that new approaches be constructed for a side walk.

30 Q Have you made an estimate of the cost of changing the existing undergrade crossings at those two streets in order to conform to this plan as ordered?

A I have.

Mr. Hobart. I offer estimate of the cost of changing crossings at these two streets.

(Marked Exhibit Erie 23.)

40 Q Have you included in the estimates for Governor street and for Fulton street any allowance for the present value of the material that would be de-

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William H. Brameld, direct.

stroyed by making these changes as required by the Board?

A I have not. At Governor street it would be \$4,250 and at Fulton street \$3,400.

Q You have included those estimates in the estimate previously referred to as the present value of the material destroyed at Essex street, have you not?

A Yes, sir.

10

Mr. Hobart. I offer this estimate.

(Marked Exhibit Erie 24.)

Q I want to call your attention to an estimate previously made by you for Madison avenue, being included in Exhibit R-104 at page 1327 of the present record, in which appears among other items an item of \$15,000 for land; what is the occasion for including that allowance in the estimated cost relating to Madison avenue?

20

A The order of the Public Service Commission calls for the relocating of a portion of the street to enable the approaches to the overhead crossing to be built so that the present traffic from Madison avenue into the highway running parallel with the railroad to Lakeview will not be disturbed, and the amount used in the estimates for the value of that land was \$15,000, to provide for the relocation of Madison avenue.

Q Under the present order of the Board the tracks at Madison avenue are not changed, are they?

30

A No.

Q How is the crossing eliminated?

A By an overhead crossing.

Q That is, the street is carried over?

A The street is carried entirely over the railroad.

Q So far as the tracks are concerned, is there any occasion for changing the location of the highways, any necessity for it?

A No.

40

William H. Brammell, direct.

Q Now, calling your attention to an estimate which was included under the item of signals and wires, Exhibit R-102 at page 1307 of the present record, you have included in this a charge of \$20,000 for signals and wires, does that include all the wires and signals along the present right of way?

A It does.

10 Q Which would be affected by the Board's order?

A Yes.

Q What part of that, approximately, would be Western Union Telegraph wires as distinguished from other wires?

A Why, taking care of the wires will cost about \$15,000. About two-thirds of that, or \$10,000, would be the cost to the Western Union, and the other third would be chargeable to the Erie Railroad Company's wires.

20 Q Have you prepared another and entirely different plan for the elimination of the crossings at Straight street, Clay street and Cedar street, involving the combination of Straight street and Clay street?

A I have.

Q And have you prepared an estimate of it?

A I have.

Mr. Hobart. I offer the estimate and blue-print together.

30

(Marked Exhibit Erie 25.)

Q State generally what this last mentioned plan contemplates to be done?

A I find that by combining Clay street and Straight street into one crossing midway between the present location of the streets that the tracks can be—that it is not necessary to raise the tracks as high as in the plan ordered by the Board. Under this plan the tracks will be raised 4 feet at Straight and Clay

40

streets, and the drainage will be into the 40-inch

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William H. Brameld, direct.

brick sewer on Clay street draining to the manhole at the corner of Madison street and Clay street.

Q And what becomes of the Cedar street crossing?

A The Cedar street grade crossing will be eliminated by an undergrade crossing.

Q Substantially on the present lines of Cedar street?

A Within the present lines of Cedar street for the undergrade crossing. The undergrade crossing will consist of one roadway twenty-four feet wide and one six foot sidewalk, the sidewalk running from Straight street to Railroad avenue, and thence to the present surface of Railroad avenue by means of stairs. The approach to the subway on Railroad avenue will be twenty-four feet wide without any sidewalk. 10

Q Now does this proposed plan of yours cover any particular subdivision of the crossings as designated in the order of the Board?

A This plan covers the eliminations of the same crossing as is done under section C of the plan ordered by the Board. 20

Q Does it cover all of C?

A It covers all of C.

Q And what is the estimated saving in the cost to the Railroad Company as shown by your estimate Exhibit Erie 25?

A \$360,381.20.

Q And is there anything in this present plan of yours which would affect the elimination of the other crossings in the other sections as ordered by the Board? 30

A No.

Q Those other crossings could be taken care of in the same way as now ordered?

A They could. If you want me to further describe these driveways—

Q Please give further details as to the approaches and the driveways at Cedar street under your present plan? 40

William H. Brumfield, direct.

A We leave an eighteen foot driveway along the McNabb & Harlin building on Cedar street, and the plan contemplates the purchase of a ten foot strip from the Graham Brewing Co. and the moving of their frame stables ten feet in on their property. This is to provide an eighteen foot driveway to Ramapo avenue.

10 Q Anything further on this plan?

A I would say that under this plan the Railroad Company's facilities in connection with the yard and freight house would remain—would operate as at present.

Q As contrasted with what method of operation as ordered by the Board?

A As contrasted with the operation on the plan ordered by the Board, being from the middle of the yard with a switchback movement into the freight house.

20 Q Which is the better scheme from the operating standpoint?

A This scheme.

Q The one that you now suggest?

A Yes.

Q Have you made a careful study of the plan and profile attached to the order of the Board with a view to ascertaining the effect of carrying out said plan upon the various sidings?

30 A I have.

Q And have you before you a copy of the plan attached to the order?

A I have.

Q Referring to this plan and the profile in connection with it, state what effect the carrying out of the order in conformity with that plan and profile would have upon the siding of the Passaic Steel Company?

40 A The siding of the Passaic Steel Company from Straight street to the Newark branch will be destroyed.

William H. Braumfeld, direct.

Q Is there any provision for another siding to take its place?

A There is no provision made on the plan for another siding to take the place of it.

Q What effect does the plan have upon the siding of R. H. McDonald?

A The siding will be destroyed.

Q And the Paterson Vehicle Co.?

10

A The siding will be destroyed.

Q And the Paterson Beef Co.?

A The siding will be destroyed.

Q And David G. Rogers Co.?

A The siding will be destroyed.

Q And as to all of them is there any provision made for any other siding or any other facilities?

A No.

Q Have you prepared an estimate of the value of those sidings that are thus ordered to be destroyed?

20

A I have.

Q Is this the estimate?

A Yes.

Mr. Hobart. I offer it.

(Marked Exhibit Erie 26.)

Q Now take up the sidings described in the proceedings as the sidings of G. A. Zabriskie, Commercial Lumber & Millwork Co., Christopher Kelley, M. Gobel, National Wood Co. and Standard Oil Co.; what effect does the order have upon those sidings?

30

A The siding to G. A. Zabriskie—the siding at present is on the railroad right of way. The building is owned by the occupant and is built on land leased by the Railroad Company. Siding is moved to an average distance of twenty feet from the building. Siding at present is practically level. Plan proposes to put this siding on a 2.3 per cent. grade, depressing track at the end of the building .6 of a foot and raising it at the west end of the building .6 of a foot.

40

William H. Brameld, direct.

The owner will have to build—there will have to be a platform built in front of the building.

Commercial Lumber & Millwork Co. The siding is in front of their building and is on their own property, and it will have to be lowered three feet, which will interfere with unloading as the siding is close to the building and the doors will have to be changed.

- 10 C. Kelley. The siding is on the railroad right of way. Building is owned by C. Kelley, land owned by Railroad Co. and leased to C. Kelley. Siding at present close to building. Will be moved to an average distance of 15 feet from buildings and placed on a 2.3 per cent. grade. Track will be raised .6 of a foot on east end and three and one-half feet at west end. Will have to build platform for unloading purposes.

- 20 M. Gobel. Siding on railroad right of way. Building owned by M. Gobel. Land leased from Railroad Co. Siding at present time close and parallel to building. Plan proposes to move it to average distance of forty-two feet from building and place on a 2.3 per cent grade. Track will be raised three and one-half feet at east end of building and 4.6 feet at west end.

- 30 National Wood Co. Siding on railroad right of way. Building owned by National Wood Co. on land leased from Railroad Co. Siding at present close to and parallel to building. Plan proposes to move siding to average distance of sixty-five feet from building and place on 2.3 per cent. grade. Track raised 4.6 feet east end and five feet on west end of building.

Standard Oil Co. The siding is off—siding and building off railroad right of way. The siding will be moved to an average distance of thirty feet from property line and raised six and one-half feet. The sidings for G. A. Zabriskie, Commercial Lumber Co., C. Kelley, M. Gobel, National Wood Co. and Standard Oil Co. are all served from the same siding at the present time.

- 40 Q At the present time?

William H. Brameld, direct.

A Yes. The new plan proposes to serve the Commercial Lumber Co. and G. A. Zabriskie from one siding. C. Kelley, M. Gobel and National Wood from another siding, and Standard Oil Co. from still another siding. These sidings will require two bridges over the proposed undergrade crossing at Taylor street.

Q Is there any bridge across Taylor street at the present time which corresponds to the proposed bridge as required by this plan? 10

A No.

Q In each of the cases that you have mentioned, namely, Zabriskie, Commercial Lumber Co., Kelley, Gobel, National Wood Co. and Standard Oil Co., are the sidings as they now exist required to be destroyed by this order. By sidings I mean the actual rails and ties on the ground?

A Except the Commercial Storage Warehouse Co. Their siding on their own property is simply lowered but the leads to it from the siding on the railroad property will be destroyed—will be changed altogether. 20

Q In other words, the existing sidings, with the exception you have named, are destroyed?

A Are taken up. They are destroyed as far as their present location is concerned. They are taken up and relaid in other places.

Q Provided the material is in condition to be relaid? 30

A Yes; I have estimated that it is.

Q Please give us a little further description of the proposed new bridge across Taylor street as required by this plan as to size and location, etc.?

A The siding of the Standard Oil Co. requires an entire new bridge spanning the entire street, and the sidings serving Commercial Lumber Co., Zabriskie, Kelley, Gobel and National Wood Co. require the construction of another bridge over Taylor street completely spanning the street. 40

William H. Brameld, direct.

Q Two separate bridges?

A Two separate bridges.

Q Neither of which now exists?

A Neither of which now exists.

Q Would these several sidings to which you have just referred, if they were built or rebuilt as required by that plan be capable of being used unless these two new bridges were built?

10

A No.

Q Please turn to the sidings of John Agnew Co. and state the effect of the order upon those sidings. There are two of them I think?

20

A Yes, two of them. There are really three. The siding of John Agnew running off the property of the company near the freight house at Cedar street and through Green street to Mr. Agnew will not be affected. The siding leading from the railroad property across Hamilton avenue into the coal shed of John Agnew Co. will be raised sixteen feet. This siding west of Hamilton avenue is off the railroad company's property. The lead from Hamilton avenue east to the main track is on the company's property. Will necessitate reconstruction of trestle and sheds on whole property and to reach same will require a bridge over Hamilton avenue.

Q Is there any bridge at the present time over Hamilton avenue?

30

A There is not. The siding just east of Governor street leading off from the company's property and on to the property of John Agnew Co.—these sidings will have to be torn down and rebuilt at the height of twenty-six feet whereas now there—now they are only sixteen. Thirty-two feet I should say, whereas they are only sixteen now.

Q In each case those two sidings would be destroyed and rebuilt?

A Yes.

William H. Brameld, direct.

Q Using that material—the old material—if practicable?

A I doubt whether you would be able to use the old material in this case.

Q Now turn to the several sidings described in the proceedings. Sidings of McNabb & Harlin Co., Graham Brewing Co., National Biscuit Co., Hygeia Ice Co., Paterson Consolidated Ice Co. and Bon Arbor Chemical Co. Please state the effect of the order upon those sidings? 10

A The sidings in front of the buildings themselves where they are used will not be changed. The lead from the westbound main track to the siding will be lengthened on account of the elevation of the tracks. The lead at the present time starts from the track about 250 feet east of Essex street and on the new plan will leave the main track about twenty feet east of Essex street. This lead will necessitate the construction of a retaining wall in Ramapo avenue. 20

Q That is one of the public streets in Paterson?

A Yes.

Q Are any of these sidings just mentioned at the present time located on or through public streets?

A The entire siding, with the exception of the lead, is on a public street; that is the portion of the siding west of Cedar street is. East of Cedar street it is on the property of McNabb & Harlin Manufacturing Co. 30

Q Well how much of this proposed new lead is located in a public street according to the plan?

A There is about 160 feet of it located entirely in the street and for 320 feet there is half on the railroad company and half within the public street, and the remainder of it is on the railroad company's property, that is, the division line between the railroad company's property and the street runs down the center of the track.

Q Now refer to Morris & Co. and Fullers Express Co., you have already given us the details of them, 40

William H. Brameld, direct.

but just to follow the thing in order, you may state generally what the result of the order is as to them?

A The building occupied by Morris Beef Co., which is owned by the Railroad Company on railroad land at present time, will be destroyed.

Q How about the siding?

10 A And the siding will also be destroyed to make room for the new depot. The Morris Beef Co.—the plan calls for the erection of a building for Morris & Co. on Railroad avenue just west of Cedar street.

Q And for a new siding at that point?

A No, the present siding will be moved over a little bit to accommodate.

Q Is there at the present time—

A There is a siding there and Morris & Co. in the new location can use that siding with slight modification.

20 Q What is that siding used for now?

A Team track.

Q It is a public siding?

A Public siding.

Q Not for the private use of any particular company?

A No.

Q Now as to Fullers Express Co.?

30 A The building occupied by Fullers Express Co. is on property of the railroad company. The building will be destroyed, and the siding will be destroyed to make room for the new depot. The plan proposes to build a new building for the Fullers Express Co. on the site of the present passenger station just east of Market street with a siding from the yard extended to serve their new building.

Q Is there any siding at that point at present?

A No.

Q So far as that siding is concerned it will be new construction?

40 A Yes.

William H. Brameld, direct.

Q Please turn to the siding that leads to the properties of Herman Co. and Sulzberger Sons Co.?

A The location of the siding—

Q There is one siding for both of those concerns?

A There is a siding that leads to Sulzberger Sons Co. and it is an extension of the siding that passes the property of Herman Co. There is only one lead from the main line track to reach both of these sidings. 10

Q What does the order require as to that siding?

A Requires that the siding be raised fifteen feet and requires a bridge over Ellison street. The siding at the present time for the Sulzberger Sons Co. is entirely on the Sulzberger Company's property. The siding to the Herman Co. is half on and half off the railroad company's property.

Q And where will the new sidings be with reference to the railroad property? 20

A Will be in exactly the same location as at present.

Q Same relative position?

A But raised fifteen feet.

Q Is there any bridges at the present time over Ellison street?

A There is not.

Q Turn now to the siding of Armour & Co., what effect does the order have upon that?

A At the present time the siding to Armour & Co. 30 leaves the main track 360 feet west of Hamilton avenue and runs for 210 feet on the railroad company's property, and then leaving the railroad company's property runs about 130 feet through Ramapo avenue to Armour & Company's building. The plan proposes that Armour & Co. shall be served by a siding leaving the main track just east of Keen street and paralleling the main track over Lafayette, Montgomery, Fulton and Governor streets to the place where the siding leaves the railroad company's right of way at the present time. 40

William H. Brameld, direct.

Q Is that an entirely different location from the existing siding?

A It is.

Q Are there any new bridges required in connection with that new siding?

A There are four new bridges required.

Q At what points?

10 A One at Lafayette street, one at Montgomery street, one at Fulton street and one at Governor street.

Q Are there any bridges at those points at the present time?

A Not for any sidings; there are two main track bridges only.

Q At each of the four streets?

A At Governor street and Fulton street but not at Montgomery street or Lafayette street.

20 Q Now turn to the siding of the Hinchcliffe Brewery; what effect does the order have upon that siding?

A The siding is entirely upon the railroad company's right of way and the location will not be changed. The siding will be raised sixteen and one-half feet.

Q It will be in the same relative position?

A Same position as it is now, but just sixteen and one-half feet higher.

Q Turn to the siding of the Katz Brewery?

30 A The siding, the present siding for the Katz Brewery, leaves the main track about fifty feet east of Fulton street and extends to within about thirty feet of Governor street paralleling the main track. The plan proposes to move this track over approximately thirteen feet adjoining the long siding which is to be built to be used by Armour & Co. about seventy feet east of Fulton street, and thence using the long siding across Fulton street, Montgomery street, Lafayette street, and joining the main track just east
40 of Keen street.

William H. Bramfeld, direct.

Q At those streets will this siding be carried over on the same bridges that you mentioned in connection with the siding of Armour & Co.?

A Yes.

Q Take the siding of P. S. Van Kirk Co.?

A At the present time the siding for P. S. Van Kirk Co. leaves the main track about seventy feet east of Montgomery street and extends on the company's property about 170 feet, then off the railroad company's right of way a distance of about 200 feet. The plan proposes to raise this siding about three feet and connect with the long siding described as running to Armour & Co. across Montgomery street, Lafayette street and joining the main track just east of Keen street.

10

Q Take the siding of the Diamond Coal Co.?

A The siding of the Diamond Coal Co. at present leaves the siding to the P. S. Van Kirk Co. about 160 feet east of Montgomery street, thence on the railroad company's property for a distance of about 210 feet, and then paralleling the railroad company's property for a distance of about 100 feet. The plan proposes to place this siding on a trestle partly on and partly off the company's property.

20

Q Olive Oil Soap Co.?

A The Olive Oil Soap Co. uses the same siding as P. S. Van Kirk Co.

Q And the same remarks apply to it as to P. S. Van Kirk Co.?

30

A Yes.

Q Taking the siding of A. H. Smith?

A At the present time the siding of A. H. Smith leaves the main track about 100 feet east of Warren street, and thence parallels the main track to within ten feet of Lafayette street about thirteen feet distant from the main track. The siding is entirely upon the railroad company's property. The plan proposes to move this siding about seventeen feet to a position

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William H. Brameld, direct.

parallel with the right of way line of the railroad company and raising it twelve feet. This siding will lead toward the long siding described as being built to reach Armour & Co. just east of Lafayette street and extends parallel to the right of way line across Franklin street and then becomes a part of the siding to Meyer & De Vogel.

10 Q Is this new siding partly off the railroad property?

A The plan shows a siding leading from the siding above mentioned on to the property of A. H. Smith.

Q To what extent is it off the railroad property?

A The plan only shows it extending approximately twenty-five feet off the railroad company's right of way.

Q Now the siding of Meyer & De Vogel; what happens to that under the order?

20 A The siding of Meyer & De Vogel leaves the siding to A. H. Smith, about thirty feet west of Keen street and thence crossing Keen street parallels the right of way line of the railroad company and Franklin street. The new plan proposes to make the Meyer & De Vogel siding an extension of the new siding to A. H. Smith and it will be built at an elevation fifteen feet higher than the present siding.

Q Is it partly off the right of way?

30 A Entirely on the railroad company's right of way.

Q Armstrong Sons' Co.; what happens to that siding?

40 A Armstrong Sons' Co. siding will be raised sixteen feet and is entirely upon the railroad company's right of way. The present siding is an extension of the siding leading across—leading from Warren street across Keen and Franklin and Lafayette streets. The proposed plan is to make the lead for this siding from the main track about 110 feet east of Montgomery street, crossing Montgomery street on a new bridge

William H. Brameld, direct.

and thence on a trestle on the railroad company's right of way 150 feet long. The new track will be sixteen feet higher than the present siding.

Q Is there any bridge at Montgomery street at the present time?

A No.

Q There is another siding of A. H. Smith which has been referred to in the proceedings here and on the siding map Exhibit 23a as No. 32, what happens to that? 10

A That is the industry adjacent to the railroad just west of Lafayette street. The present siding is a continuation of the siding from Warren street across Keen and Franklin streets, the lead to said siding being a cross-over between the siding and the main track located just east of Franklin street. This siding is entirely on the railroad company's right of way. The new location is the same as the present but is raised sixteen feet. 20

Q Now the siding of D. Fullerton & Co.?

A The same remarks as apply to A. H. Smith No. 32.

Q Now take the sidings of Atherton Grain Co. and J. A. Lydecker?

A The sidings serving the Atherton Grain Co. and the J. A. Lydecker Co. are on the long siding extending from Warren street across Keen to Franklin street. Entirely upon the railroad company's right of way. The new siding is—the proposed siding is on the same location as the present but will be raised sixteen feet, requiring a bridge across Keen street. 30

Q Is there any bridge there at the present time?

A No.

Q Take now the siding of the Public Service Gas Co.?

A At the present time the Public Service Gas Co. have two sidings leading from the siding serving the Erie freight station at River street. They cross Wait 40

William H. Brammald, direct.

street into the property—on to the property of the Public Service Corporation of New Jersey. The present—the proposed plan leads this siding from the siding to J. A. Vander Hendel at the east end of the freight house, extends through Wait street to a point just east of Lyon street and thence on to the lands of the Public Service Corporation of New Jersey.

- 10 Q Does the new siding cross or pass through one or more public streets?

A Passes through Wait street.

Q For how long a distance approximately?

A 390 feet. No, more than that, 420 feet.

Q What part of the new siding for the Public Service Gas Co. is required to be constructed off the railroad right of way?

A All of it.

- 20 Q Take the siding of J. Vander Hendel, is that affected?

A J. Vander Hendel siding is not affected otherwise than to install this turnout from it.

Q Take the sidings of Swift & Co., H. M. Post, Ashley & Bailey, National Silk Dyeing Co., Grasselli Chemical Co., Auger & Simon Co., Center Paper Box Co. and Waldo Silk Ribbon Co., what effect does the order have upon those sidings?

- 30 A The siding to Swift & Co. at the present time leaves the siding to the freight house at a point about forty feet west of Lowe street. The plan proposes to lead the switch to Swift & Co. from a new track to be built parallel and about eight feet from the right of way line of the company. The change made will practically be all on the lands of the Erie Railroad Company. Henry M. Post siding will not be changed, except that a turnout will be laid where this siding leaves the main track to enable the building of the track from which Swift & Company's siding will lead. The siding to Ashley & Bailey will not be changed as
40 to location, but the turnout where it leaves the siding

William H. Brameld, direct.

on the railroad company's property will be raised about six inches. The same applies to the National Silk Dyeing Company's siding, but the track will be raised about two feet, necessitating the raising of the track across the public street, which will require re-grading to get over the raised elevation of the siding. The same applies to the Grasselli Chemical Co. whose siding will be raised approximately two feet where it leaves the main side track and the street will have to be raised about two feet where this siding crosses it. The same applies to the Auger & Simon Silk Dyeing Company's siding. The siding to the Center Paper Box Mfg. Co. and the Waldo Ribbon Co., both concerns using the same siding, will remain in its present position and will be raised about three feet. All of the siding except the turnout is located off the railroad company's right of way.

10

Q Of these several sidings last mentioned, Swift & Co., H. M. Post, etc., can you state which of the required construction is off the right of way and which is on?

20

A The raising of the turnout and a small portion of the track is on the railroad company's right of way, and there will be about sixty to seventy feet of the track will have to be raised within the limits of Wait street.

Q How about the leads or connections of these several last mentioned sidings?

30

A They will have to be raised on the railroad company's property to make the connection with the new grade of the sidings.

Q So that the present connections will have to be destroyed and these other connections made?

A They will have to be raised up. Some of it might be destroyed. The present ballast would be destroyed and they would put new ballast in. I do not think it will be necessary to take it up altogether. I just figured on raising—

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William H. Brauwald, direct.

Q Together with the total?

A Yes.

Q You have testified to the necessity of constructing certain bridges in order to conform to the Board's plan as ordered?

A Yes.

Q Have you included the cost of those bridges in this estimate Exhibit Erie 28?

10

A I have.

Q And how have you divided that cost with reference to the several siding owners?

A I have divided the cost of the bridges between—equally among the siding owners using said bridges.

Q And as to some of these leads, you mentioned several leads that went to different sidings or at least to more than one?

A Where there is more than one switch owner on a siding, I have divided the cost up equally between the siding owners for the common work. That is, the work on the siding where it would be used by each of them.

20

Q In this estimate that you have here there is apparently a summary of the cost, have you taken that summary from actual details?

A Actual detail figures.

Q Which you prepared?

A Which I did myself.

Q Referring again to these several bridges which you mentioned in connection with the construction of the new sidings or new leads, are there any of those bridges that carry the main line tracks as they now exist or that proposes to carry main line tracks?

30

A No.

Q In every case do they carry merely side tracks?

A Just the siding tracks or leads.

Q So far as the elevation of the main line tracks is concerned as required by this order, is there any necessity for the construction or building of these new

40

William H. Bramfeld, direct.

Q At any rate, there would have to be some changes made?

A Yes.

Q Have you taken the plan attached to the order and indicated on that plan in any way the various changes in the sidings to which you have testified?

10 A I have taken the plan attached to the order of the Board of Public Utility Commissioners, and on that plan I have shown in red the location—the present location—of the sidings where they will be changed as to location. The present location of the siding being shown in red.

Q The plan as I understand it shows the sidings as they will be when this work is done?

A The plan shows the sidings as they will be when this work is completed.

20 Q And have you this plan with these sidings noted there in red before you?

A I have.

Mr. Hobart. I offer it.

(Marked Exhibit Erie 27.)

Q Have you prepared an estimate of the cost of making these changes to which you have testified in the sidings and leads and connections and buildings and the new bridges to which you have referred?

A I have.

30

Mr. Hobart. I offer it in evidence.

(Marked Exhibit Erie 28.)

Q Have you in preparing this estimate divided the cost with reference to the constructions that are on the railroad property as compared with the constructions off the railroad property?

A Yes.

Q And you have so indicated on the estimate in the appropriate column?

40

A I have.

William H. Brameld, direct.

bridges for the sidings and leads; in other words, is it necessary to have those other bridges if you elevated merely the main line tracks and cut off your connection with the sidings?

A No. You could raise the sidings up to the level of the main line tracks and get on to them just as you do now without crossing the streets.

10 Q Would any bridges be necessary under such an arrangement?

A It might be necessary to build a bridge over Keen street.

Q If, however, the main line tracks alone are elevated and the sidings are not touched, is there anything in the elevation of the main line tracks which would require either the elevation of the siding tracks or the construction of bridges on which the siding tracks might be placed; in other words, can you elevate the main line and disregard entirely these sidings and these new bridges that are required?

20

A Yes, but by cutting off the industries.

Q Have you examined this plan of the Board with a view to determining what effect it would have upon the present construction of the railroad yards and the operation of those yards?

A I have.

Q And what would be the effect upon the construction and the operation?

30 A I think that the plan as proposed would seriously interfere with and impair the operation of the yard.

Q For what reason?

A On account of the grades that are used and the movement into the yard not being a direct movement but a switchback movement. It would require considerable more switching and probably heavier engines or using lighter trains and more engines to perform the amount of switching that has to be performed

40

at this time.

William H. Brameld, cross.

Q Would it be more expensive to the railroad to operate it that way than at present?

A It would.

Cross examination by Mr. Merrey.

Q All these matters that you have testified to were contained in the plan proposed by the City of Paterson to the Board of Public Utility Commissioners, were they not? 10

A Not all. The plans—the changing of the sidings and the estimates for the sidings were all contained in the proceedings before the Board of Public Utility Commissioners, but they were not separated into the items as they are separated now. The matter of the combination of Straight and Clay streets into one crossing was brought to the attention of the Board as a suggestion by Mr. R. C. Falconer, superintendent of construction of the Erie Railroad Company, and the suggested treatment of Cedar street, due to the plan proposed at Straight and Clay by combining the crossing and only raising the track four feet enabled us to work out a plan such as has been presented on Cedar street. That plan was not presented to the Board, but works out in consequence of the suggestion made by Mr. Falconer as to the combining of Straight and Clay streets. 20

Q The plan adopted by the Commission is substantially the plan proposed by the City of Paterson, was it not? 30

A It is, with the exception of Madison avenue.

Q Outside of the treatment of Madison avenue, then all these criticisms might have been directed to the plan of the City of Paterson as proposed to the Commission?

A I believe so.

Q At the time the matter was pending before the Commission you were called by the Erie Railway Company to criticize a plan that was proposed by the city?

A Yes. 40

William H. Brameld, cross.

Q And outside of the suggestion as to the consolidation of Clay and Straight streets, did you make any of these suggestions which you have made to-day?

A There is only one change suggested that I have made to-day, which was the treatment of Cedar street. Outside of that—

10 Q You suggest now the changing of the station, that is, instead of putting the new station as proposed by the plan by the city you say the station may remain where it is now and serve its purpose by having plat-

forms erected on either side of the track?
A I believe I have testified to that as could be done. I have prepared estimates showing the cost of making the change or moving the station across the street, which I submitted, and incidentally that would require the taking care of the present facilities in their present location if that was not done. I have just
20 merely shown the increased cost to the railroad by doing that.

Q But you did not suggest in your examination before the Commission that it was possible to maintain the depot at its present place instead of changing it?

A I don't remember that I did.

Q You did not criticize or object to the widening of Essex street at that time?

A I think not.

80 Q And the widening of Essex street was as proposed by the city in its original plan?

A It was.

Q Nothing was said as to maintaining the Nelson Morris & Company's beef house in its present location was there before the Utility Commission?

A I do not remember that anything was by this company. I believe I remember Morris & Company's attorney or representative at that time mentioning something about it.

40 Q But no plan was suggested to the Commission whereby that might be done?

William H. Brameld, cross.

A No.

Q Nor whereby the Fullers Express Company building could be maintained in its present location?

A None that I know of.

Q The building of the Fullers Express Company is an old freight station?

A It is.

Q And it is in a very dilapidated condition now? 10

A It is.

Q And would probably be very difficult to elevate it or move it about any way?

A That all depends upon the construction of it and I have not examined it in detail.

Q The company did suggest a change, did it not, at River street, in the city's plan?

A I do not know that I suggested it. It may have been suggested by Mr. Falconer or some other official of the company. 20

Q And this is the first plan that you know of for the consolidation of the crossing at Straight and Clay streets that has been presented?

A Yes, the first plan.

Q The suggestion was made heretofore that it might be done?

A Yes, by Mr. Falconer.

Q This plan that you offer now for the consolidation of Straight and Clay streets requires the taking of some private property at this point for the connection with the street on the one side of the railroad with Straight street and Clay street? 30

A It does.

Q The property sought to be taken is property owned by the Commercial Lumber and Millwork Co. or E. M. Stiles?

A It is.

Q And is referred to in various parts of this testimony because of the switch running into it? 40

William H. Brameld, cross.

A It is. It also takes the property of Robert McDonald on the corner of Straight and Peach streets.

Q That is property that McDonald occupies?

A Occupies.

Q You don't know who the owner of the property is?

10 A I don't. I think McDonald. As far as I know, McDonald does.

Q You have given an estimate that the cost of making an undergrade crossing at Montgomery street would be about \$38,451?

A Yes, just for the work; building the abutments, bridges, and work in the street.

Q Is not Montgomery street now opened at grade?

A No.

20 Q The plan of the Commission that proposes the opening of Montgomery street, does it not propose the closing of a street nearby?

A It does.

Q You have given us the estimated cost of putting in an undergrade crossing at Taylor street. This crossing is put in in lieu of the one now at Cedar street, is it not?

A It is.

30 Q And in your new proposed plan for changing the plan of the Board at Cedar, Clay and Straight streets have you considered the saving by not opening Taylor street?

A Yes.

Q You have given us the cost of the changing of the undergrade crossing at Governor street and at Fulton street; those streets are now open?

A They are.

Q What does the order of the Commission provide?

40 A For raising the abutments and bridges sixteen feet higher than they are at the present time, and also for the construction of a new bridge at each street to serve industries.

1987

William H. Brameld, cross.

Q In this estimate which you gave us and which is shown in exhibit marked Erie 23, was the cost of those bridges to serve industries charged?

A Yes.

Q So that we have those in Exhibit Erie 23 and also in Erie 28?

A Those are the same figures.

Q They are duplicated?

10

A Duplicated.

Q The same thing would refer to Fulton street?

A Yes.

Q If the tracks of the company are elevated as proposed by the Commission it is necessary to do this work at Governor and Fulton streets?

A Not necessary, no. That is, it is necessary to do the—to raise the abutments, yes, and raise the bridges.

Q And in Erie 23 you are simply giving us the cost of doing that work?

20

A Yes.

Q That work cannot be saved and the tracks elevated at that point?

A No.

Q You have shown us in Exhibit Erie 24 the value of the work on Essex street which is destroyed; now then if Essex street was not widened to fifty feet as proposed by the Commission some of that present value would be retained?

30

A It would.

Q And could the walls of Essex street be used in case the tracks were raised as required by the Commission?

A The walls of the—on most of the structure would be or could be. All across the yard those walls could be retained if the street was not widened, and the bridges could be retained, just simply raised a foot.

40

William H. Brameld, cross.

Q You testified that one of the sidings of the Passaic Steel Co. marked No. 3 would be destroyed if this plan were followed?

A So the plan shows.

Q How many sidings are there into the works of the Passaic Steel Co.?

A I should think there were seven or eight.

10 Q And these others are not affected in any way?

A No.

Q So that the plan does not contemplate the cutting off of service to the Passaic Steel Co., but merely the elimination of one of their several buildings?

A Yes.

Q Can the company be served over these other sidings in lieu of No. 3, which is destroyed?

A I could not say that.

20 Q The siding of David S. Rogers is destroyed; is that now in use?

A Yes, I have occasionally seen cars in there—coal cars.

Q But it is not used for serving the mill?

A I don't believe so; it is used for getting in coal.

Q And the siding of the Paterson Beef Co., is not now in use?

A I could not say. I have seen cars in there on the siding; whether they were using it or not I don't know.

30 Q Has not the Paterson Beef Co. gone out of business and its business taken over by Morris & Co.?

A I could not say. I know the National Conditioning Co. is in there.

Q The siding of the Paterson Vehicle Co. is not in use at present?

A It is there and can be used. Whether they do use it or not I am unable to say.

Q You mentioned in your testimony that it would be necessary to put a number of bridges over Mont-

William H. Brameld, cross.

gomery and Fulton and Lawrence and some other streets in order to relieve those industries?

A Yes.

Q Those are merely extensions of the main line bridges, are they not?

A No, they would have to be entirely new bridges, separate bridges, because they are at a different elevation from the main track.

Q But these bridges are all adjacent to the bridges which carry the main track?

A Oh, yes.

Q And they would be built upon the same retaining walls?

A But the retaining walls to support the main tracks would be about sixteen feet higher than the retaining walls to support these bridges to the industries.

Q And there would simply be little extensions of the retaining walls that hold up the main track?

A They would be extensions of the abutments that hold up the main track?

Q And they are necessary in order that you may serve these various industries?

A According to the plans proposed by the Commission, yes.

Q You made a statement that by filling up and bringing this up to the height of the main tracks it would not be necessary to do that. I wish you would explain that?

A Take Armour & Co. If their siding was built on a trestle or a bridge up to their second story, their siding could leave the main tracks in their new elevation, and it would not be necessary to carry their siding down across Fulton street.

Q Then I take it that the siding of Armour & Co. runs into their industry at about the present grade?

A It does.

Q So that it must be carried down from the main tracks which are elevated?

William H. Brameld, cross.

A Yes.

Q And your proposition is that if instead of carrying them at grade they were brought at the same grade as the main tracks that the bridge would be saved?

A You would not have to build the bridge because you could get right off the main track.

10 Q But that would give us an amount of trestle?

A It would.

Q In any of these estimates have you shown the cost of this other kind of construction?

A No, I have just shown the cost of construction as proposed by the Board of Public Utility Commissioners, and I have not suggested any other method of treatment.

20 Q So that it may be that the method you suggest would be just as expensive in the end as the method proposed by the Commission?

A It may be.

Q And that because of other changes which would be made necessary?

A It might be just as expensive.

Q In referring to the McNabb & Harlin switch, you refer to the siding being on a public street, the new siding being on a public street; that is known as Ramapo avenue, is it not?

A Ramapo avenue.

30 Q That street is not paved?

A No.

Q And is not really used as a public thoroughfare?

A No, it is just used by the industries that are located on it for teaming purposes, and I believe there is one dwelling on it that is used just behind Royal's machine shop.

Q And that is at the lower end of the street?

A Lower end of the street.

40 Q And that part of the street is not affected by the proposed plan?

William H. Brameld, cross.

A Not affected.

Q The principal industry on this street is McNabb & Harlin?

A It is.

Q As a matter of fact it is the only industry upon the street at that point?

A No, there is a brewing company, and Bon Arbor Chemical Co. and National Biscuit Co.

10

Q But the brewing company does not use this street to go in and out?

A No.

Q They can get in from Straight street and also another side street?

A Yes.

Q The switch running from—running through this street now is somewhat above the grade of the roadway?

A Only at the lower end. The major portion of it, I would say, is about the level of the roadway.

20

Q The road is hardly passible for teams?

A Hardly.

Q Do you know whether McNabb & Harlin use it to team in or out?

A I do not know who is using it, I have seen teams in there.

TESTIMONY CLOSED FOR PROSECUTOR.

DAVID A. NEWTON,
Supreme Court Examiner.

30

*Exhibit Erie 1—Erie 2.***Exhibits for Prosecutor.**

Offered in connection with affidavits taken pursuant to order of September 27, 1915.

EXHIBIT ERIE 1.

10 Map entitled "New Busq. & Western R. R. map of lands at Straight street terminal, Paterson."

EXHIBIT ERIE 2.

20 THIS INDENTURE, made the tenth day of March in the year of Our Lord, One Thousand Eight Hundred and Eighty-two between GARRET A. HORART and JENNIE HORART, his wife, of the City of Paterson, in the County of Passaic and State of New Jersey of the First Part; and THE PATERSON EXTENSION RAIL ROAD COMPANY, a corporation organized under the laws of the State of New Jersey of the Second Part:

WITNESSETH:

30 That the said party of the first part, in consideration of the sum of One dollar to them duly paid before the delivery hereof, have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim to the said party of the second part, and to its successors, heirs and assigns, ALL those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey.

40 The First Tract: BEGINNING on what is now or was formerly known as the old road leading to what was formerly known as Posts Tavern adjoining lands now or late of Capt. Henry Van Blarcum and running thence North five degrees and forty minutes East one hundred and sixty-five feet along said Van Blarcum's land thence North eighty-three degrees and twenty minutes West sixty-six feet, thence South five degrees

and forty minutes West one hundred and sixty-five feet to the road thence along the road South Eighty-three degrees and twenty minutes East sixty-five feet to the place of Beginning. Containing one quarter of an acre.

The Second lot: BEGINNING on the Easterly line of the Paterson and Ramapo Rail Road at the distance of two hundred and seven feet six inches Southerly from the Southerly line of Ellison Street running thence (1) Easterly one hundred and thirty feet six inches to the North East corner of the Van Blarcum lot thence (2) Southerly along said lot fifty-six feet (3) Westerly one hundred and twenty-seven feet six inches to a point in the Westerly line of the said Rail Road distant seventy feet Southerly from the aforesaid Beginning (4) Northerly along the Rail Road seventy feet to the place of beginning. 10

Third Lot: BEGINNING on the South side of lands now or late belonging to the Society for Establishing Useful Manufacturers and running thence Southerly along the line of Straight Street one hundred and fifty feet to a lot of land designated as lot No. 9 on a map of lands belonging to the Estate of the late Jacob Van Blarcum deceased made by Cornelius Van Wagener Surveyor thence Westerly along the line of said lot one hundred and eleven feet six inches to lands now or lately owned by Thomas O. Colt thence Northerly along the line of said Colt one hundred and fifty feet to land of the Society aforesaid thence Easterly along said lands about one hundred feet to Straight Street the place of Beginning. Being lots designated Nos. 10, 11, 12, 13, 14 & 15 on said map above referred to and bounded on the North by lands of the Society U. M. West by lands of Thomas O. Colt South by lot No. 9 and East by Straight Street. 20 30

The Fourth Lot: BEGINNING at the point where the Northerly line of Willis Street intersects the Easterly line of Paterson and Ramapo Rail Road thence (1) 40

Exhibit Eric 1--Eric 2.

10 Northerly along said Rail Road two hundred and seventy two feet to the South West corner of a lot conveyed to Henry Muxxy & George H. Welles by the Society for Establishing Useful Manufacturers by deed dated July 7-1854 (2) Easterly along that lot one hundred and twenty seven feet six inches to Van Blaricum's lot (3) Southerly along that lot one hundred feet to the North East corner of the Parker lot (4) Westerly along that lot sixty six feet to the North west corner of said Parker lot (5) Southerly along said lot one hundred and sixty five feet to Willis Street (6) Along Willis Street Westerly forty eight feet to the place of Beginning.

20 EXCEPTING however thereout and from the above the following: Beginning on the Northerly line of Willis Street at the South West corner of a lot now of Hugh Riddle (1) Westerly along Willis Street sixty three feet (2) Northerly parallel with the said Riddle's Westerly line one hundred and twenty feet and nine tenths of a foot (3) Easterly sixty three feet to a point on the Westerly side of said Riddle's lot produced Northerly one hundred and nineteen feet and six tenths of a foot from the Northerly line of Willis Street and (4) Southerly along said Riddle's lot one hundred and nineteen feet and six tenths of a foot to Willis Street and place of Beginning. The above described premises being the same as were conveyed by
30 the party of the first part hereto by deed of Thomas Beveridge and wife by deed dated April 15, 1881 and recorded in Passaic County Clerk's Office in Book 8-6 of deeds page 617 &c. with the appurtenances, and all the estate, right, title and interest, dower and right of dower of the said party of the first part therein.

TO HAVE AND TO HOLD the above mentioned and described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

Exhibit Erie 3.

IN WITNESS WHEREOF the said party of the first part, have hereunto set their hands and seals the day and year first above written.

GARRET A. HOBART (SEAL).

JENNIE HOBART (SEAL).

Signed, Sealed and Delivered
in the Presence of

10

Word "heirs" twice erased and six
words on first page before execution.

ALBERT A. WILCOX.

(Acknowledgment Attached.)

EXHIBIT ERIE 3.

THIS INDENTURE, made the twenty-eighth day of May in the year one thousand eight hundred and eighty-one, between THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a body corporate, of the first part, and The Paterson Extension Railroad Company, a Corporation of the State of New Jersey, of the second part:

20

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Six thousand three hundred and fifty Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, at or before the enrolling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, ALL that plot, piece or parcel of land situate, lying and being in the City of Paterson, County of Passaic and State of New Jersey and bounded and described as follows:

30

BEGINNING at a point in the westerly line of Straight Street distant one hundred feet Northerly from the

40

Exhibit Eric 3.

Northwesterly corner of Willis and Straight Streets: running thence Northwardly along the Westerly line of Straight Street ninety feet to the southerly line of land of Muzzey and Wells; thence Westwardly along the said Southerly line of land of Muzzey and Wells one hundred and eleven feet six inches to the Easterly line of land known as the Parker property; thence Southwardly along the Easterly line of said Parker property ninety-one feet; and thence Eastwardly one hundred and eighteen feet four inches to the Westerly line of Straight Street at the place of beginning.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To HAVE AND TO HOLD all and singular the above mentioned and describer premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit and behoof forever.

Subject, nevertheless, to all unpaid taxes, assessments, water rents and all other unpaid State, County, Town or City impositions or charges of every kind and nature.

And the said party of the first part does covenant, promise and agree to and with the said party of the second part, its successors and assigns, that it has not made, done, committed or executed any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter, shall or may be impeached, charged, or incumbered, in any manner or way whatsoever.

Exhibit Erie 4.

IN WITNESS WHEREOF, the said parties of the first part have hereunto caused their corporate seal to be affixed and these presents to be subscribed by their Vice-President and Secretary the day and year above written.

RICHARD A. McCURDY,,

(SEAL)

Vice-Prest.

10

Attest:

ISAAC I. LLOYD,

Secy.

(Acknowledgment attached.)

EXHIBIT ERIE 4.

THIS INDENTURE, made the Thirtieth day of August in the year one thousand eight hundred and eighty-three between The New York, Susquehanna and Western Railroad Company, successor corporation to the Paterson Extension Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania, party of the first part, and Henry B. Crosby of the City of Paterson in the County of Passaic and State of New Jersey, party of the second part: 20

WITNESSETH, that the said part——of the first part, for and in consideration of the sum of Seven thousand (7000) Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged; and the said party of the second part, his heirs, executors and administrators forever released and discharged from the same, by these presents, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, 40 30

Exhibit Erie 4.

convey and confirm unto the said party of the second part, and to his heirs and assigns forever,

ALL that certain piece or parcel of land situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey and bounded and described as follows:

10 BEGINNING in the westerly line of Straight Street distant one hundred feet and twenty four hundredths of a foot (100.24) northerly from the northerly line of Willis Street, thence (1) northerly along the westerly line of Straight Street forty seven feet and thirty four hundredths of a foot (47.34), thence (2) westerly and parallel with Willis Street seventy feet (70), thence (3) Southwesterly and parallel with the southeasterly side of the brick passenger depot of the party of the first part, fifty feet and eighty seven hundredths of a foot (50.87) to the easterly line of a lot of Henry
20 B. Crosby, thence (4) southerly and along said lot of Crosby's twenty six feet and seven hundredths of a foot to a point that is distant one hundred feet northerly from the northerly line of Willis Street, and thence (5) easterly and parallel with Willis Street along lands of Richard Hartley, R. B. Garrison and H. B. Worden one hundred and nineteen and fifty one hundredths of a foot (119.51) to the place of beginning.

30 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof,

And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances.

40 TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the

Exhibit Erie 4.

appurtenances, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit and behoof forever.

SUBJECT, however, to the rights of the tenants now in occupation of said premises.

And the said party of the first part for themselves, their successors and assigns, doth covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that the said party of the first part at the time of the sealing and delivery of these presents was lawfully seized in its own right of a good, absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted, bargained and described premises, with the appurtenances thereunto belonging and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

And that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises and every part and parcel thereof with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party of the first part, his successors, heirs or assigns, or of any other person or persons lawfully claiming or to claim the same.

And that the same now are free, clear, discharged and unencumbered of and from all forms and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature and kind soever.

And also that the said party of the first part and its successors and assigns, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises by, from, under or in trust for them, shall and will at any time or

Exhibit Erie 4.

times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do and execute or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, his heirs and assigns, forever as by the said party of the second part, his heirs or assigns, or his counsel learned in the law, shall be reasonably devised, advised or required.

And the said party of the first part, its successors and assigns, heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and its successors and assigns and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF the said party of the first part has caused its common or corporate seal to be hereunto affixed and signed by its President and Secretary the day and year first above written.

THE NEW YORK, SUSQUEHANNA, AND
WESTERN RAILROAD COMPANY,

By F. A. POTTS,
President.

(Forty printed words stricken out and six words interlined before execution.)

(L. S.) Attest:

J. P. RAFFERTY,
Secretary.

(Acknowledgment attached.)

EXHIBIT ERIE 5.

THIS INDENTURE, made the Seventh day of September, in the year of our Lord one thousand eight hundred and eighty three Between The New York, Susquehanna and Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania, party of the first part, and Henry B. Crosby, of the City of Paterson, in the County of Passaic and State of New Jersey, party of the second part, 10

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One (1) Dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath remised, released and quit-claimed and by these presents doth remise, release and quit-claim unto the said party of the second part, and to his heirs and assigns, forever, 20

ALL that certain triangular piece or parcel of land, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey, bounded and described as follows:

Beginning at a point in the westerly line of lands conveyed to the party of the second part, by the party of the first part by deed bearing date August 30th, 1883, which point is distant one hundred and twenty six feet and seven hundredths of a foot from the northerly line of Willis Street, thence running southwesterly twelve feet and eight five hundredths of a foot (12.85) to a point in the division line of lands of Henry B. Crosby and the party of the first part to a point, thence easterly and along said Crosby's line eleven feet and seventy one hundredths of a foot (11.71) to the line of lands first mentioned, thence northerly along said line five feet and forty seven hundredths of a foot to the place of beginning. Containing thirty two (32) 30 40 square feet of land be the same more or less.

Exhibit Erie 6.

10 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof with the appurtenances.

TO HAVE AND TO HOLD all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

20 IN WITNESS WHEREOF, the said part— of the first part has hereunto set its corporate seal and caused these presents to be signed by its President and Secretary the day and year first above written.

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY.

(SEAL)

By F. A. POTTS,
President.

Attest:

J. P. RAFFERTY,
Secretary.

(Acknowledgment attached.)

30

EXHIBIT ERIE 6.

THIS INDENTURE, made the 30th day of October, in the year of Our Lord One Thousand Eight Hundred and Eighty four, between The New York, Susquehanna and Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania. party of the first part, and Henry B. Crosby, of the City of Pater-

40

Exhibit Eric G.

son, in the County of Passaic and State of New Jersey, of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Fifteen hundred (1500) dollars lawful money of the United States of America, to it in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever,

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey,

BEGINNING at a point in the westerly line of Straight Street distant one hundred and forty seven feet and fifty eight one hundredths of a foot northerly from Willis Street, and running thence (1) northerly along Straight Street twenty five feet, thence (2) westerly about one hundred and eighty four feet and seventy three one hundredths of a foot to the northwest corner of the buildings owned by Henry B. Crosby, thence (3) easterly along the north side of said buildings about fifty one feet and thirty five one hundredths of a foot to a cut thereon, thence (4) still easterly sixty three feet and seventy two one hundredths of a foot to a corner post, and thence (5) still easterly seventy feet to Straight Street and place of beginning and containing about 2052 square feet of land. Said tract being an irregular shaped piece of land more fully shown on a map of property of the New York, Susquehanna and Western Railroad Company, Paterson, New Jersey, made by Hilton and Menger of Paterson, August 27th,

Exhibit Eric 6.

1883, and on file in their office. And being the property marked in green on the map hereto attached and made part hereof.

10 TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining; Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof.

20 TO HAVE AND TO HOLD all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part doth for itself, its successors covenant and grant to and with the said party of the second part, his heirs and assigns, that it the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents are not encumbered by any mortgage, judgment or limitation, or by any encumbrance
30 whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

And Also that the said party of the first part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid,

40 And Also that it will WARRANT, secure and forever defend the said land and premises unto the said party

Exhibit Erie 7.

of the second part, his heirs and assigns, forever, against the lawful claims and demand of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

IN WITNESS WHEREOF, the said party of the first part has caused its corporate seal to be hereunto affixed and signed by its President and Secretary the day and year first above written. 10

NEW YORK, SUSQUEHANNA &
WESTERN RAILROAD COMPANY,

By F. A. POTTS,
President.

Attest:

J. P. RAFFERTY,
Sect'y.

20

Signed, Sealed and Delivered
in the presence of

(Acknowledgment attached.)

EXHIBIT ERIE 7.

THIS INDENTURE, made the Seventh day of August in the year of Our Lord One Thousand Eight Hundred and Eighty six, between The New York, Susquehanna and Western Railroad Company, a corporation organized and existing under and by virtue of the laws of the States of New Jersey and Pennsylvania, party of the first part, and Henry B. Crosby of the City of Paterson, in the County of Passaic and State of New Jersey of the Second part: 30

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Five hundred (500.00) Dollars lawful money of the United States of America to it in hand well and truly paid by the said party of the second part, at or before the sealing 40

Exhibit Erie 2.

and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, hath given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns, forever

10

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the City of Paterson, in the County of Passaic and State of New Jersey,

20

Beginning on the westerly line of Straight Street at the distance of one hundred and seventy two feet and fifty eight hundredths of a foot (172.58) northerly from the northwest corner of Straight & Willis Streets, thence (1) northerly along Straight St. thirteen (13) feet, thence (2) in a southwesterly direction one hundred and eighty seven feet and ninety six hundredths of a foot (187.96) to the northwest corner of a lot of H. B. Crosby's said corner being distant one hundred and twenty feet and ninety one hundredths of a foot (120.91) northerly from Willis St., thence (3) in a northeasterly direction one hundred and eighty four feet and seventy three hundredths of a foot (184.73) to the place of beginning, containing 1174, 75/100 square feet. It being a triangular piece of land lying on the northerly side of the lot that was conveyed to H. B. Crosby by the New York, Susquehanna & Western R. R. Co. by deed bearing date Oct. 30th, 1884.

30

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining:

40

Also all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of

Exhibit Erie 7.

the first part of, in and to the same and of, in and to every part and parcel thereof.

To Have and To Hold all and singular the above described land and premises, with the appurtenances, unto said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part, doth for itself, its successors, covenant and grant to and with the said party of the second part, his heirs and assigns, that it the said party of the first part is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

And Also that the said party of the first part now has good right, full power and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid.

And Also that it will WARRANT, secure and forever defend the said land and premises unto the said party of the second part, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

IN WITNESS WHEREOF the said party of the first part has caused its corporate seal to be hereunto annexed

Exhibit Erie 8.

and these presents to be signed by its President and Secretary the day and year first above written.

**NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY,**

**By P. A. POTTS,
President.**

- 10 Signed, Sealed and Delivered
in the presence of
(21 printed words struck out before execution.)

(L. S.) Attest:

J. P. RAFFERTY,

Sec'y.

(Acknowledgment attached.)

20 **EXHIBIT ERIE 8.**

**NEW YORK, SUSQUEHANNA & WEST-
ERN RAILROAD CO.**

to

HENRY B. CROSBY.

- 30 This Agreement made this First day of November,
A. D. 1884 by and Between The New York, Susque-
hanna and Western Railroad Company, party of the
first part, and Henry B. Crosby of the City of Pater-
son, New Jersey, party of the second part: Wit-
nesseth that for and in consideration of the sum of
One Dollar, by each party to the other paid, the re-
ceipt whereof is hereby acknowledged, and of the
mutual benefit and advantages to be derived here-
from, the parties hereto respectively covenant and
agree each with the other as follows:

- 40 First: The party of the first part hereby cove-
nants and agrees that the party of the second part
may lay and maintain for the period of ninety nine
(99) years from the date hereof a flag sidewalk of

Exhibit Erie 8.

the widths hereinafter mentioned on its land in the City of Paterson, in the County of Passaic and State of New Jersey, known and described as follows:

Beginning at a point in the westerly line of straight street distant about one hundred and seventy two (172) feet northerly from Willis street and running thence westerly along the northerly side of the property conveyed to the party of the second part by the party of the first part by deed bearing date the Thirtieth day of October, 1884, about one hundred and eighty-five (185) feet to the northwesterly corner of the lands of the party of the second part and thence from said northwesterly corner southerly along the westerly side of the premises owned by said party of the second part to Willis street said sidewalk so to be laid and maintained by the party of the second part to be of the width of ten (10) feet from Straight street along the northerly side of the property of the party of the second part as hereinbefore mentioned to said northwesterly corner and from said northwesterly corner to Willis street of the width of six (6) feet.

Second: The party of the first part further covenant and agree that during the period for which said sidewalk is to be laid and maintained it will keep open and place no obstruction thereon, a roadway of the width of twenty five (25) feet around the said sidewalk as to be laid and maintained by the party of the second part which roadway together with said sidewalk shall from a private roadway of the width of thirty-one (31) and thirty-five (35) feet respectively for the use of the parties hereto and *their* patrons and customers.

Third: The party of the second part hereby covenants and agrees that he will without delay, lay and maintain the said sidewalk at his own expense the said sidewalk to be laid with the best blue flagging and have the necessary curbing and gutters and that

Exhibit Eric 8.

he will keep the same in good repair during the continuance of this agreement, at the expiration of which he will remove the same without cost to the party of the first part.

10 In Witness Whereof, the party of the first part has hereunto affixed its corporate seal and caused these presents to be signed by its President and Secretary and the party of the second part has hereunto set his hand and seal the day and year first herein written.

Executed in duplicate.

NEW YORK, SUSQUEHANNA AND
WESTERN RAILROAD COMPANY,

By F. F. POTTS,
President.

20 Signed, sealed and delivered in the
presence of

(L. S.) Attest:

J. P. RAFFERTY,
Secty.

Witness as to Henry B. Crosby,
THOS. S. PENDREIGH.

HENRY B. CROSBY. (L. S.)

(Acknowledgment attached.)

30

Exhibit Erie 9.

EXHIBIT ERIE 9.

**CERTIFICATE OF INCORPORATION
of the
ERIE RAILROAD COMPANY**

Dated November 13, 1895.

Filed and Recorded November 14, 1895, in the
Office of the Secretary of State of the State of New York. 10

Certificate of Incorporation of the Erie Railroad
Company.

WHEREAS, The property and franchises of The New
York, Lake Erie and Western Railroad Company, a
domestic stock corporation, were sold pursuant to
the judgment and decree of the Circuit Court of the
United States for the Southern District of New York,
the same being a court of competent jurisdiction, to
Charles H. Coster, Louis Fitzgerald and Anthony J. Thomas, and said sale having been duly confirmed by
said Court, the said property and franchises were, in
pursuance of said decree and the orders of said Court
made thereon, conveyed to the said Charles H. Coster,
Louis Fitzgerald and Anthony J. Thomas, who have
thereby acquired title to the said property and fran- 20
chises in the manner prescribed by law;

AND, WHEREAS, The said purchasers, Charles H.
Coster, Louis Fitzgerald and Anthony J. Thomas,
have associated with themselves the following-named 30
persons, namely: Temple Bowdoin, John Henderson
Emanuel, Jr., Albert Henry Gillard, Abran Banta
Hopper, Thomas Washington Joyce, Walter Schnyler
Kemeys, John Pierpont Morgan, Jr., Francis Lynde
Stetson, Mortimer Fitzalan Smith, William Stevens
Townsend, John Henry Tierney, Eben Briggs
Thomas, all of whom are citizens and residents of the
State of New York; and the said purchasers and their
associates desire to become a corporation pursuant
to the laws of the State of New York, and as such to 40

Exhibit Erie 9.

take and possess the property and franchises thus sold and which were at the time of sale possessed by said The New York, Lake Erie and Western Railroad Company, except the leases and contracts which, as specified in said deed of conveyance, said purchasers have elected not to assume or adopt, and such other leases and contracts sold with said property as the
 10 new corporation formed hereunder by said purchasers and their associates shall hereafter lawfully elect not to assume:

Now, THEREFORE, In conformity with the provisions of the laws of the State of New York in such case made and provided, we, the undersigned, Charles Henry Coster, Louis Fitzgerald, Anthony Johnson Thomas, Temple Bowdoin, John Henderson Emanuel, Jr., Albert Henry Gillard, Abram Banta Hopper, Thomas Washington Joyce, Walter Schuyler Kemeys,
 20 John Pierpont Morgan, Jr., Francis Lynde Stetson, Mortimer Fitzalan Smith, William Stevens Townsend, John Henry Tierney, Eben Briggs Thomas, being the said purchasers and their associates, do hereby certify:

FIRST. The name of the corporation whose property and franchises they have acquired as aforesaid is The New York, Lake Erie and Western Railroad Company, and said corporation was organized under a certain act of the Legislature of the State of New
 30 York, entitled "An Act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11, 1874, being Chapter 430 of the Laws of 1874, as amended by an act, passed June 2, 1876, being Chapter 446 of the Laws of 1876, entitled "An Act to amend chapter four hundred and "thirty of "the laws of eighteen hundred and seventy-four, entitled 'An Act to facilitate the reorganization of rail-
 "roads sold under mortgage, and providing for the
 40 "formation of new companies in such cases.'"

Exhibit Erie 9.

SECOND. The sale aforesaid was made by authority of the United States Circuit Court for the Southern District of New York, under and pursuant to a decree authorizing and directing the same, which decree was made and entered in said court on the 21st day of August, 1895, in a certain consolidated cause in equity pending in said court, wherein bills in equity were filed by Trenor Luther Park against said The New York, Lake Erie and Western Railroad Company, and by the Farmers' Loan and Trust Company against said The New York, Lake Erie and Western Railroad Company and Trenor Luther Park; and also by authority of a decree of the Circuit Court of the United States for the Northern District of New York, entered on the 28th day of August, 1895; a decree of the Circuit Court of the United States for the District of New Jersey, entered on the 3d day of September, 1895; a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, entered on the 26th day of August, 1895; a decree of the Circuit Court of the United States for the Western District of Pennsylvania, entered on the 28th day of August, 1895; a decree of the Circuit Court of the United States for the Northern District of Ohio, Eastern Division, entered on the 30th day of August, 1895; a decree of the Circuit Court of the United States for the southern District of Ohio, Western Division, entered on the 29th day of August, 1895; a decree of the Circuit Court of the United States for the District of Indiana, entered on the 30th day of August, 1895; a decree of the Circuit Court of the United States for the Northern District of Illinois, entered on the 27th day of August, 1895; a decree of the Circuit Court of the United States for the Southern District of Illinois, entered on the 28th day of August, 1895; each of which decrees was ancillary to said decree of the Circuit Court of the United States for the Southern District of New York.

Exhibit Erie 3.

THIRD. (This paragraph is a description of the property sold at said sale. Included in said description is the following) :

10 "All and singular the railway of said The New York, Lake Erie and Western Railroad Company, from and including Piermont, on the Hudson River, to and including the final terminus of the said railway on Lake Erie, and the railway known as the Newburgh Branch from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie Railway, extending from Hornellsville to Attica, in the State of New York, and also all other railways belonging to the defendant Railroad Company, in the States of New York, Pennsylvania and New Jersey, or any of them, together with

20 all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood and supplies of every kind belonging or appertaining to said Railroad Company, and all the tolls, income, issues and profits arising out of the said property, and all rights to receive or recover the same; also all the estate,

30 right, title and interest, terms and remainder of terms, franchises, privileges and rights of action of whatsoever name or nature in law or in equity conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company, or by Union Railroad Company, a corporation existing under the laws of the State of New Jersey. * * *

FOURTH. The name of the new corporation intended to be formed by the filing of this certificate is

40 **ERIE RAILROAD COMPANY.**

Exhibit Eric 9.

FIFTH. The maximum amount of the capital stock of such new corporation shall be one hundred and forty-six million dollars (\$146,000,000), divided into one million four hundred and sixty thousand shares. Said capital stock shall consist of

Three hundred thousand shares of Non-Cumulative Four Per Cent. First Preferred Stock, of the par value of one hundred dollars each;

10

One hundred and sixty thousand shares of Non-Cumulative Four Per Cent. Second Preferred Stock, of the par value of one hundred dollars each, and

One million shares of Common Stock of the par value of one hundred dollars each.

THE FIRST PREFERRED STOCK shall be entitled to non-cumulative dividends, at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year beginning after the 30th day of June, 1896, in preference and priority to any payment, in or for such fiscal year, of any dividend on other stock; but only from undivided net profits of the Company when and as determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom. If, after providing for the payment of full dividends for any fiscal year on the First Preferred Stock, there shall remain any surplus undivided net profits, the Board out of such surplus may declare and pay dividends for such year upon the Second Preferred Stock.

20

30

THE SECOND PREFERRED STOCK shall be entitled to non-cumulative dividends, at the rate of, but not exceeding, four per cent. per annum, in each and every fiscal year beginning after the 30th day of June, 1896, in preference and priority to any payment, in or for such fiscal year, of any dividend on the Common Stock; but only from undivided net profits of the Company remaining after providing for the payment of the full dividends for such fiscal year on the First

40

Exhibit Erie 9.

Preferred Stock when and as such undivided net profits shall have been determined by the Board of Directors, and only if and when the Board shall declare dividends therefrom.

THE COMMON STOCK shall be subject to the prior rights of holders of all classes of Preferred Stock at any time outstanding, according to the preferences thereof.

10

If, from the business of any particular fiscal year, excluding undivided net profits remaining from previous years, after providing out of the net profits of such particular fiscal year for the payment of the full dividends for such fiscal year on the First and Second Preferred Stock, there shall remain surplus net profits, the Board of Directors may declare, and out of such surplus net profits of such year may pay, dividends upon any other stock of the Company. But no dividends shall in any year be paid upon any such other stock out of net profits of any previous fiscal year in which the full dividends shall not have been paid on the First and Second Preferred Stock.

20

The new corporation shall have the right to redeem at any time either or both classes of its Preferred Stock at par in cash, if such redemption shall then be allowed by law.

30

All classes of stock of the new Company (except such number of shares as may be disposed of to qualify Directors) are to be vested in voting Trustees in the manner and for the period of time and subject to the terms and conditions set forth in the plan of readjustment and reorganization hereinafter mentioned.

SIXTH. The affairs of the new corporation shall be managed by thirteen Directors. The names and post-office addresses of the Directors for the first year are as follows:

(Then follow names and addresses.)

40

SEVENTH. Previous to the time of such sale, the purchasers thereof entered into a plan for, or in anti-

Exhibit Erie 9.

pation of, the formation of such new corporation and of the readjustment of the respective interests of the mortgage creditors and stockholders of said The New York, Lake Erie and Western Railroad Company, and for the representation of such interests of creditors and stockholders in the bonds or stock of such new corporation, and such purpose was made pursuant to such plan.

10

Such plan is as follows, viz:

(Then follows details of Plan of Readjustment and Reorganization of Interests in the New York, Lake Erie and Western Railroad Company.)

EIGHTH. No mortgage other than that provided for in such plan shall be put upon any property vested under such plan in the corporation, or hereafter acquired by the use of any of the bonds to be issued under its said mortgage, nor shall the amount of the First Preferred Stock be increased, except in each instance of the execution of any such mortgage, or of the increase of the First Preferred Stock, with the consent of the holders of a majority of the whole amount of the First Preferred Stock and a majority of the whole amount of the Second Preferred Stock, given at a meeting of the stockholders called for that purpose, and with the consent also of the holders of a majority of such part of the Common Stock as shall be represented at such meeting, the holders of each class of stock voting separately; nor shall the amount of the Second Preferred Stock of such corporation be increased except with like consent by the holders of a majority thereof and also of a majority of such part of the Common Stock as shall be represented at the meeting; but nothing herein contained shall limit the right or the power (hereby expressly reserved) of the new corporation to execute a mortgage in the nature of a purchase-money mortgage upon the Buffalo and Southwestern Railroad to secure bonds for the prin-

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Exhibit Erie 10.

cipal sum of \$1,000,000 (besides interest), to be issued in part payment for the stock of that Company.

- 10 NINTH. The corporation may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness, of any corporation, domestic or foreign, and issue in exchange therefor its stocks, bonds or other obligations, from time to time, when and as determined by the Board of Directors; and the President and such other officers as shall from time to time be designated by the Board of Directors may, and when elected shall, in behalf of this corporation, act as Director in any other corporation in which this corporation shall be stockholder.

(Then follows testimonium clause and signatures of incorporators, acknowledgment and certificate.)

20

EXHIBIT ERIE 10.

THIS AGREEMENT, made and executed in duplicate, this 24th day of January, 1908, by and between the ERIE RAILROAD COMPANY, (hereinafter called the "Railroad Company") party of the first part, and FULLERS EXPRESS COMPANY, (hereinafter called the "Express Company") party of the second part:

WITNESSETH:

- 30 THAT WHEREAS, the Express Company is engaged in the handling of property and merchandise between the Cities of Jersey City, New Jersey, and Paterson, New Jersey, and desires to arrange with the Railroad Company for the use of certain property of the Railroad Company at Jersey City and Paterson for the more convenient handling of such property and merchandise and for the transporting of the same between said points.

- 40 NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) to each of the parties herein by

Exhibit Erie 10.

the other in hand paid, the receipt whereof is hereby duly acknowledged, and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

FIRST: The Railroad Company hereby agrees to permit the Express Company to use the freight house in the City of Paterson which has heretofore been used by said Express Company, located between Ellison and Market Streets, for receiving, loading, unloading, billing and recording of property and merchandise handled by said Express Company; and the said Express Company agrees not to use said freight house for any other purpose than for the transaction of the business covered by this agreement, and not to permit said premises or any part thereof to be used for any other purpose without the written consent of the Railroad Company.

10

SECOND: The Railroad Company hereby agrees to permit the Express Company to use the portion of the freight house on Pavonia Avenue in Jersey City, formerly known as the freight house of the Northern Railroad of New Jersey, which has heretofore been used by said Express Company for receiving, loading, unloading, billing and recording of property and merchandise handled by said Express Company; and the said Express company agrees not to use said freight house for any other purpose than for the transaction of the business covered by this agreement, and not to permit said premises or any part thereof to be used for any other purpose without the written consent of the said Railroad Company.

20

30

THIRD. The Railroad Company agrees, without extra charge, to do the necessary switching and placing of cars for the Express Company at the aforesaid freight stations in Paterson and Jersey City, for the purpose of loading and unloading; and the Express Company agrees, at its own expense, to load and

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Exhibit Erie 10.

unload into and from cars, all property and merchandise shipped or received by it, and to properly tally and record the same without any charge to the Railroad Company.

10 FOURTH: It is understood and agreed that in case the Railroad Company shall at any time during the existence of this agreement deem it necessary or convenient to provide the Express Company with freight
20 house facilities at points in Paterson or Jersey City other than those hereby assigned to this service or subsequently assigned in accordance with this article in place and in lieu thereof, the Railroad Company may assign other locations suitable for handling the traffic of the Express Company, and the Express Company agrees, at its own expense, to vacate the premises theretofore assigned and to transfer its business
20 to such other places as may be so assigned, and all of the provisions of this agreement shall thereafter apply to such new locations and the business transacted thereat to the same extent as to the prior location and the business previously transacted thereat.

 FIFTH. All business handled under this contract shall be way-billed by the Express Company in the customary manner for way-billing by express companies, and the Express Company agrees to forward to the Auditor of the Railroad Company at the close
30 of each month, and not later than ten days thereafter, all original way-bills for property and merchandise transported in either direction under this agreement during such month, also all forwarded and received
30 abstracts covering such billing, together with recapitulations or summaries and such other statements as may be requested by the Railroad Company, in order that the same may be checked by the Auditor of the Railroad Company. The Express Company further
40 agrees that it will always keep its books at Paterson, Jersey City or New York City in such manner that its

Exhibit Erie 10.

way-bills and statements of weight and revenue can at any time be verified, and said books shall at all times be accessible to the Railroad Company, its officers or agents, for such inspection.

SIXTH: It is further agreed and understood by and between the parties hereto that if the said Railroad Company shall at the request of the Express Company place or make delivery of cars at any other points than the freight houses at Jersey City and Paterson assigned to the Express Company's business or other locations substituted therefor in accordance with Article Fourth hereof or public team delivery tracks, the Express Company shall pay the Railroad Company switching charge for such service in addition to the other payments herein provided for. 10

SEVENTH: The Railroad Company hereby agrees to transport the property and merchandise of the said Express Company to and from Jersey City and Paterson only in the local passenger or freight trains of the said Railroad Company which run between those points, it being understood that freight trains will be used as far as possible, and that only when the traffic cannot be handled satisfactorily in such trains shall the Railroad Company be required to move the traffic on passenger trains. 20

EIGHTH: It is understood and agreed that the rate to be paid by shippers to the Express Company for traffic carried under this agreement shall in no case be less than the regular published tariff freight rate of the Railroad Company between New York and Paterson. 30

NINTH: The Express Company hereby covenants and agrees to pay to the Railroad Company an amount equal to thirty per cent. of the gross revenue derived from transportation, cartage, handling or other sources on all traffic handled by said Express between New York City, Jersey City and 40

Exhibit Erie 10.

Paterson, in either direction, which amount shall be paid in monthly payments covering an amount equal to thirty per cent. of the gross revenue so derived during the preceding month, and shall be paid promptly by the Express Company upon receipt of bill or voucher from the Railroad Company therefor; it being understood and agreed that the payment assured to the Railroad Company by the Express Company shall not in any event be less than Thirty-five thousand dollars (\$35,000) per annum.

At the end of each year while this agreement is in force, an accounting shall be had and the Express Company shall promptly pay to the Railroad Company any balance that may be found due the latter Company on account of the minimum hereinbefore provided for.

TENTH: The said Express Company further agrees to work exclusively over the lines of the said Railroad Company between the points herein specified, and further agrees to use every possible endeavor to increase and enlarge the business between those points, co-operating in every way with the officials of the Railroad Company.

ELEVENTH: The Express Company assumes all liability for loss of or damage to property or merchandise transported by the Railroad Company for the Express Company, and agrees to indemnify and save harmless the said Railroad Company and all lines or companies owned, leased or operated by it, their respective successors or assigns, of and from all such liability so assumed by the Express Company, whether arising from the dishonesty or negligence of the Railroad Company its officers, agents or employes, or from any other cause whatever, and from all costs and expenses connected therewith.

The said Express Company further assumes all risk of loss of or damage to its property or of injury to the persons of its officers, agents or employes occa-

Exhibit Erie 10.

sioned by, arising out of, or in any way connected with the carrying out of this agreement or the enjoyment of the rights and privileges herein provided for, whether caused by the negligence of the said Railroad Company or by that of any line or company leased, owned or operated by it or of its or their officers, agents or employes or otherwise, and hereby agrees to indemnify and save harmless it or them or either of them of and from all claims for such loss, damage or injury so assumed, and from all costs and expenses connected therewith.

10

TWELFTH: It is hereby further understood and agreed by and between the said Railroad Company and the said Express Company, that nothing in this agreement shall be construed or understood as giving to the said Express Company exclusive rights or privileges which may not be given to other parties upon the same terms as expressed in this agreement.

20

THIRTEENTH: The Express Company further agrees that it will not do any business between the said or any other points in opposition to the Railroad Company, but will contribute to the growth of the traffic of said Railroad Company, and said Express Company further agrees not to sell, assign, transfer or sublet any of its rights under this agreement or the whole or any part of the premises referred to herein to any other person or persons without the written consent of the Railroad Company first had and obtained, and in consideration thereof the Railroad Company agrees in every practicable and lawful way to protect the Express Company in the maintenance, enjoyment and increase of the traffic under the trade-mark which it uses as long as it continues to handle its business via the lines of the Railroad Company.

30

FOURTEENTH: It is mutually understood and agreed by and between the parties hereto, that in case

40

Exhibit Erie 10.

any decision of the courts or of any lawful constituted commission or body of the United States or of the States of New Jersey or New York having jurisdiction thereof shall be rendered, or any act of the Legislature of either of the said States, or of the Congress of the United States shall be passed, adverse to the continuance of the arrangement herein provided for, then this agreement shall cease and become null and void, and the said Railroad Company shall be released from all its obligations hereunder.

FIFTEENTH: The Railroad Company agrees, during the continuance of this agreement, so far as it lawfully may, to issue three annual passes good between Jersey City, New Jersey, and Paterson, New Jersey, to employes of said Express Company.

SIXTEENTH: This agreement, unless abrogated as hereinbefore provided, shall continue in full force and effect for the period of one (1) year from the date hereof, and shall continue thereafter until terminated by either party giving to the other one (1) year's notice in writing of its intention to cancel and terminate the same.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective presidents, and their corporate seals, attested by their respective secretaries, to be hereto affixed on the day and year first above written.

30

ERIE RAILROAD COMPANY,

By F. D. UNDERWOOD,
President.

Attest:

DAVID BOSMAN,
Secretary.

FULLERS EXPRESS COMPANY,

By E. W. GUINDON,
President.

Attest:

W. L. BERDAN,
Secretary.

40

Exhibit Erie 10.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK. } ss.

On the 30th day of January, 1908, before me personally came David Bosman to me known, who, being by me duly sworn, did depose and say, that he resides in Rutherford, New Jersey; that he is the Secretary of the Erie Railroad Company, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

10

H. MURRAY ANDREWS,
Notary Public, Kings County,
Certificate filed in New York County.

20

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC. } ss.

On the 24th day of January, 1908, before me personally came William L. Berdan, to me known, who being by me duly sworn, did depose and say that he resides in Paterson, N. J., that he is the Secretary of Fullers Express Company, one of the corporations described in and which executed the above instrument, that he knows the seal of said corporation, that the seal affixed to said instrument was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

30

BEULAH LOCKWOOD,
Notary Public of New Jersey.

40

*Exhibit Erie 11.***EXHIBIT ERIE 11.**

THIS LEASE, made in duplicate this 14th day of May, A. D. 1910, by and between ERIE RAILROAD COMPANY, hereinafter designated as the Lessor, and MORRIS AND COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, hereinafter designated as the Lessee;

10

WITNESSETH THAT:

Said Lessor, in consideration of the rents to be paid and the covenants to be performed by said Lessee, as hereinafter recited, hereby leases to said Lessee the following described premises situate in the City of Paterson, County of Passaic and State of New Jersey, viz:

20 BEING so much of the first floor of the brick building known as the "Old Machine Shop" of said Lessor located on the northerly side of Market street, as lies south of a partition crossing said building at right angles distant one hundred two (102) feet eight (8) inches, measured northerly along the outside of the easterly wall of said building, from the southeasterly corner of same.

30 AND ALSO so much of the second floor of said building as lies directly over said first floor between the above mentioned partition and a partition on the second floor crossing said building at right angles at a point distant twenty-four (24) feet eight (8) inches, measured northerly along the outside of the easterly wall of said building, from the southeasterly corner of same to a height not exceeding five (5) feet ten (10) inches.

AND ALSO the premises bounded and described as follows:

40 BEGINNING at a point in the northerly line of Market street, which point is the southwest corner of the said "Old Machine Shop": running thence northerly along the westerly side of the said "Old Machine

Exhibit Eric 11.

Shop" ninety-seven (97) feet; thence westerly at right angles to the last mentioned course six (6) feet; thence northerly at right angles to the last mentioned course twenty-five (25) feet; thence westerly at right angles to the last mentioned course nineteen (19) feet; thence southerly parallel to said westerly side of the said "Old Machine Shop" to the said northerly line of Market Street; thence southeasterly along said line of Market Street twenty-seven (27) feet to the point of beginning, in substantially the location and position shown enclosed by red lines on the blue print hereto annexed and made a part hereof. 10

TO HAVE AND TO HOLD the same unto said Lessee for the term of one year from the first day of February, A. D. 1910, subject to all the conditions and covenants hereinafter recited: it being mutually understood and agreed that his lease may be terminated and cancelled by said Lessor, its successors or assigns, at any time by giving at least sixty (60) days previous notice in writing to said Lessee of the time when the same will be so terminated and cancelled; but in case of non-payment of rent by said Lessee as hereinafter provided, or the violation of any of the other provisions of this lease by said Lessee, said Lessor, its successors or assigns, may terminate and cancel this lease by giving not less than three (3) days similar notice to said Lessee: it being further understood and agreed that if this lease shall continue for the full term above specified, then it shall continue on the same terms and conditions except as modified by mutual agreement until terminated by either party hereto giving to the other party hereto at least sixty (60) days previous notice in writing of such termination. The notice herein provided for to be given by said Lessee shall be served on the General Land and Tax Agent hereinafter mentioned, and either of the notices herein provided for to be given of said Lessor, its successors or assigns, may be served personally 20 30 40

Exhibit Erie 11.

upon said Lessee, or by leaving it with any person occupying said premises, or with any servant or employe of said Lessee on said premises or by mailing such notice directed to said Lessee at Paterson, N. J., aforesaid, and upon expiration of the time limited in any notice herein provided for, said Lessor, its successor or assigns, may forthwith enter upon and take
10 and maintain possession of said leased premises and remove all persons therefrom without let or hindrance and without liability therefor; any law, usage or custom of said State to the contrary notwithstanding.

Said lease hereby agrees to pay for said premises the yearly rent of One thousand (\$1000.00) Dollars payable in equal semi-annual payments in advance to the Station Agent of said Lessor, its successors or assigns, at Paterson, N. J.: it being mutually understood that rent paid in advance for a period subse-
20 quent to the termination of this lease shall be repaid to the Lessee within thirty (30) days after demand unless such termination shall be on account of violation of non-fulfillment of any of the provisions of this lease by said Lessee, and that any demand of rent made by the Lessor after the date it is due shall have the same effect as if made on the day it is due, any law or custom of said State to the contrary notwithstanding.

Said Lessee further agrees that so long as this lease
30 continues it will, at its own cost and expense, keep all buildings and other structures covered by this lease and on said premises in as good condition and repair as they are at the beginning of this lease, ordinary wear and decay and casualties unavoidable with due care and caution excepted and put any and all such additions and repairs on said buildings and other structures as it itself may require, and said Lessee shall have the privilege of removing any building and improvements placed by it on said premises,
40 provided the same can be removed without injury to

Exhibit Erie 11.

the freehold; keep said leased premises and appurtenances in good sanitary condition free from all accumulations of rubbish so as to fully meet the requirements of the Health Officer or any other proper authority of the City in which said leased premises are located; perform all the duties imposed upon the owners or occupants of said premises as to the care of the same and in general keep said leased premises and appurtenances in good order and occupy and use the same in a careful, safe and orderly manner and so as not to interfere in any way with the maintenance or operation of the Railroad or any of its appurtenances operated by said Lessor, its successors or assigns, and use said premises for the purpose only of an office and cold storage meat warehouse and site for shed and stable. 10

Said Lessee further agrees to pay such portion of all taxes, assessments, water rates or rents, assessed, charged or levied during the continuance of this lease on or on account of said premises and any other property which may be assessed or charged therewith as the value of the premises herein demised and the improvements thereon of said Lessee bear to the value of the entire premises against which such taxes, assessments, water rates or rents are assessed, charged or levied, and said Lessee further agrees that the Lessor, its successors or assigns, may at its or their option pay such taxes, assessments, water rates or rents, and that in case of such payment said Lessee will repay such portion thereof as aforesaid to said Lessor, its successors or assigns, within thirty (30) days after receipt of bill or voucher therefor. 20 30

Said Lessee further agrees that so long as this lease continues, it will not sell, barter or give away or permit to be sold, bartered or given away on or about said leased premises any intoxicating liquor, either spirituous, vinous or fermented without the consent of said Lessor, its successors or assigns, first had in writing. 40

Exhibit Erie 11.

Said Lessee, for itself, its successors and assigns, hereby assumes all risk of loss, damage or injury by fire or otherwise to property or person on or about said leased premises, arising out of the condition or location of said leased premises or the operation, maintenance or existence of the railroad operated by said Lessor, its successors or assigns, or any of its appurtenances and agrees to indemnify and save harmless said Lessor, its successors and assigns, from all claims for any and all such loss, damage or injury, whether caused by the negligence of said Lessor, its successors or assigns, or by the negligence of its or their servants, agents or employees or otherwise.

Said Lessee further covenants and agrees to give to said Lessor, its successors or assigns, the transportation of all materials and products under the control of said Lessee, shipped to and by said Lessee, to and from Paterson, N. J., aforesaid, from and to all points reached by the lines of said Lessor, its controlled and allied Companies and their connections provided that the rates for such transportation shall be as low as by any other line or lines of Railroad to and from the same points.

Said leased premises shall not be sublet nor shall this lease be assigned in whole or in part by said Lessee without the consent of said Lessor, its successors or assigns, first had in writing.

It is mutually understood that this lease is given without covenant of warranty on the part of the Lessor and is accepted subject to all encumbrances, conditions, covenants and easements to which the title or possession of the Lessor is subject.

It is mutually agreed that this lease supersedes and cancels as of February 1, 1919, a certain lease dated April 1st, 1908, from said Lessor to said Lessee covering a portion of the above described premises, said lease being known as No. A-638.

Exhibit Erie 12.

IN WITNESS WHEREOF, the parties hereto execute this lease: dated the day and year first above written.

ERIE RAILROAD COMPANY,

By HARRISON WILLIAMS,
General Land & Tax Agent.

MORRIS AND COMPANY,

By F. W. HESS,
Attorney in Fact.

10

Correct

J. T.

J. H. B.

EXHIBIT ERIE 12.

ERIE RAILROAD COMPANY

Office of the General Freight Agent

21 Cortlandt Street

New York

20

Feb. 25, 1898.

Bill against Myer & DeVogel, Paterson, for construction of siding.

My Dear Mr. Gaddis,

I return herewith bill against Myer & DeVogel of Paterson.

30

It appears that our Superintendent, Mr. Maguire, holds a written agreement dated October 26th, 1897, wherein Myer & De Vogel agreed to pay not to exceed \$454.03 on account of this switch, and this amount has been reduced to \$430.19.

The figures given herein are the actual cost of the switch, of which you will also note the Erie assumed a proportion amounting to \$70.74.

40

Exhibit Erie 12.

It would be impracticable for us to make any reduction in this bill.

Yours truly,

R. M. PARKER,

2nd Asst. Gen. Frt. Agent.

To Mr. Elisha B. Gaddis,
Newark, N. J.

Encl. P.40.
Dict. R.M.P.

COLLECTION VOUCHER.

No. Maintenance of Way and Structures
Department Month of December 1897
MEYER and DE VOGEL
Paterson, N. J.

To the ERIE RAILROAD COMPANY, Dr.

General Offices: 81 Cortlandt Street, New York.

If this bill is found to be incorrect, or further information relative thereto is required, address J. T. WANN, Auditor. Remit to EDWARD WHITE, Treasurer.

In Remitting Please

Record No.

Month of

Memo
1897 To

Dec. Cost of siding for your accommodation East of River St., Paterson.

Rail	107.40	
Frogs and Switches	84.30	
Spliers, Spikes & Bolts	84.19	
Switch Timber & Ties	107.20	
		383.19

Labor	178.45	
10%	17.85	
		196.30
		579.49

Less Erie proportion		
Rail	62.00	
Spliers, Spikes & Bolts	8.50	
		70.50

Cr. by payment on account

430.19
140.00
570.19

Exhibit Erie 12.

COLLECTION VOUCHER.

No. Maintenance of Way and Structures
 Department Month of December, 1897

MEYER and DE VOGEL
 Paterson, N. J.

To the ERIE RAILROAD COMPANY, Dr.

General Office: 21 Cortlandt Street, New York.

If this bill is found to be incorrect, or further
 information relative thereto is required, address
 J. T. WANN, Auditor. Remit to EDWARD
 WHITE, Treasurer.

In Remitting Please
 quote
 Record No. 1888
 Month of Dec. 1897

1897 To
 December Cost of siding for your accommodation East of River St.
 Paterson.

Rail	107.86	
Frogs & Switches	54.30	
Spliers, Spikes & Bolts	34.18	
Switch, Timber & Ties	107.80	
	<hr/>	
	304.14	
Labor	179.45	
10%	17.96	
	<hr/>	
	197.40	500.50
Less Erie proportion		
Rail	62.08	
Spliers, Spikes & Bolts	8.66	
	<hr/>	
	70.74	430.19
Cr. by payment on account		180
Balance to be paid March 1st, 1898		350.19
Credit M. of W. Payroll report	197.40	
R. & B. Material	203.79	
	<hr/>	
		400.19
R. R. Frogs & Switches	54.30	
Spliers, Spikes & Bolts	35.18	
Cross Ties R. F.	107.80	
Rails	45.77	
Roadway & Track	197.40	
	<hr/>	
		430.19

180.00 remitted to treasurer 1-13-98.

Paid in Full

W. A. WEAVER, Agt.

July 27/98

Correct, M. W. MAGUIRE, Superintendent.

Correct, N. F. BALDWIN, Eng'r of M. of Way.

Correct, JNO. RAUCH, Road Master.

Approved, C. R. FITCH, General Supt.

Auditors Office

Received Jan. 22 1898

Forwarded Jan. 22 1898

Exhibit Erie 13.

EXHIBIT ERIE 13.

ARTICLES OF AGREEMENT between the Paterson Railway Company hereafter called the Paterson Company, party of the first part, and The New York, Lake Erie and Western Railroad Company, hereafter called the Erie Company, party of the second part,

10

WITNESSETH:

WHEREAS, the route of the Paterson Railway Company, owning and operating a line of horse or street railroad within the City of Paterson, New Jersey, crosses or may cross the tracks of the Paterson and Ramapo Railroad, or the tracks of the Paterson, Newark and New York Railroad Company called and known as the Newark Branch, now and for a long time past leased and operated by the said Erie Railroad Company, at River Street, Market Street, Broadway and divers other streets within the City of Paterson.

20

AND WHEREAS, the said Paterson Railway Company are about to use electric power upon their said line and route and to carry passengers over the same in cars propelled by said power or by other power than by horses.

30

AND WHEREAS, the use of such power increases the danger in the estimation of the said Erie Company, of such crossings, and it is contemplated that in operation by means of such electric power overhead wires shall be used.

AND WHEREAS, the Erie Company is willing that such crossings shall be made upon the terms and conditions hereafter stated.

NOW, THEREFORE, THE SAID COMPANIES AGREE with each other as follows:

40

First. The Erie Company agrees that the Paterson Company may continue and maintain their street

Exhibit Erie 13.

railway across the present tracks of said Paterson and Ramapo Railroad or of said Newark Branch or any other track or tracks of either of said railroads leased to the Erie Company, within the city aforesaid, as more particularly shown and specified upon the map and diagram hereto annexed and marked Schedule A. and at the points delineated thereon.

Second. The Paterson Company shall at their own cost and expense construct said crossings at the points shown upon said diagram, and in the manner agreed upon with the representatives of the Erie Company, and will thereafter keep and maintain such crossings and their tracks thereat in good and safe condition, satisfactory to the Erie Company, during the continuance of this agreement, and so as shall from time to time be best adapted to secure safety at such crossings, and under the supervision and direction of the Erie Company, and shall restore to it or to their former condition any such track or tracks of the said Erie Company displaced or injured in constructing or repairing said crossings, work to be commenced with all convenient speed after the execution of this contract.

Third. The Paterson Railway Company will stop all their cars at or before reaching the said crossings or any of them for at least ten seconds and sufficiently to ascertain if there is any danger in crossing, and will stop no car on either of said crossings at any time.

Fourth. The Erie Company may, if it see fit at any time do any reasonable work, construction or repair to the said crossing or either of them, which the said Paterson Railway Company shall fail to do and which shall be necessary or advisable to be done for the safe operation of the said crossing, and the expense thereof shall be payable by the Paterson Railway Company to the Erie Company on demand.

Exhibit Erie 13.

Fifth. The Erie Company shall in all cases have the right of way and passage over their said railroad for their cars and trains and rolling stock whatsoever, whenever arriving in preference and precedence of the cars of said Paterson Railway Company, the passage by said Erie rolling stock never to be impeded by any of said Paterson Railway cars.

- 10 Sixth. Flagmen and gatemen shall be employed by the said Erie Company at such crossings in such number and at such wages as said Erie Company shall think best, the service of said flagmen and gatemen to be regulated as to time and hours by the said Erie Company. The said Paterson Railway Company shall pay to the said Erie Company one-third of the expense of said employment of said flagmen and gatemen monthly or on or before the fifteenth day of each month, the bills for such payment or for any other
20 expense in connection with said crossings agreed to be borne by the Paterson Company to be rendered between the first day and the eighth day of each month.

- Seventh. Should it in the future become necessary or in the judgment of the Erie Company expedient to erect gates at any of the crossings over the streets aforesaid, the same are to be built by and at the expense of the Erie Company, and said Paterson Railway Company are thereupon to pay one-third of the
30 cost of such erection, and of all repairs and renewals thereof, and of maintaining the same, such costs to be certified to them by the said Erie Company monthly as aforesaid, and such payment of the proportion of said Paterson Railway Company to be made on or before the fifteenth day of the said month in which such certificate shall be delivered.

- Eighth. It being contemplated that the cars of said Paterson Railway Company shall be propelled
40 as aforesaid by electric power derived by use of over-

Exhibit Erie 13.

head wires, it is further agreed that any overhead wires erected or used by said Paterson Company shall be erected and kept and maintained at a height of at least twenty feet in the clear above the top of the rails of the railroad tracks of the said Erie Company at such points of crossing, and that no poles or supports for said wires shall be *pleased* so near the tracks of said Erie Company or their lessors as in the opinion of the Engineer of the Erie Company to be a source of danger or inconvenience to said Erie Company in operating its railroad.

10

Ninth. The crossing by said Paterson Railway Company hereby permitted and agreed for shall be by not more than two tracks covering a space of no more than twenty nine feet in width, running as nearly as possible, having regard to the Paterson Company's necessities, at right angles to the lines of the said Erie Company's tracks or track.

20

Tenth. It is mutually agreed that this contract shall not impair or in any wise affect any of the legal or equitable rights of either of the said Companies as they would exist if this contract had not been made, except so far and so far only as each Company has agreed herein.

Eleventh. It is further mutually agreed that in case of the failure of said Paterson Company to make the payments herein provided for when due, or to keep and observe all said covenants and agreements, the Erie Company shall have the right upon thirty days notice in writing to terminate this contract and declare the same null and void, whereupon the same shall forthwith cease and determine.

30

IN WITNESS WHEREOF each of said corporations has caused its corporate seal to be affixed, attested by the signature of its President and Secretary, this

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Exhibit Erie 13.

26th day of February one thousand eight hundred and ninety two.

THE PATERSON RAILWAY COMPANY,

By GARRET A. HOBART,
President.

10 Sealed and delivered in the presence of:

ALBERT A. WILCOX,
(SEAL) *Secy.*

THE NEW YORK, LAKE ERIE AND
WESTERN RAILROAD COMPANY,

By E. B. THOMAS,
1st Vice Prest.

20 Attest:

A. R. MACDONOUGH,
Secretary.

New York, May 20th, 1898

It is hereby mutually agreed that the provision in the sixth section of the foregoing contract reading as follows:

30 "The said Paterson Railway Company shall pay to the said Erie Company one third of the expense of said employment of said flagmen and gatemen monthly on or before the fifteenth day of each month," shall be suspended for the period of ten (10) years from and after this date, but shall thereafter be in full force and effect; it being understood that all the other provisions of this contract remain unaltered

Exhibit Erie 14.

and in full force and effect, as if the foregoing change had not been made.

ERIE RAILROAD COMPANY,

By E. B. THOMAS,

(SEAL)

President.

Attest:

T. A. MIDDLETON,

10

Secretary.

THE PATERSON RAILWAY COMPANY,

By WM. BADBOUD,

Vice President.

Attest (SEAL)

ALBERT A. WILCOX,

Secretary.

20

EXHIBIT ERIE 14.

THIS AGREEMENT made in duplicate this sixth day of February in the year one thousand nine hundred twelve between Erie Railroad Company (hereinafter called the Erie Company), party of the first part and Public Service Railway Company (hereinafter called the Public Service Company), party of the second part,

30

WITNESSETH THAT

WHEREAS on February 26, 1892, the New York, Lake Erie and Western Railroad Company, the predecessor in interest of the Erie Company, and The Paterson Railway Company, the predecessor in interest of the Public Service Railway, entered into an agreement covering the construction and maintenance of the street railway of the Paterson Railway Company across the tracks of the Paterson and Rama-

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Exhibit Erie 14.

po Railroad Company at Market street in the City of Paterson, N. J., it being provided in said agreement that said crossing by said Paterson Railway Company should "be by not more than two tracks covering a space of not more than twenty-nine feet in width" and

- 10 WHEREAS, the Public Service Company desires to construct, maintain and operate one additional track across the tracks of the Paterson and Ramapo Railroad Company at Market street and Park avenue in said City of Paterson, N. J., and the Board of Public Utility Commissioners of the State of New Jersey on September 6th, 1910, approved an ordinance of the Board of Public Works of the City of Paterson, passed August 2, 1910, approved August 3rd, 1910, entitled "An ordinance granting permission to Public Service Railway Company to construct, operate
20 and maintain additional street railway tracks and connections along the route of its street railway in the City of Paterson, County of Passaic and State of New Jersey" which ordinance so approved, among other things granted permission to the Public Service Company to construct and lay a track at grade across said tracks of Paterson and Ramapo Railroad Company at Market street and Park avenue in said City of Paterson, and

- 30 WHEREAS, Said Board of Public Utility Commissioners by a certificate dated January 2nd, 1912, determined that the construction of said additional track by the Public Service Company across the tracks of the Paterson and Ramapo Railroad Company at Market street and Park avenue in said City of Paterson will constitute an added factor of safety and granted permission to said Public Service Company, subject to the terms of said ordinance, to construct said additional track across the tracks of said Paterson and Ramapo Railroad Company at Market
40 street and Park avenue in said City of Paterson.

Exhibit Erie 14.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions herein contained, IT IS AGREED that the Public Service Company shall be allowed to construct one additional track across the tracks of the Paterson and Ramapo Railroad Company at Market street and Park avenue in the City of Paterson, N. J.; that said crossing shall be constructed at grade and in substantially the location and position indicated by parallel red lines on the blueprint attached hereto, marked Exhibit "A" and hereby made a part hereof, and that said additional track shall be constructed, maintained and operated under and in accordance with the following terms and conditions:

10

FIRST: The Public Service Company shall bear and pay the entire cost and expense of the installation of said crossing by said additional track and the entire cost and expense of the construction, maintenance, repair, renewal or removal of said additional track, including the installation, maintenance and operation of such derails in said additional track as shall be approved by the General Superintendent or such other officer as may be designated from time to time by the Erie Company, or by the Board of Public Utility Commissioners;

20

SECOND: The work of constructing said additional track and installing said crossing shall be performed by the Public Service Company under the supervision and direction and subject to the acceptance and approval of the Superintendent or such other officer as the Erie Company may designate and at such times and in such manner as shall not unnecessarily interfere with or endanger the operation of the railroad of the Erie Company;

30

THIRD: It is the intention of the parties that when said additional track has been constructed by the Public Service Company across the tracks of the Pat-

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Exhibit Erie 15—(1).

erson and Ramapo Railroad Company in the manner hereinbefore provided, the provisions of said agreement of February 26th, 1892, shall apply to and cover said additional track and the obligations and liabilities of the parties with respect thereto to the same extent and as fully as though said additional track were specifically referred to therein.

10 IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year hereinbefore first above written.

ERIE RAILROAD COMPANY,

By J. C. STUART.

Attest: (SEAL)

DAVID BOSMAN,

Secretary.

20 PUBLIC SERVICE RAILWAY COMPANY,

GEORGE J. ROBERTS,

Vice President.

Attest: (SEAL)

EDWIN W. HINE,

Secretary.

EXHIBIT "ERIE 15."

30

(1)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY,
dated June 1st, 1905.

AGREEMENT.

Between EDWARD T. STOTESBURY and GIRARD TRUST
COMPANY and ERIE RAILROAD COMPANY. For issue of
\$2,000,000 Gold Equipment Trust Certificates. Dated
40 June 1st, 1905. SERIES "H."

LEASE.

Agreement dated June 1, 1905, between Edward T. Stotesbury and Erie Railroad Company. Witnesseth:

That for and in consideration as well of the sum of one dollar paid by the Railroad Company to the Lessor as of the rents and covenants hereinafter mentioned, the Lessor has let and leased and by these presents doth let and lease to the Railroad Company for the term of ten years from and after the first day of June, 1905; unless sooner terminated as hereinafter provided, the following described railroad equipment or rolling stock, to wit: (Then follows description and statement of numbers of 37 freight engines, 19 passenger engines and 100 freight engines) which said locomotive engines shall be delivered to the Railroad Company as they shall from time to time be received by the Lessor from the builders under the contracts dated December 29, 1904, and February 17, 1905, respectively, between the builders and the Lessor, at and for the rent hereinafter set out, and upon the terms and conditions and covenants following, to wit:

First. That the Railroad Company shall and will pay to the Lessor or his assigns at the office of Girard Trust Company in the City of Philadelphia as rent or hire for the said locomotive engines:

I. Upon demand on or after June 1, 1905, a cash payment of Five Hundred and Twenty-three Thousand Thirty-two Dollars and Fifty Cents (\$523,032.50).

II. Half-yearly on the thirty-first day of May and the thirtieth day of November in each year, the first payment to be made on the 30th day of November, 1905:

(a) A sum equal to two per cent. on Two Million Dollars (\$2,000,000), which sum thus paid shall be reduced from time to time by an amount

Exhibit Erie 15—(1).

equal to two per cent. on such sum as the Railroad Company shall pay to the lessor to be applied in reduction of the sum of two million dollars as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the Lessor or his assigns in enforcing the covenants and terms of this lease.

10 (c) A sum equal to the taxes upon the income or property of the trust which the Lessor or his assigns may be liable in taxes which may by law be charged against the Lessor on account of payments of rental hereunder.

III. Half-yearly on the 31st day of May and the 30th day of November in each year, beginning with the 30th day of November, 1905, the following sums, respectively:

20 On November 30, 1905.....\$100,000
On May 31, 1906 100,000

(Then follows provision for further payments of \$100,000 each on November 30th and May 31st of each year down to and including May 31, 1915).

Second. The Railroad Company covenants and agrees with the Lessor, or his assigns, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said locomotive engines in good order and repair, and to cause the said locomotive engines to be kept numbered as herein before mentioned and all of said locomotive engines to be plainly marked upon both sides thereof, with the words:

30

"E. T. STOTESBURY, Trustee, Owner."

And that it, the Railroad Company, will replace at its own cost any of said locomotive engines which may be destroyed from any cause whatever during the continuance of this lease, by other locomotive engines of

Exhibit Erie 15—(1).

equal value as those destroyed and of substantially as good material, character and construction, and that it, the Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said locomotive engines as a designation which might be interpreted as a claim of ownership thereof; PROVIDED, however, that the Railroad Company may cause the said locomotive engines, and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein. 10

Third. The Company agrees to furnish an inventory of the engines once each year.

Fourth. The Company agrees there shall be no assignment or transfer of its rights, or interest in the engines without the consent of the Lessor or his assigns.

Fifth. That in case the Railroad Company shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable or shall fail to keep the said locomotive engines in good serviceable condition or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated and thereupon all installments of rent reserved hereunder whether said installments shall then have fallen due or not shall at once become forthwith due and payable, and the Lessor or his assigns may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said locomotive engines may be and may retake the said locomotive engines and withdraw the same from said railroad or premises. 20 30

Sixth. In case of such retaking the Company agrees to draw the engines to such points as shall be designated by the Lessor or his assigns and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that when it, 40

Exhibit Eric 15—(1).

- the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, shall and will, upon the payment by the Railroad Company to the Lessor or his assigns of the additional sum of one dollar, sell, assign and transfer or cause to be sold, assigned or transferred to the Railroad Company its successors and assigns as its absolute property all the locomotive engines held under this lease and evidence such sale and transfer by an appropriate bill of sale so that thereupon and thereafter the absolute ownership in said locomotive engines shall be and become vested in the Railroad Company, its successors and assigns; *Provided*, however, and it is hereby understood that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto Girard Trust Company as Trustee, all his right, title and interest in and to said locomotive engines hereby leased unto the Railroad Company, and as well all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Girard Trust Company as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor.

The Lessor hereby transfers and assigns unto the Railroad Company all its rights, claims and demands arising or which may arise against the Baldwin Locomotive Works (Burnham, Williams & Company), or the American Locomotive Company the builders, or either of them, under said contracts of December 29th, 1904, and February 17th, 1905, respectively, in case of the failure of either of said companies to deliver said

Exhibit Erie 15—(1).

locomotive engines or any of them at the times or in the manner therein provided.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated June 1, 1905, between Edward T. Stotesbury, Girard Trust Company and Erie Railroad Company, WITNESSETH:

10

Recites the above lease; also that certain Bankers have secured subscriptions for \$2,000,000 to "Erie Railroad Equipment Trust 'Series H'"; further, that Edward T. Stotesbury proposes to secure to the parties subscribing to said fund the repayment thereof in twenty semi-annual installments as follows:

Then follows list of repayments, beginning December 1, 1905, and ending June 1, 1915, each for the sum of One hundred thousand dollars—with interest at the rate of four per cent.

20

Now, THEREFORE, this agreement witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto Girard Trust Company, as Trustee for the holders of the certificates hereinafter described, all the right, title and interest of the said Edward T. Stotesbury in and to a certain Indenture of Lease bearing date the first day of June, 1905, made by the said Edward T. Stotesbury to Erie Railroad Company, a copy of which is hereunto annexed, as hereinbefore stated, and in and to said locomotive engines so leased as aforesaid.

30

Second. The Trustee covenants and agrees that contemporaneously herewith it will execute and deliver to Drexel & Co. for distribution to the several subscribers to said "Erie Railroad Equipment Trust, Series H," Two thousand certificates in the following form, to wit:

Then follows form of Equipment Trust Certificates and of Dividend Warrant.

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Exhibit Erie 15—(1).

Third. Trustee agrees to keep a register at its office.

Fourth. The Trustee, as assignee of the said Edward T. Statesbury, Lessor, further covenants to perform and, so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said Lease and to apply and distribute the rentals thereunder when and as the same shall be received,
10 for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad locomotive engines as are usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may be required to pay and any tax which may by law be deductible from the principal of said certificates or the dividends thereon.
20

(c) To the payment of the dividend warrants attached to the said trust certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable; the said warrants and certificates to be cancelled upon payment thereof.

It being distinctly understood and agreed that neither the Trustee nor any successor in the trust shall
30 be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own willful and intentional breach thereof.

Fifth. Erie Railroad Company becomes a party hereto in order to express its assent to the assignment herein contained by Edward T. Statesbury to Girard Trust Company, as Trustee for the benefit of the subscribers to said "Erie Railroad Equipment Trust Series H," and does hereby accept all the terms of this
40 assignment including the obligation to make payment

Exhibit Erie 15—(1).

of the reasonable expenses of said Trustee and of all taxes herein above mentioned for which the Trustee may be liable or may by law be required to deduct from the principal of the said certificates or the dividends thereof.

Sixth. It is further herein settled and provided that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of the said lease, that the Trustees shall have the right as assignee of the said Edward T. Stotesbury, to declare the principal of all of said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said locomotive engines, it may either hold or lease or dispose of said locomotive engines or so many thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit as the Trustee may deem most beneficial; and the proceeds of such lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property or the certificates aforesaid or the dividends thereof,

(1) to the dividend warrants then due and

(2) to the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata*.

and such retaking possession of the said locomotive engines by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company for

Exhibit Erie 15—(2).

future accruing rent until such sum is realized, as, with the proceeds of the sale of said locomotive engines, is sufficient for the payment in full of all taxes and expenses as aforesaid together with all accrued dividend warrants and the principal of all of the said certificates;

Then follows testimonium clause and acknowledg-
10 ments.

EXHIBIT "ERIE-15."

(2)

CAR LEASE AND AGREEMENT.

STANDARD STEEL CAR COMPANY to ERIE RAILROAD
COMPANY,

Dated November 1st, 1906. SERIES J.

20

LEASE.

Agreement dated November 1, 1906, between Standard Steel Car Company, called the Lessor, and Erie Railroad Company, called the Railroad Company. WITNESSETH:

In consideration of One dollar and of the rents and covenants herein mentioned, the Lessor has leased for the term ending November 1, 1916, unless sooner terminated, five hundred Steel Underframe Gondola
30 Cars; five hundred Steel Underframe Flat Cars.

Cars to be delivered to the Erie Railroad Company at the Car Works of the Lessor, between November 1, 1906, and March 1, 1907, on the following terms:

First. That the said Railroad Company shall and will pay to the Lessor, or its assigns, at the office of the Railroad Company in the City of New York, as rent or hire for the said railroad cars:

I. Upon demand a cash payment of Two Thousand One Hundred and Ninety-five Dollars (\$2,195.00),
40 and the air brakes, springs (truck and draft), brake

Exhibit Erie 15—(2).

beams, brake shoes, journal boxes and lids, journal bearings and wedges and couplers for equipping such cars, receipt of which appliances is hereby acknowledged.

II. Half-yearly, on the first days of May and November in each year, the first payment to be made on the first day of May, 1907, the following sums:

(a) A sum equal to two per cent. on Nine hundred and Fifty Thousand Dollars, which sum thus paid shall be reduced from time to time by an amount equal to two per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of Nine Hundred and Fifty Thousand Dollars, as specified in Paragraph III of this Article: 10

(b) A sum equal to the taxes upon the property leased hereunder which the Lessor or its assigns may be liable to pay. 20

III. Half-yearly for nine and one-half years, on the first day of May and the first day of November in each year, beginning with the first day of May, 1907, the sum of Forty-seven Thousand Dollars, making nineteen semi-annual payments of Forty-seven Thousand Dollars each, and on the first day of November, 1916, the sum of Fifty-seven Thousand Dollars, making in all twenty payments amounting to Nine Hundred and Fifty Thousand Dollars. 30

IV. The payments of rental provided for in paragraphs II (a) and III shall be evidenced by Car Trust notes or certificates to be executed by the Railroad Company, and payment of such certificates and the coupons thereof shall be for all purposes equivalent to payment of the said portions of rental to the said Lessor, and such certificates and coupons shall be in form substantially as follows:

Then follows form of Car Trust Note, Trustee's Certificate and Coupon. 40

Exhibit Erie 15—(2).

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said railroad cars in good order and repair and to cause the said railroad cars in good order and repair and to cause the said railroad cars to be kept numbered as hereinbefore mentioned, and all of said railroad cars to be plainly marked upon both sides thereof with the words, "Bankers Trust Company, Trustee, Assignee, Owner, and Lessor," and that it, the said Railroad Company, will replace at its own cost any of the said cars which may be destroyed from any cause whatever during the continuance of this lease, by other railroad cars of equal value as those destroyed and of substantially as good material, character and construction, and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said railroad cars as a designation which might be interpreted as a claim of ownership. PROVIDED, however, that the Railroad Company may cause the said cars and each of them, to be lettered "Erie," for convenience of identification of its lessee interest therein. PROVIDED, however, that the Railroad Company may, at its option, instead of replacing any of said cars, which may be worn out, lost or destroyed, pay to the Lessor the sum of Nine Hundred and Fifty Dollars for each car so worn out, lost or destroyed, all such money to be held by the Lessor until the termination of this lease, and, in the event that the Railroad Company exercises the option of purchase herein provided, after default or otherwise, to be turned over to said Railroad Company at the time of such purchase, and the Lessor agrees to pay to the Railroad Company interest thereon at a reasonable interest rate, not less than the highest rate paid general depositors of the Bankers Trust Company, of

Exhibit Erie 15—(2).

New York, said interest to be retained by the Lessor, its successors or assigns, until all payments have been made in accordance with Article First, Paragraphs I, II and III.

It is provided further, that the Railroad Company shall exercise such option of substituting money for cars within thirty days after notice to the Accounting Department of the Railroad Company of the wearing out, loss or destruction of any such cars, or shall, within such period, notify the Lessor, its successors or assigns, of its election to replace said cars, and shall so replace the same as speedily as possible thereafter. 10

Third. The Railroad Company agrees to furnish an inventory in each year.

Fourth. The Railroad Company agrees that there shall be no assignment of its rights or interest without the consent of the Lessor or its assigns. 20

Fifth. In case the Railroad Company (a) shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition, or to perform any other obligations and covenants herein contained to be performed on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Lessor, then, and in each and every case of default as aforesaid, the Lessor may declare this lease terminated, and all outstanding bonds due and payable, and thereupon all installments of rent reserved herein and all said bonds, whether said installments of bonds shall have fallen due or not, shall at once become due and payable, and the Lessor may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein said cars may be, 30 40

Exhibit Erie 15—(2).

and may retake said cars and withdrew the same from said railroad or premises.

10 But in such case of default the Railroad Company shall have the right, within thirty (30) days, after the Lessor shall have declared the lease terminated, to pay all outstanding bonds and interest thereon to the date of such payment. Thereupon, upon receipt of evidence of such payment and of the cancellation of all such bonds and interest coupons thereon, the Lessor, its successors or assigns, will make and deliver to the Railroad Company a bill of sale of all its rights, title and interest in and to the cars covered by this lease, and return to the Railroad Company all sums deposited by the Railroad Company with the Lessor, its successors or assigns, on account of cars worn out or destroyed, with accrued and unpaid interest.

20 Sixth. In case of such retaking the Railroad Company agrees to draw and deliver the cars to the Lessor.

Seventh. On payment of the rent, Lessor agrees to sell and transfer the cars to the Railroad Company.

Then follows testimonium clause and acknowledgment.

AGREEMENT.

30 Dated February 9, 1907, between Standard Steel Car Company, Bankers Trust Company and Erie Railroad Company.

Recites above lease; also that the Car Company has secured subscriptions to the amount of Nine hundred and fifty thousand dollars to a fund to be known as "Erie Railroad Equipment Trust, Series J"; recites that Car Company proposes to secure to the subscribers the repayment of Nine hundred and fifty thousand dollars in twenty installments, to wit, nineteen semi-annual payments of Forty-seven thousand dol-

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Exhibit Erie 15—(2).

lars each, beginning May 1, 1907 and a final payment of Fifty-seven thousand dollars on November 1, 1916, with interest at the rate of 4%.

THIS AGREEMENT, WITNESSETH:

First. Car Company assigns to the Trust Company as Trustee for the holders of the certificates all its right, title and interest in and to the railroad cars; also its right, title and interest to the above lease. 10

Second. The Trustee agrees to deliver to the Car Company Nine hundred and fifty certificates; then follows form of certificate, trustee's endorsement and form of coupon.

Third. Trustee agrees to keep a register in its office.

Fourth. Agreement as to payment of interest.

Fifth. The Trustee, as assignee of the said Standard Steel Car Company, Lessor, further covenants to perform and, so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals thereunder when and as the same shall be received, for the following purposes, to wit: 20

(a) To the payment of any taxes upon the railroad cars leased which it may be required to pay.

(b) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable. 30

(c) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof. Provided, however, that the Railroad covenants and agrees to pay bonds or certificates and coupons issued under said lease at its office, in accordance with the terms and provisions of said bonds and coupons and 40

Exhibit Eric 15—(2).

of this instrument and of said lease, and such payments shall to the extent thereof be satisfaction of the rental reserved in said lease and a discharge to the Trustee from all obligation to require the payment of rentals to that extent and to apply and distribute the same.

10 It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Sixth. The Railroad Company agrees to the assignment of the lease to the Trust Company.

20 Seventh. It is further herein agreed and provided that in case the Railroad Company (a) shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition or to perform all other obligations and covenants in said lease contained to be performed, on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Trustee, then and in each and every case of default as aforesaid, the Trustee shall have the right, as assignee of said Car Company, to enforce all
30 the terms and stipulations of said lease subject to the right of the Railroad Company to exercise its option of purchase as therein set out, and in case the said Trustee shall re-take possession of the said cars, it may either hold or lease, or dispose of said cars or so many thereof as it may deem necessary in such manner at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale, together with any
40 moneys in the hands of the Trustee in lieu of lost,

Exhibit Erie 15—(2).

worn out or destroyed cars, and any unpaid interest thereon, shall be applied by the Trustee to the payment, after deducting all taxes which the Trustee may by law be required to pay in respect to the railroad cars covered by the said lease.

(1) Of the dividend warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then pro rata. 10

And such re-taking possession of the said railroad cars by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such sum is realized as, with the proceeds of the sale of said cars, is sufficient for the payment in full of all taxes aforesaid, together with all accrued interest warrants and the principal of all of the said certificates. 20

The Trustee assumes no liability, however, saving for its own willful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty, however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is incumbent upon it.

Eighth. Provides for temporary receipts.

Ninth. Provides for compensation to the Trustee. 30

Tenth. Car Company agrees to protect the Trustee from all claims arising out of the use of any patents employed in the construction of said cars.

Then follows testimonium clause and acknowledgments.

Exhibit Eric 15—(3).

EXHIBIT "ERIE-15."

(3)

AGREEMENT dated April 1, 1913, between ERIE RAILROAD COMPANY, STANDARD STEEL CAR COMPANY and WELLS FARGO AND COMPANY.

10 Recites that the Express Company conducts the express business on the line of the Railroad Company and that twenty-five additional express cars are required, and that the Car Company is willing to construct, sell and deliver the same to the Express Company, and the Express Company is willing to purchase the same and lease them to the Railroad Company.

It is agreed as follows:

20 First. The Car Company shall construct, sell and deliver to the Express Company and the Express Company shall receive and purchase from the Car Company twenty-five (25) standard express cars to be numbered 375 to 399 inclusive at the prices and upon the terms hereinafter mentioned, each of said cars shall be constructed and equipped strictly in accordance with the Railroad Company's drawings and specifications therefor which have been agreed upon heretofore by the Car Company and the Railroad Company and uniform with the twenty-five express cars recently built by the Barney and Smith
30 Car Company for the Express Company and leased to the Railroad Company, except that said cars are to be equipped with the Car Company's make of steel six wheel trucks as shown on a certain blue print numbered 14,630 heretofore delivered to the Railroad Company by the Car Company, with the Car Company's make of springs and with solid steel wheels manufactured by the Forged Steel Wheel Company; the aforesaid drawings, specifications and blue print being hereby made a part hereof to the
40 same effect as if they were attached hereto.

Exhibit Erie 15—(3).

The Car Company shall promptly assemble the material for the construction of said cars and shall deliver them to or upon the order of the Express Company f. o. b. tracks of the Boston and Maine Railroad Company at Worcester, Massachusetts, during the month of May, 1913, unless prevented by strikes, fires, delays of material-men or carriers or other contingencies which are unavoidable or beyond the control of the Car Company, and which necessarily delay the prosecution or completion of the work of constructing said cars; and in the event of any delay so caused the time herein fixed for the completion and delivery of said cars shall be extended for a period equivalent to the time lost by reason of any or all of the aforesaid causes. It is understood that said cars are to be leased by the Express Company to the Railroad Company and it is agreed that the time herein specified at which the said cars are to be delivered to the Express Company shall be of the essence of this agreement.

Second. The total cash cost of constructing, equipping and delivering said cars in the manner hereinbefore provided shall be Seven thousand, eight hundred and forty-eight and 71/100 Dollars (\$7,848.71) each and the Express Company shall pay such total cash cost to the Car Company in New York Exchange at the office of the Car Company upon the delivery of said cars in the manner hereinbefore provided and upon the certificate of an inspector or inspectors duly authorized by the Railroad Company, stating that said cars have been constructed and equipped in accordance with the provisions contained herein.

The Express Company shall also pay promptly upon the receipt thereof from the Railroad Company from time to time as the work of constructing said cars progresses all invoices or bills covering materials which the Express Company agrees under Article Third hereof to furnish or cause to be furnished

Exhibit Eric 15—(3).

to the Car Company free of expense in connection with the construction of said cars; provided, however, that said vouchers or bills shall first be approved by the General Mechanical Superintendent of the Railroad Company or other officer designated by it.

- 10 Third. Provides for certain "specialities" to be included as part of the construction of said cars.

Fourth. Provides that the Railroad may have an inspector at the works of the Car Company.

Fifth. Concurrent with the delivery of said cars and their acceptance in the manner hereinbefore provided full legal title thereto shall be vested in the Express Company to the end that the Express Company shall lease said cars to the Railroad Company upon the terms and conditions hereinafter set forth.

- 20 Sixth. The Express Company hereby leases to the Railroad Company all and singular the said cars from the dates of the respective deliveries thereof until the first day of April, 1913, or the earlier termination of this agreement and lease as hereinafter provided.

- 30 Seventh. The Railroad Company agrees to accept and receive as and when ready for delivery at Worcester, Massachusetts, in good order and complete according to plans and specifications as agreed upon, all of such cars, in such installments as may from time to time be ready for delivery, upon and subject to all the terms and conditions of this agreement, and promises and agrees to faithfully perform and carry out all the terms and conditions hereof.

- 40 Eighth. The Railroad Company shall pay to the Express Company as rental for said cars the entire amount of money to be paid as aforesaid by the Express Company, including the total cash cost of all of said cars constructed and delivered pursuant to the

Exhibit Erie 13—(3).

terms of this agreement and all sums paid in settlement of invoices or bills for materials furnished or caused to be furnished by it hereunder, in ten (10) semi-annual payments with interest payable semi-annually upon each part thereof as shall be outstanding at the rate of five per centum (5%) per annum; shall pay all taxes, licenses, assessments and charges of any kind which may be assessed or levied upon said cars or any part thereof; shall retain upon said cars the plate or stencil to be placed on each side thereof in the manner hereinbefore provided up to the time the last payment is made hereunder by the Railroad Company to the Express Company, and the lien of the Express Company upon said cars shall continue up to the time of making such final payments.

The Railroad Company hereby expressly reserves the right (which the Express Company agrees that the Railroad Company shall have) at any time during the continuance of this agreement, upon giving thirty (30) days' notice in writing of its intention so to do, to pay off all such sum or sums of money together with the interest thereon which it may owe to the Express Company under the provisions of this agreement.

Ninth. The Railroad Company agrees to assume and pay the cost of maintenance, renewals and repairs.

Tenth. Car Company agrees to pay royalties and other charges because of the use of patents.

Eleventh. The Railroad Company hereby agrees that in case of default by it in the payment when due of any sums herein agreed to be paid, the Express Company may withhold so much of any and all amounts due or to become due to the Railroad Company from the Express Company under the aforesaid agreement existing between said companies cov-

Exhibit Erie 15—(3).

ering the conduct of express business over the lines of the Railroad Company as shall be necessary to pay said sums so in default and may apply the amount so withheld to the payment of said sums so in default until they are fully paid and satisfied.

Twelfth. The Express Company may in its discretion resort to any proceeding, legal or equitable, in its judgment necessary or proper for the enforcement of this indenture, and any remedies specially conferred by any of the provisions of this indenture shall be deemed cumulative and in addition to all other remedies in law or in equity in favor of the Express Company.

Thirteenth. The Express Company hereby covenants and agrees that when the Railroad Company shall have completed the payment of all the sums which it has agreed to pay as rental for said cars and has kept and performed all and singular the obligations and covenants of this agreement on its part, it, the said Express Company, shall and will, upon the payment by the Railroad Company to the Express Company, its successors or assigns, or the additional sum of One Dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned, and transferred to the Railroad Company, its successors and assigns, as its absolute property all of the said cars constructed and leased hereunder, and evidence such sale and transfer by an appropriate bill of sale or such other instrument as may be reasonably required by the Railroad Company, so that thereupon and thereafter, the absolute ownership in said cars shall be and become vested in the Railroad Company, its successors and assigns.

Then follows testimonium clause and acknowledgments.

Exhibit Erie 15—(4).

EXHIBIT ERIE-15.

(4)

AGREEMENT dated March 8, 1911, between ERIE RAILROAD COMPANY and BUFFALO, ROCHESTER AND PITTSBURGH RAILWAY COMPANY.

Recites the parties desire that a portion of said line of said railroad be revised by eliminating the curvature thereof. 10

AGREED

First. Pittsburgh Company to furnish labor, tools and material necessary for the work as therein described.

Second. Pittsburgh Company agrees to comply with all ordinances, laws, etc.

Third. The entire cost of all labor, tools and materials employed on said work and all other costs and expenses connected therewith shall be borne and paid by the parties hereto in the following proportions and manner: 20

(a) That part of said cost and expense chargeable to operating expenses under the Classification of Expenditures for Additions and Betterments as prescribed by the Interstate Commerce Commission for Steam Roads in accordance with Section 20 of the Act to Regulate Commerce shall be borne and paid for by the parties hereto in the proportions that their respective wheel mileage upon said line of railroad for the second half of the fiscal year next preceeding the date of the satisfactory completion of said work in the manner provided herein bear to the total wheel mileage thereon during said period. 30

(b) That part of said cost and expense chargeable to Capital Account under the aforesaid Classification shall be advanced and paid in the first instance by the Pittsburgh Company and the entire amount of said cost and expense chargeable to Capital 40

Exhibit Erie 15—(4).

tal Account so advanced and paid by the Pittsburgh Company as aforesaid shall be repaid by the Erie Company to the Pittsburgh Company in five equal, successive, annual payments, the time of making said payments to be reckoned from the date of the satisfactory completion of said work in the manner provided for herein and the first of said payments to be made at the expiration of one year from said date, with interest on unpaid balances at the rate of four and one-half per centum ($4\frac{1}{2}\%$) per annum from the respective dates when the advances were made by the Pittsburgh Company, said interest to be payable semi-annually on the first day of June and the first day of December in each year; PROVIDED, however, that the Erie Company at its option may repay the whole of said amount or any part thereof to the Pittsburgh Company on any interest date prior to the date on which the last of said five annual payments shall be due.

(c) From and after the date of the completion of said work in the manner provided for herein and so long as the aforesaid agreement between the parties hereto dated July 1st, 1907, shall remain in effect, the Pittsburgh Company shall pay to the Erie Company interest at the rate of four and one-half per centum ($4\frac{1}{2}\%$) per annum payable semi-annually on the first day of June and the first day of December in each year on such proportion of the aforesaid part of the cost and expense of said work chargeable to Capital Account as aforesaid as its wheel mileage upon said line of railroad for the period of six months of the fiscal year next preceding the interest date bears to the total wheel mileage thereon during said period.

Fourth. Said work to be fully completed on or before December 1, 1911.

Fifth. Agreement as to method of charging for loss or damage to property or person.

Exhibit Erie 15—(5).

Sixth. The revised line is to become the property of the Erie Company or its Lessor the New York, Lake Erie and Western Coal and Railroad Company, and the Pittsburgh Company is entitled to the joint use thereof.

Then follows testimonium clause and acknowledgment.

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EXHIBIT "ERIE 15."

(5)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated December 1st, 1905.

AGREEMENT.

Between EDWARD T. STOTESBURY and THE PENNSYLVANIA COMPANY FOR INSURANCE ON LIVES AND GRANTING ANNUITIES and ERIE RAILROAD COMPANY, for issue of \$7,000,000. Gold Equipment Trust Certificates. Dated December 3d, 1905. Series "I." 20

LEASE.

Agreement dated December 1, 1905 between Edward T. Stotesbury, called the Lessor, and the Erie Railroad Company, Witnesseth:

The Lessor leases to the railroad company, for the term ending June 1, 1916, unless sooner terminated, 30 certain cars and locomotives as follows:

- 2,000 Steel Underframe box cars.
- 500 Steel Underframe box cars.
- 1,500 Steel Underframe box cars.
- 1,000 Steel Hopper cars.
- 1,000 Steel Hopper cars.
- 500 Steel Underframe Gondola cars.
- 25 Consolidation Freight Locomotives.
- 50 Consolidation Freight Locomotives.
- 25 Pacific Type Passenger Locomotives. 40

Exhibit Erie 15—(5).

upon the terms and conditions and covenants following, to wit:

First. That the said Railroad Company shall and will pay to the Lessor, or his assigns at the office of The Pennsylvania Company for Insurance on Lives and Granting Annuities, in the city of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad cars and locomotives:

1. Upon demand after February 1st, 1906, a cash payment of one million six hundred and twenty-five thousand dollars, (\$1,625,000);

2. Half-yearly, on the first days of June and December in each year, the first payment to be made on the first day of June, 1906, the following sums:

(a) A sum equal to two per cent. on seven million dollars (\$7,000,000), which sum thus paid shall be reduced from time to time by an amount equal to two per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of seven million dollars, as specified in paragraph 3 of this article;

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease;

(c) A sum equal to the taxes upon the income or property of the trust which the Lessor or his assigns may be liable to pay, and any taxes which may by law be charged against the Lessor on account of the payments or rental hereunder.

3. Half-yearly, for ten years, on the first day of June, and the first day of December in each year, beginning with the first day of December, 1906, the following sums, respectively:

On December 1st, 1906.....	\$350,000
On June 1st, 1907.....	350,000

Exhibit Erie 15—(5).

(Then follows provisions for further payments of \$350,000 each on December 1 and June 1 of each year down to and including June 1, 1916.)

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said railroad cars and locomotives in good order and repair, and to cause the said railroad cars and locomotives to be kept numbered as hereinbefore mentioned, and all of said railroad cars and locomotives to be plainly marked upon both sides thereof with the words, "E. T. Stotesbury, Trustee, Owner," and that it, the said Railroad Company will replace at its own cost any of the said cars or locomotives which may be destroyed from any cause whatever during the continuance of this lease, by other railroad cars or locomotives of equal value as those destroyed and of substantially as good material, character and construction, and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said railroad cars or locomotives as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said cars and locomotives, and each of them, to be lettered "Erie" for convenience of identification of its lessee interest herein.

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Third. The railroad company agrees to furnish an inventory of the cars and locomotives.

Fourth. The company agrees that there shall be no assignment or transfer of its rights or interest in the cars or locomotives without the consent of the Lessor, or his assigns.

Fifth. Divides cars and locomotives into three classes designated as numbers one, two and three; and provides for execution and delivery of a bill of sale at certain dates.

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Exhibit Erie 15—(5).

10 Sixth. That in case the Railroad Company shall make default in the payment of any part of the said rental for more than thirty days after the same shall have become payable, or shall fail to keep the said railroad cars and locomotives in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor or his assigns may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad cars or locomotives may be, and may retake the said railroad cars and locomotives and withdraw the same from the said railroad or premises.

20 Seventh. In case of such retaking the company agrees to draw the cars and locomotives to such points as shall be designated by the Lessor or his assigns, and to deliver same.

30 Eighth. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned and transferred, to the Railroad Company, its successors and assigns, as its absolute property, all the railroad cars and locomotives held under this lease (or so many thereof as shall not have been previously assigned and transferred), and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter, the absolute ownership in said railroad cars and locomotives shall be and become vested in
40 the Railroad Company, its successors and assigns.

Exhibit Eric 15—(5).

Provided, however, and it is hereby understood, that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee, all his right, title, and interest in and to said cars and locomotives hereby leased unto the Railroad Company, and as well all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said The Pennsylvania Company for Insurances on Lives and Granting Annuities, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor. 10 20

The Lessor hereby transfers and assigns unto the Railroad Company all the rights, claims and demands arising or which may arise against the American Car and Foundry Company, The Barney and Smith Car Company, Standard Steel Car Company, Pressed Steel Car Company, American Locomotive Company, or the Baldwin Locomotive Works (Burnham Williams & Co.), the builders, or any one or more of them, under the contracts under which the said cars and locomotives are built by them, respectively, in case of the failure of any of said companies to deliver said cars or locomotives or any of them at the times or in the manner therein provided. 30

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated December 2, 1905, between Edward T. Stotesbury, Pennsylvania Company for Insurance on Lives and Granting Annuities and Erie Railroad.

10 Recites the above lease; also that certain bankers have secured subscriptions to the amount of \$7,000,000 to Erie Railroad Equipment Trust, Series "I"; further, that Stotesbury proposes to secure to the parties subscribing to said fund the repayment thereof in 20 semi-annual instalments, as follows: (Then follows list of repayments beginning December 1, 1906, each for the sum of \$350,000) with interest at the rate of four per cent. This agreement witnesseth:

20 First. That the said Edward T. Stotesbury hereby assigns and sets over unto The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad cars and locomotives leased, as aforesaid, unto the Railroad Company, and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue under the lease aforesaid.

30 Second. The said Trustee covenants and agrees that contemporaneously herewith it will certify and deliver to Drexel & Co., for distribution to the several subscribers to said "Erie Railroad Equipment Trust, Series 'I,'" seven thousand certificates in the following form, to wit: (Then follows form of equipment trust certificate, dividend warrant and guaranty).

Third. Trustee agrees to keep a register.

40 Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor, further covenants to

Exhibit Erie 15—(5).

perform, and, so far as possible, to enforce the performance of all and singular the terms, conditions, and covenants, of the said lease, and to apply and distribute the rents thereunder when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad cars and locomotives, and usual in cases of trust estates. 10

(b) To the payment of any taxes upon the income or property of the trust which it may be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable. 20

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof.

It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own willful and intentional breach thereof. 30

Fifth. The Erie Railroad Company becomes a party hereto in order to express its assent to the assignment of the said lease by the said Edward T. Stotesbury to the said The Pennsylvania Company for Insurance on Lives and Granting Annuities, as Trustee for the benefit of the subscribers to said "Erie Railroad Equipment Trust, Series 'I'," and does hereby accept all the terms of this assignment, including the obligations to make payment of the reasonable expenses of the Trustee, and of all taxes 40

Exhibit Eric 15—(5).

hereinabove mentioned, for which the Trustee may be liable, or may by law be required to deduct from the principal of the said certificates or the interest thereon.

- 10 Sixth. It is further herein agreed and provided that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days
after the same shall become payable, or shall fail to keep and perform all the terms and covenants of said lease, that the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and that in case the said Trustee shall re-
20 take possession of the said railroad cars or locomotives it may either hold or lease or dispose of said railroad cars or locomotives or so many thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may by law be required to pay in respect to the trust property, or
30 the certificates aforesaid, or the interest thereon:

(1) Of the dividend warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata*.

And such retaking possession of the said railroad cars or locomotives by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such
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Exhibit Erie 15—(6).

sum is realized as, with the proceeds of the sale of said cars and locomotives, is sufficient for the payment in full of all taxes and expenses aforesaid, together with all accrued interest warrants and the principal of all of the said certificates.

The Trustee assumes no liability however saving for its own wilful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty, however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is incumbent upon it. 10

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE-15."

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(6)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated December 2, 1912.

AGREEMENT OF ASSIGNMENT OF LEASE

Between Edward T. Stotesbury and Commercial Trust Company, Trustee, and Erie Railroad Company, for issue of \$2,000,000 Gold Equipment Trust Certificates, dated December 3rd, 1912. Series "S." 30

LEASE.

Agreement dated December 2, 1912, between Edward T. Stotesbury and Erie Railroad Company, Witnesseth:

That for and in consideration as well of the sum of one dollar, paid by the said Railroad Company to the Lessor, as of the rents and covenants herein-after mentioned the Lessor has let and leased, and by these presents doth let and lease to the Railroad 40

Exhibit Erie 15—(6).

Company for the term of ten years from December 2nd, 1912, and ending December 2nd, 1922, unless sooner terminated as hereinafter provided, the railroad equipment more particularly described as follows: (Then follows description and statement of numbers of 1,000 steel underframe box cars, 500 steel underframe box cars, 30 Mikado locomotives, 5 K-2 Pacific locomotives) upon the terms, conditions and covenants following to wit:

Article First. The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment:

I. Upon demand after December 2nd, 1912, each payment aggregating five hundred and eleven thousand two hundred and nineteen (\$511,219) dollars.

II. Half-yearly, on the first days of June and December in each year, the first payment to be made on the first day of June, 1913, the following sums:

(a) A sum equal to two and one-fourth per cent. on two million (\$2,000,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of two million (\$2,000,000) dollars, as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

Exhibit Erie 15—(6).

III. Half-yearly, for ten years on the first day of June and the first day of December in each year, beginning with the first day of June, 1913, the following sums respectively:

On June 1st, 1913.....\$100,000.

On December 1st, 1913..... 100,000.

(Then follows provision for further payments of \$100,000, each on June 1st and December 1st of each year down to and including December 1st, 1922.) 10

Article Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense, the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each car or locomotive with the words: "E. T. Stotesbury, Lessor, Commercial Trust Company, Trustee, Owner." And that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie," for convenience of identification of its lessee interest therein. 20 30

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third. The Company agrees to furnish inventory. 40

Exhibit Erie 13—(6).

Fourth. The Company agrees that there shall be no assignment or transfer without the consent of the Lessor.

10 Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad
20 equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all instalments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equip-
ment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Article Sixth. In case of such retaking the company agrees to draw the said equipment to such points as shall be designated by the Lessor, and to deliver same.

30 Article Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the ab-
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Exhibit Erie 15—(6).

solite ownership of said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Article Eighth. Recites intention of the Lessor to assign all his right, title and interest to Commercial Trust Company as Trustee.

Article Ninth. Lessor transfers and assigns to the Railroad Company all claims against the builders of the equipment, in case of failure of said builders of said equipment to deliver same as required by the conditions of the contracts therefor. 10

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated December 3, 1912, between Edward T. Stotesbury, Commercial Trust Company and the Erie Railroad Company, witnesseth: 20

Recites the above lease; also that certain bankers have secured subscriptions for \$2,000,000. to Erie Railroad Equipment Trust, Series "8", and that the subscribers are to be repaid in 20 semi-annual instalments of \$100,000. each beginning June 1, 1913, and ending December 1, 1922, with interest at the rate of 4½ per cent. Now therefore, this agreement, witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company, as Trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash payments aggregating five hundred and eleven thousand two hundred and nineteen (\$511,219) dollars 30 40

Exhibit Erie 15—(6).

due on demand after December 2nd, 1912, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

10 Second. The said Trustee covenants and agrees that contemporaneously herewith it will certify and deliver to Drexel & Company for distribution to the several subscribers to said "Erie Railroad Equipment Trust, Series 'S'," two thousand certificates substantially in the following form, to wit: (Then follows form of equipment trust certificate and dividend warrant.)

Third. Trustee agrees to keep a register at its office.

20 Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals payable on and after June 1st, 1913, thereunder, when and as the same shall be received for the following purposes, to wit:

30 (a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

40 (d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

Exhibit Erie 15—(6).

The said warrants and certificates to be cancelled upon payment thereof.

It is distinctly understood and agreed that neither the Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

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Fifth. The Erie Railroad Company becomes a party hereto in order to express its assent to the assignment herein contained of the said lease by the said Edward T. Stotesbury for the said Commercial Trust Company, as Trustee, for the benefit of the holders of the certificates of said "Erie Railroad Equipment Trust Series 'S,'" and does hereby accept and become bound by all the terms of this agreement and covenants to make payment of the reasonable expenses of the Trustee and of all taxes hereinable mentioned, for which the Trustee may be liable, or may by law be required to deduct from the principal of the said certificates or the dividends thereon.

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Sixth. It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury, to declare the principal of all of said equipment trust certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said railroad equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale,

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Exhibit Erie 15—(6).

for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon,

- 10 (1) To the dividend warrants then due,
 (2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata*.

20 And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad of the future accruing rent until such sum is realized, as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates.

30 Seventh. There shall be no duty upon the Trustee to insure or repair or take care of any of the trust property, nor to record this agreement, or the Agreement of Lease, nor shall it be responsible for the performance or non-performance of any of the covenants and agreements undertaken by the parties to said agreement; nor shall it be required to undertake any active duty hereunder until fully indemnified to its satisfaction, the Trustee assuming no liability save for its own wilful or gross neglect.

40 The Commercial Trust Company hereby constitutes and appoints Thomas Dewitt Cuyler to be its attorney for it and in its name and as and for its corporate act and deed to acknowledge this instrument before any person having authority by the Laws of the Common-

Exhibit Erie 15—(7).

wealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

The Erie Railroad Company hereby constitutes and appoints F. D. Underwood to be its attorney for it and in its name and as and for its corporate act and deed to acknowledge this instrument before any person having authority by the Laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

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(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(7)

American Car and Foundry Company, Columbia-Knickerbocker Trust Company, Trustee, and Erie Railroad Company. Conditional Sale Agreement and Indenture of Lease. Dated June 14, 1913. Series "T."

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Recites request of railroad to the Trustees to secure certain cars. Parties agree as follows:

First. The Car Company agrees to manufacture for and to sell and deliver to the Trustee, f. o. b. tracks at Car Company's works at Madison, Ill., on or prior to the 31st day of December, 1913, the following described railroad equipment and rolling stock, to wit:

Fifteen Hundred 30-ton steel underframe box cars to be numbered 87500 to 88999, both inclusive, and to be lettered "Erie," (comprising the trust equipment in this instrument mentioned), built in accordance with specifications heretofore agreed upon between the Railroad and the Car Company; and agrees to accept as full payment for all said cars, the principal sum of One Million Five Hundred and Eighty-seven Thousand Three Hundred and Twenty-five (\$1,587,325.00) dollars, of which sum Two Hundred and Sixty-seven Thousand Three Hundred and Twenty-

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Exhibit Eric 15—(7).

five (\$267,325.00) Dollars shall be paid in cash in the manner and at the times hereinafter provided, and the remaining One Million, Three Hundred and Twenty Thousand (\$1,320,000) Dollars of said principal sum shall be in the "equipment notes" (hereinafter described) of the Railroad to be issued and delivered as hereinafter provided for.

- 10 **Second.** The Trustee agrees to, and does hereby, lease unto the Railroad, and the Railroad does hereby hire and lease from the Trustee, all and singular the said trust equipment, from the times and at the place of the respective deliveries thereof to the Trustee by the Car Company and until the 15th day of June, 1923 (or the earlier termination of this agreement as hereinafter provided for), at the rental and upon and subject to the terms and conditions hereinafter stated.

- 20 **Third.** The railroad agrees to receive and accept the equipment and to pay for the same as set forth in the agreement; the delivery and acceptance of the equipment of the railroad shall not vest any right or title in the railroad other than as defined.

And it is further covenanted and agreed by and between the parties:

- 30 **I.** The Railroad agrees, as a consideration for the leasing to it of the trust equipment, to faithfully observe and comply with all and every the terms, provisions and conditions of this agreement by it to be observed and complied with; and agrees to pay to the Trustee, to and for the account of the Car Company, in cash and in the manner and at the times hereinafter provided, the sum of two hundred and sixty-seven thousand three hundred and twenty-five (\$267,325.00) dollars; and agrees to pay as rental for said trust equipment:

- 40 (a) The entire principal sum of the equipment notes issued in accordance with the provisions hereof according to their tenor, as the same severally mature,

Exhibit Erie 15—(7).

together with interest at the rate of five (5%) per cent. per annum upon the principal of said notes, according to the tenor of the coupons thereto attached—all such payments both of principal and interest to be in gold coin of the United States of the present standard of weight and fineness, or its equivalent; (b) any and all taxes which may be assessed or levied upon the trust equipment, or any part thereof; and any and all taxes which the Trustee may be required to pay on the equipment notes issued hereunder, and the interest coupons thereon, or by reason of this agreement; (c) compensation and expenses of the Trustee hereunder; and (d) all expenses incurred in the printing or lithographing (or both) of the notes and coupons herein provided for, and in the execution, acknowledgment filing and recording of this agreement and of all agreements supplemental hereto or amendatory hereof wherever in the opinion of the Trustee or the Car Company it may be necessary or proper to record or file the same for the complete protection of the holders of the notes issued in accordance with the terms of this agreement, and for the purpose of securing the Trustee in the ownership of the trust equipment until all payments herein provided to be made shall have been made and until all things herein required to be done by the Railroad shall have been done.

II. The Railroad agrees to forthwith execute and deliver to the Trustee its notes (herein designated "equipment notes") aggregating in principal amount One Million Three Hundred and Twenty Thousand (\$1,320,000) Dollars. Such notes shall be designated as "Erie Railroad Equipment Notes, Series T"; shall be for the principal sum of One Thousand Dollars each; shall all be dated as of June 14, 1913 and bear interest (to be evidenced by interest coupons attached) from June 15, 1913, at the rate of five per cent. per annum, payable semi-annually, on the fifteenth day

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of December, and of June in each year, beginning December 15, 1913, and ending June 15, 1923.

Said notes shall be numbered consecutively from 1 to 1320 inclusive; each said note shall have endorsed thereon a certificate of the Trustee, as hereinafter specified; and said notes shall mature as follows: (Then follows list of numbers and dates of maturity of the notes, running from number 1 to number 1320, and maturing between December 15, 1913 and June 15, 1923.

Then follows the form of note, coupon and Trustees certificate and further provisions as to the amount and the terms of such notes).

III. The Car Company agrees to complete the delivery of the entire trust equipment on or prior to December 31, 1913—its obligation with respect to deliveries however, being made expressly subject to delays caused by accidents, labor troubles, fires, delays of sub-contractors or in receipt of material, or any other cause or causes beyond the control of itself or of its sub-contractors it being understood that time is of the essence of this agreement.

The Trustee hereby transfers and assigns unto the Railroad, for the protection of the Railroad's interests as lessee hereunder, all the rights, claims and demands arising or which may arise against the Car Company as the builder of said railroad equipment, or any part thereof, under the contract which the said railroad equipment is built by it, in case of the failure of the Car Company to deliver said railroad equipment, or any part thereof at the times or in the manner and in accordance with the specifications therefor as in said contract provided, but nothing in this article contained shall affect or divest the title of the Trustee in and to said equipment.

IV. Railroad agrees to keep an inspector at the works of the car company.

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V. (a) The Railroad agrees that upon delivery of each one hundred (100) cars of the trust equipment, and from time to time as the same are delivered, it will execute and deliver, in duplicates, to the Car Company and to the Trustee a certificate or certificates executed by its President or by one of its Vice-Presidents and by either its Secretary, one of its Assistant Secretaries, its Treasurers, or one of its Assistant Treasurers, showing the number (in every case one hundred (100) or a multiple thereof) of the cars so delivered and the road numbers thereof—which certificate shall be taken and acted on by the Trustee as conclusive evidence of its right to pay to the Car Company, either in cash or partly in cash and partly in equipment notes, as hereinafter specified, for the cars so delivered. 10

(b) The Railroad agrees to pay to the Trustee the sum of \$267,325, specified in Article I hereof, and to pay said sum to the Trustee at such times and in such amounts as will enable the Trustee forthwith to make to the Car Company the payments hereinafter specified for the cars as delivered. 20

(c) Upon or at any time after the Trustee shall have received from the Railroad the equipment notes (whether permanent or temporary) above mentioned, it shall, upon the written request of the President or Treasurer of the Car Company, authenticate and deliver all of said notes, provided, however, that such authentication and delivery shall not be made unless the Trustee shall receive for the notes so authenticated and delivered an amount in cash equal to the face value of the notes so authenticated and delivered with accrued interest thereon to the date of such authentication and delivery. In the event of such authentication and delivery of the equipment notes, the cash so received by the Trustee shall be held by it in trust for the benefit of the Car Company, to be paid to it from time to time not otherwise than as hereinafter pro- 30 40

Exhibit Erie 15—(7).

vided for, viz: Whenever there shall be delivered to the Trustee a bill or bills of the Car Company for cars forming part of the trust equipment delivered by it (in every case one hundred (100) or a multiple thereof), approved as to amount by the President or a Vice-President of the Railroad, and accompanied by a certificate executed as specified in foregoing subdivision (a) hereof, together with a certificate of inspection executed as specified in Article IV of this instrument, the Trustee shall pay over in cash to the Car Company the full amount of such bill or bills—retaining the balance of the said moneys so received by it in trust for the benefit of the holders of the equipment notes, but subject to its prior obligation to pay therefrom the bills of the Car Company for cars forming part of the trust equipment that shall thereafter be delivered by the Car Company in conformity with the provisions hereof.

In no event shall the Trustee be liable to the holders of outstanding equipment notes, nor to the Car Company, for an amount in excess of the cash which it shall receive under the provisions of this article V and of preceding Article I of this agreement.

(d) If there shall be no authentication and delivery of the equipment notes as provided for in preceding subdivision (c) hereof, then the Trustee, upon the presentation to it of certificate or certificates executed as specified in preceding subdivision (a) hereof, and upon the payment to it of the moneys specified in preceding Article I of this instrument, in accordance with the provisions of subdivision (b) of this Article V of this instrument, shall pay to the Car Company, with respect to each lot of one hundred (100) cars, in cash, the sum of Seventeen thousand eight hundred dollars (\$17,800) out of the moneys to be paid to it by the Railroad for the account of the Car Company as specified in said Article I of this instrument; and shall also certify and deliver to the

Exhibit Erie 15—(7).

Car Company, or on its order, with respect to each lot of one hundred (100) cars, the equipment notes of the Railroad of the face value of Eighty-eight thousand Dollars (\$88,000)—in each case of the earliest maturities then remaining undelivered by the Trustee.

Any balance of the cash or of the equipment notes not theretofore paid or delivered shall be adjusted upon the delivery to the Trustee of the certificate of the Railroad respecting the last lot of cars to be delivered hereunder. And as soon as may be after the delivery of the last lot of cars, the Railroad and the Car Company shall account together respecting such allowance of interest as may be due from the Car Company to the Railroad, and the Railroad will thereupon pay to the Trustee for the account of the Car Company the balance of the cash payment hereunder of Two Hundred and Sixty-seven Thousand, Three Hundred and Twenty-five (\$267,325.00) dollars then remaining unpaid, less such amount of interest as may then be owed by the Car Company to the Railroad. 10 20

As the cars comprising the trust equipment are paid for, as hereinabove specified, title thereto shall vest in the Trustee, and the Trustee shall be entitled to have from the Car Company a bill or bills of sale, or other instrument or instruments evidencing that fact.

Anything herein contained to the contrary notwithstanding, in the event that any of the cars deliverable by the Car Company hereunder shall remain undelivered on April 1, 1914, all moneys theretofore deposited with the Trustee by the Car Company or the Railroad as hereinbefore provided, and then remaining on deposit unapplied to cars delivered shall be applied by the Trustee under the direction of the Railroad to the purchase of steel underframe box cars of the same general design as the cars hereinbefore described and bearing the same lettering as to interest or ownership, and the cars so purchased shall be and 30 40

Exhibit Erie 13—(7).

become subject to this Agreement as fully and in all respects as though said cars had been cars manufactured and delivered by the Car Company to the Railroad hereunder; and the title to all equipment so purchased shall be vested in the Trustee for the protection of the holders of the notes issued hereunder in like manner as the title to the other equipment
10 herein described.

VI. Railroad to have possession and use of the equipment upon its railroad and connecting railroads. Equipment to be marked in a certain manner.

VII. Railroad agrees to keep equipment in proper order and repair, to replace such parts thereof as may be worn out or destroyed; shall furnish inventory of the numbers and descriptions of the cars included in the equipment.

20 VIII. Railroad agrees that it will not assign or transfer this indenture, or any of its rights hereunder, without the consent of the Trustee.

IX. The Railroad agrees that the title of the Trustee shall not be affected by any failure to comply with the Laws of the United States or of any State.

X. The Railroad agrees that the notes and coupons shall be paid at maturity, and that no notes or coupons in substitution thereof shall be issued; nor shall the railroad consent to the extension of the time
30 of payment of the principal of any such notes or coupons.

XI. The Railroad agrees to make, execute and deliver all further agreements as the car company, or the Trustee, may require.

XII. Upon payment by the Railroad of the notes and interest, and upon performance by it of its covenants, the Trustee will execute and deliver a bill of sale to the railroad.

Exhibit Erie 15—(7).

XIII. The railroad entitled to possession of the equipment so long as it observes the conditions of the agreement; but in case of default which continues for 30 days after notice in writing by the Trustee, the Trustee may, at its option, retake the Trust equipment; on such default the railroad agrees to deliver the equipment to the Trustee and relinquish all claims or rights in and to the same.

Upon such election by the Trustee to retake the equipment, the whole of the principal of the notes may be declared due and shall be so declared upon the written request of the holders of at least one-fourth of the notes then outstanding; Trustee may sell the equipment with or without notice to the railroad and apply the net proceeds to the payment of its expenses and of the principal and interest on the notes.

The holders of fifty per cent. of the notes may waive default on the part of the railroad and shall have the right to direct and control the action of the Trustee.

XIV. The Trustee not to be liable for delay in delivery of the equipment, or for any failure or default on the part of the Railroad, or of the car company, or for any defect in equipment.

XV. Provides for service of notice upon the railroad by serving certain of its officers, either personally or by mail.

XVI. Trustee may resign on giving certain notice; or may be removed by a majority of the outstanding notes.

XVII. All parties may treat the bearer of any note or coupon as the absolute owner thereof.

XVIII. Defines the companies intended by the expressions "Car Company," "Trustee," and "Railroad."

Then follows testimonium clause and acknowledgments.

EXHIBIT "ERIE-15."

(8)

Agreement dated December 1, 1911, between Erie Railroad Company, Barney and Smith Car Company and Wells Fargo & Company.

10 Recites, the Express Company conducts the express business and that 25 additional express cars are required; and that the car company is willing to construct, sell and deliver the cars to the express company, and the express company is willing to purchase the cars and to lease them to the railroad. Agreed as follows:

First. The car company agrees to construct and sell to the express company 25 express cars in accordance with certain drawings and specifications.

20 The car company agrees to deliver same at Dayton, Ohio, commencing March 1, 1912, and to complete delivery March 31, 1912.

Second. The total cash cost of constructing and delivering said cars in the manner hereinbefore provided shall be as follows:

(a) For each of said cars provided with large automobile door in one and six thousand one hundred forty five and 63/100 dollars (\$6,145.63).

30 (b) For each of said cars not so provided Six Thousand, One Hundred Thirty Two and 93/100 Dollars (\$6,132.93).

The Express Company shall pay said total cash cost to the Car Company in New York Exchange at the office of the Car Company upon the delivery of said cars to it in the manner hereinbefore provided and upon the certificate of inspectors duly authorized by the Railroad Company stating that said cars have been constructed and equipped in accordance with the provisions contained herein.

The Express Company shall also pay promptly upon the receipt thereof from the Railroad Company from time to time as the work of constructing said cars progresses all invoices or bills covering materials which the Express Company agree under Article Third hereof to furnish or cause to be furnished to the Car Company free of expense in connection with the construction of said cars; provided, however, that said vouchers or bills shall first be approved by the General Mechanical Superintendent of the Railroad Company or other officer designated by it. 10

Third. Express Company agrees to furnish certain special specialities.

Fourth. The railroad agrees to keep an inspector at the works.

Fifth. The delivery of the cars and their acceptance to vest legal title in express company. 20

Sixth. The express company leases the cars to the railroad company from the dates of delivery until December 1, 1916.

Seventh. The railroad company agrees to accept cars as the same may be ready for delivery.

Eighth. The Railroad Company shall pay to the express company as rental for said cars the entire amount of money to be paid as aforesaid by the Express Company, including the total cash cost of all of said cars constructed and delivered pursuant to the terms of this agreement and all sums paid in settlement of invoices or bills for material furnished or caused to be furnished by it hereunder, in ten (10) semi-annual payments with interest payable semi-annually upon such part thereof as shall be outstanding at the rate of five per centum (5%) per annum; shall pay all taxes, licenses, assessments and charges of any kind which may be assessed or levied upon said cars or any part thereof; shall retain upon said 30 40

Exhibit Erie 15—(8).

cars the plate or stencil to be placed on each side thereof in the manner hereinbefore provided up to the time the last payment is made hereunder by the Railroad Company to the Express Company, and the lien of the Express Company upon said cars shall continue up to the time of making such final payment.

- 10 The Railroad Company hereby expressly reserves the right (which the Express Company agrees that the Railroad Company shall have) at any time during the continuance of this agreement, upon giving thirty (30) days notice in writing of its intention so to do, to pay off all such sum or sums of money together with the interest thereon which it may owe to the Express Company under the provisions of this agreement.

Ninth. The Railroad Company assumes cost of maintenance and repairs.

- 20 Tenth. The Car Company agrees to pay royalties.

- Eleventh. The Railroad Company hereby agrees that in case of default by it in the payment when due of any sums herein agreed to be paid, the Express Company may withhold so much of any and all amounts due or to become due to the Railroad Company from the Express Company under the aforesaid agreement existing between said companies covering the conduct of express business over the lines of the Railroad Company as shall be necessary to pay said
30 sums so in default and may apply the amount so withheld to the payment of said sums so in default until they are fully paid and satisfied.

Twelfth. Express Company may resort to any proceedings to enforce this agreement.

Thirteenth. The Express Company agrees to sell and transfer the cars to the Railroad Company upon payment of the sums agreed to be paid as rental.

- 40 (Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(9).

EXHIBIT "ERIE-15."

(9)

Agreement dated November 28, 1915, by and between Baldwin Locomotive Works, Lessor, and Erie Railroad Company, Lessee; Witnesseth:

First. The Lessor loans to the Lessee ten locomotives of certain numbers with the privilege of using the same at the Lessee's risk upon its railroad for the term of 37 months. 10

Second. It is agreed that the value of each of said locomotives is twenty-four thousand, three hundred twenty-seven dollars and eighty-six cents (\$24,327.86) and that if all or any of said locomotives are not purchased by the lessee as provided in this agreement, and are in any way lost or destroyed prior to actual redelivery to the lessor, or value with interest from the date of this agreement shall become immediately due and payable by the lessee to the lessor; and in case said locomotives or any of them shall be returned to, or be reclaimed by the lessor, under the provisions of this agreement, in a damaged condition, the amount of any such damage (except depreciation from reasonable use) shall be paid by the lessee to the lessor; and in case said locomotives or any of them shall be returned to, or be reclaimed by the lessor under the provisions of this agreement, without any injury or damage, except depreciation from reasonable use, the amount of such depreciation shall be determined as hereinafter provided, and the amount so determined shall be paid by the lessee to the lessor. 20 30

Third. Lessee not to use the locomotives other than as provided in the agreement, without the written consent of the lessor.

Fourth. The lessee will pay to the lessor as rent for said locomotives the value of each thereof, as 40

Exhibit Erie 15—(9).

mentioned in the first section of this agreement, together with interest on unpaid balances during the term of this agreement, making in all the sum of two hundred sixty-four thousand, six hundred twenty-four dollars and six cents (\$264,624.06), in the following payments:

10 On December 28th, 1913, Twenty-four thousand, three hundred twenty-seven dollars and sixty-six cents—\$24,327.66.

On March 28th, 1914, and quarterly thereafter up to and including December 28th, 1916, the sum of Twenty thousand, twenty-four dollars and seventy cents (\$20,024.70) as the amount of each quarterly payment.

20 Fifth. If the lessee shall have faithfully performed all the terms and conditions of this agreement, in the manner and form as herein provided, without default, then it is agreed, that the lessee may, at its option, at any time during the term of this agreement, or within one month after the expiration thereof, purchase said ten (10) locomotives at the price of one dollar (\$1.00) and upon the payment of said sum to the lessor, the lessor will convey said ten locomotives to the lessee by good and sufficient bill of sale.

30 Sixth. Title of the lessor to remain until the rent and purchase money have been paid and until a bill of sale has been delivered by the lessor.

Seventh. Provision for arbitration in case of disagreement as to the amount to which the lessor is entitled.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(10).

EXHIBIT "ERIE-15."

(10)

LEASE.

Standard Steel Car Company to Erie Railroad Company; dated July 1st, 1907.

AGREEMENT.

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Between Standard Steel Car Company and Bankers Trust Company and Erie Railroad Company, for issue of \$2,140,000 Gold Equipment Trust Certificates. Dated July 1st, 1907. Series "L."

LEASE.

Agreement dated July 1, 1907, between Standard Steel Car Company and Erie Railroad Company, Witnesseth:

That for and in consideration of the sum of one dollar, paid by the said Railroad Company to the Lessor, as well as of the rents and covenants hereinafter mentioned, the Lessor has let and leased, and by these presents doth let and lease to the Railroad Company for the term ending July 1, 1917, unless sooner terminated, as hereinafter provided, the cars, more particularly described, as follows:

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Two thousand (2,000) Steel Hopper Cars, 100,000 pounds capacity each, marked "Erie" and numbered from 27,000 to 28,999, inclusive.

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Which said cars shall be delivered to the Railroad Company on tracks at the Car Works of the Lessor, between July 1st, 1907, and December 1st, 1907, at and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First. That the said Railroad Company shall and will pay to the Lessor, or its assigns, at the office of the Railroad Company in the City of New York, as rent or hire for the said railroad cars:

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Exhibit Eric 15—(10).

I. Upon demand a cash payment of Fifty-five Thousand One Hundred Dollars (\$55,100.00), and the springs (truck and draft), brake beams, journal boxes and lids, journal bearings and wedges and couplers for equipping such cars, receipt of which appliances is hereby acknowledged.

10 II. Half-yearly, on the first days of January and July in each year, the first payment to be made on the first day of January, 1908, the following sums:

(a) A sum equal to $2\frac{1}{2}$ per cent. on Two Million One Hundred and Forty Thousand Dollars, which sum thus paid shall be reduced from time to time by an amount equal to $2\frac{1}{2}$ per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of Two Million One Hundred and Forty Thousand Dollars as specified in Paragraph III of this Article:

20 (b) A sum equal to the taxes upon the property leased hereunder which the Lessor or its assigns may be liable to pay.

III. Half-yearly for Ten years, on the first day of January and the first day of July in each year, beginning with the first day of January, 1908, the sum of One Hundred and Seven Thousand Dollars, making twenty semi-annual payments of One Hundred and Seven Thousand Dollars each.

30 IV. The payments of rental provided for in paragraphs II (a) and III shall be evidenced by Car Trust notes or certificates to be executed by the Railroad Company, and payment of such certificates and the coupons thereof shall be for all purposes equivalent to payment of the said portions of rental to the said Lessor, and such certificates and coupons shall be in form substantially as follows:

(Then follows the form of car trust certificate, trustees certificate and coupon; then follows provisions for
40 the numbering of the certificates, from 1 to 2140, each

Exhibit Erie 15—(10).

for the sum of \$1000, Nos. 1 to 107 payable January 1st, 1908 and then each series of 107 notes payable on each of the following July 1st and January 1st down to and including July 1st, 1917.

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided for, to keep and maintain at its own expense the said railroad cars in good order and repair, and to cause the said railroad cars to be kept numbered as hereinbefore mentioned, and all of said railroad cars to be plainly marked upon both sides thereof with the words "Bankers Trust Company, Trustee, Assignee, Owner and Lessor," and that it, the said Railroad Company, will replace at its own cost any of the said cars which may be destroyed from any cause whatever during the continuance of this lease, by other railroad cars of equal value as those destroyed and of substantially as good material, character and construction, and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of the said railroad cars as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said cars and each of them, to be lettered "Erie," for convenience of identification of its lessee interest therein. Provided, however, that the Railroad Company may, at its option, instead of replacing any of said cars, which may be worn out, lost or destroyed, pay to the Lessor the sum of Ten Hundred and Seventy Dollars for each car so worn out, lost or destroyed, all such money to be held by the Lessor, until the termination of this lease, and, in the event that the Railroad Company exercises the option of purchase herein provided, after default or otherwise, to be turned over to said Railroad Company at the time of such purchase, and the Lessor agrees to pay to the Railroad Company interest thereon at a reasonable interest rate, not less

Exhibit Erie 15—(10).

than the highest rate paid general depositors of the Bankers Trust Company, of New York, said interest to be retained by the Lessor, its successors or assigns, until all payments have been made in accordance with Article First, Paragraphs I, II and III.

10 It is provided further, that the Railroad Company shall exercise such option of substituting money for cars within thirty days after notice to the Accounting Department of the Railroad Company of the wearing out, loss or destruction of any such cars, or shall, within such period, notify the Lessor, its successors or assigns, of its election to replace such cars, and shall so replace the same as speedily as possible thereafter.

Third. The Railroad agrees to furnish an inventory.

20 Fourth. The Railroad agrees that there shall be no assignment and transfer of its rights without the consent of the Lessor.

Fifth. In case the Railroad Company (a) shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition, or to perform any other obligations and covenants herein contained to be performed on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Lessor, then, and in each and every case of default aforesaid, the Lessor may declare this lease terminated, and all outstanding bonds due and payable, and thereupon all installments of rent reserved herein and all said bonds, whether said installments of bonds shall have fallen due or not, shall at once become due and payable, and the Lessor may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon and wherein said cars may be, and may retake said cars

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Exhibit Erie 15—(10).

and withdraw the same from said railroad or premises.

But in any such case of default the Railroad Company shall have the right, within thirty (30) days, after the Lessor shall have declared the lease terminated, to pay all outstanding bonds and interest thereon to the date of such payment. Thereupon, upon receipt of evidence of such payment and of the cancellation of all such bonds and interest coupons thereon, the Lessor, its successors or assigns, will make and deliver to the Railroad Company a bill of sale of all its rights, title and interest in and to the cars covered by this lease, and return to the Railroad Company all sums deposited by the Railroad Company with the Lessor, its successors or assigns, on account of cars worn out or destroyed, with accrued and unpaid interest. 10

Sixth. In case of such retaking the Railroad agrees to draw the cars to such points as designated by the Lessor and to deliver the same. 20

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, and all other payments which it may have agreed to make, it, the said Lessor, shall and will upon the payment by the Railroad Company to the Lessor, or its assigns, of the additional sum of One Dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad cars held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter, the absolute ownership in said railroad cars shall be and become vested in the Railroad Company, its successors and assigns, and also to repay to the Rail- 30 40

Exhibit Erie 15—(10).

road Company all amounts theretofore paid to it by the Railroad Company, in accordance with Section Second hereof on account of cars worn out, lost or destroyed, together with the interest thereon accrued and unpaid.

10 PROVIDED, however, and it is hereby understood, that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and
20 set over unto the Bankers Trust Company, as Trustee, all its right, title and interest in and to said cars hereby leased unto the said Railroad Company, and as well all its claims, demands and remedies under this lease accruing or to accrue; and that any bills of sale of said equipment or any part thereof at any time hereafter executed by said Bankers Trust Company, as Trustee, or any duly appointed successor Trustee, conveying such title as it has received,
20 delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; the Lessor, shall, however, join in any such bill of sale and warrant the title of the said cars against any and all claiming title to, or a lien upon, said cars through the Lessor.

30 (Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated July 1, 1907, between Standard Steel Car Company, Bankers Trust Company and Erie Railroad Company.

40 Recites the above lease; also that the Car Company has secured subscriptions for \$2,140,000 to Erie Railroad Equipment Trust, Series "L"; further, that the Car Company proposes to secure to the subscribers the repayment thereof in 20 semi-annual pay-

Exhibit Erie 15—(10).

ments of \$107,000 each beginning January 1, 1908 and ending July 1, 1917, with interest at the rate of five per cent. This agreement witnesseth:

First. The Car Company assigns to the Trust Company, as Trustee, all its right, title and interest in the said railroad cars; also all its right and title to the repayment of money deposited in lieu of the replacement of cars lost or destroyed; and to the delivery of a bill of sale on the termination of the lease. 10

Second. Trustee agrees to certify and deliver to the Car Company 2,140 certificates. (Then follows form of certificate and coupon.)

Third. As all of the bonds to be executed by the Railroad Company and secured by said Indenture of Lease will bear date the first day of July, 1907, and the interest thereon, represented by the coupons attached thereto, will date from the first day of July, 1907, the Car Company agrees to pay to the Railroad Company, in cash, such sum as may represent the interest which may accumulate on the said bonds from July 1, 1907, to the average date the cars referred to in the Indenture of Lease are delivered; said payment of interest by the Car Company to the Railroad Company to become due and payable immediately following the delivery of the last of the said cars. 20

Fourth. The Trustee, as assignee of the said Standard Steel Car Company, Lessor, further covenants to perform, and, so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals thereunder when and as the same shall be received, for the following purposes, to wit: 30

(a) To the payment of any taxes upon the railroad cars leased which it may be required to pay.

(b) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable. 40

Exhibit Erie 15—(10).

10 (c) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof. Provided, however, that the Railroad covenants and agrees to pay bonds or certificates and coupons issued under said lease at its office in accordance with the terms and provisions of said bonds and coupons and of this instrument and of said lease, and such payments shall to the extent thereof be satisfaction of the rental reserved in said lease and a discharge to the Trustee from all obligations to require the payment of rentals to that extent and to apply and distribute the same.

20 It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. The Railroad Company assents to the assignment of said lease by the Car Company to the Trust Company.

30 Sixth. It is further herein agreed and provided that in case the Railroad Company (a) shall at any time make default in the payment of any part in the rental in said lease reserved for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition or to perform all other obligations and covenants in said lease contained to be performed, on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Trustee, then and in each and every case of default as aforesaid, the Trustee shall have the right, as assignee of said Car Company, to enforce all the terms and stipulations of said lease subject to the right of the Railroad Company to exercise its option of purchase as therein set out, and in case the said Trustee shall re-

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take possession of the said cars, it may either hold or lease, or dispose of said cars or so many thereof as it may deem necessary in such manner at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale, together with all moneys in the hands of the Trustee in lieu of lost, worn out or destroyed cars, and any unpaid interest thereon, shall be applied by the Trustee to the payment, after deducting all taxes which the Trustee may by law be required to pay in respect to the railroad cars covered by the said lease. 10

(1) Of the dividend warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata*.

And such retaking possession of the said railroad cars by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such sum is sufficient for the payment in full of all taxes aforesaid, together with all accrued interest warrants and the principal of all of the said certificates. 20

The Trustee assumes no liability, however, saving for its own wilful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty, however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is incumbent upon it. 30

Seventh. Temporary receipts may be issued.

Eighth. Trustee shall receive reasonable compensation.

Ninth. The Car Company indemnifies the Trustee against loss by use of any patents.

(Then follows testimonium clause and acknowledgments.) 40

Exhibit Erie 15—(11).

EXHIBIT "ERIE 15."

(11)

LEASE.

Edward T. Stotesbury to Erie Railroad Company.
Dated July 1, 1907.

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AGREEMENT.

Between Edward T. Stotesbury and Girard Trust Company and Erie Railroad Company; for issue of \$580,000. Gold Equipment Trust Certificates. Dated July 2d, 1907. Series "M."

LEASE.

Agreement dated July 1, 1907, between Edward T. Stotesbury and Erie Railroad Company; Witnesseth:

20 That for and in consideration as well of the sum of one dollar, paid by the said Railroad Company to the Lessor, as of the rents and covenants hereinafter mentioned, the Lessor has let and leased, and by these presents doth let and lease to the Railroad Company for the term ending July 1st, 1917, unless sooner terminated as hereinafter provided, the locomotives more particularly described as follows: (Then follows description of 3 Mallet Type Locomotives and 35 Consolidation Freight Locomotives.)

30 First. That the said Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Girard Trust Company, in the city of Philadelphia, State of Pennsylvania, as rent or hire for the said locomotives:

1. Upon demand, after August 1st, 1907, a cash payment of one hundred and forty-four thousand eight hundred and seventy-five dollars (\$144,875);

2. Half-yearly, on the first days of January and July in each year, the first payment to be made on the first day of January, 1908, the following sums:

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Exhibit Erie 15—(11).

(a) A sum equal to two and one-half per cent. on five hundred and eighty thousand dollars (\$580,000), which sums thus paid shall be reduced from time to time by an amount equal to two and one-half per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of five hundred and eighty thousand dollars, as specified in paragraph 3 of this article; 10

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease;

(c) A sum equal to the taxes upon the income or property of the trust which the Lessor his assigns may be liable to pay, and any taxes which may by law be charged against the Lessor on account of the payments or rental hereunder.

3. Half-yearly, for ten years, on the first day of January and the first day of July in each year, beginning with the first day of January, 1908, the following sums, respectively: 20

On January 1st, 1908.....\$29,000

On July 1st, 1908..... 29,000

(Then follows provision for further payments of \$29,000 each on January 1st and July 1st of each year down to and including July 1st, 1917.)

3. The Railroad Company agrees to furnish an inventory. 30

4. The Railroad Company agrees that there shall be no assignment or transfer without the consent of the Lessor.

Fifth. That in case the Railroad Company shall make default in the payment of any part of the said rental for more than thirty days after the same shall have become payable, or shall fail to keep the said locomotives in good serviceable condition, or to perform any of the other covenants herein contained to 40

Exhibit Erie 15—(11).

be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all installments of rent reserved herein whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor or his assigns may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said locomotives may be, and may retake the said locomotives and withdraw the same from the said railroad or premises.

Sixth. In case of such retaking the Railroad Company agrees to draw the engines to such points as designated by the Lessor, and to deliver the same.

(Then follows the testimonium clause and acknowledgments.)

AGREEMENT.

Agreement, dated July 2, 1907, between Edward T. Stotesbury, Girard Trust Company and Erie Railroad Company.

Recites the above lease; also that certain bankers have secured subscriptions to the amount of \$580,000 to Erie Railroad Equipment Trust, Series "M"; recites that Stotesbury proposes to secure to the parties subscribing to the fund the repayment thereof in 20 semi-annual instalments of \$29,000 each, beginning January, 1908, and ending July 1, 1917, with interest at the rate of five per cent. This agreement witnesseth:

First. That the said Edward T. Stotesbury hereby assigns and sets over unto the Girard Trust Company, as Trustee for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said locomotives leased, as aforesaid, unto the Railroad Company, and to said indenture of lease and as well as all the claims, demands and remedies of the said Edward T.

Exhibit Eric 15—(11).

Stotesbury accruing or to accrue under the lease aforesaid, to be deferred rentals aggregating five hundred and eighty thousand dollars, but reserving the cash payment of \$144,875 due on demand after Aug. 1, 1907, which is to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used in part payment for said locomotives.

Second. Trustee agrees to deliver 580 certificates in the following form: (Then follows form of equipment Trust Certificate and Dividend Warrants.) 10

Third. Trustee agrees to keep a register.

Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor, further covenants to perform and, so far as possible, to enforce the performance of all and singular the terms, conditions, and covenants of the said lease, and to apply and distribute the rentals thereunder when and as the same shall be received for the following purposes, to wit: 20

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said locomotives and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable. 30

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said coupons and certificates to be cancelled upon payment thereof.

It being distinctly understood that neither the said Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its 40

Exhibit Eric 15—(11).

own or their own wilful and intentional breach thereof.

Fifth. Erie Railroad expresses its assent to the assignment of the lease by Stotesbury to the Trust Company.

Sixth. It is further herein agreed and provided that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable, or shall fail to keep and perform all the terms and covenants of said lease, that the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and that in case the said Trustee shall retake possession of the said locomotives it may either hold or lease or dispose of said locomotives or so many thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may by law be required to pay in respect to the trust property, or the certificates aforesaid, or the interest thereon:

(1) Of the individual warrants then due.

(2) Of the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata*.

And such retaking possession of the said locomotives by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company for future accruing rent until such sum is realized

Exhibit Erie 15—(12).

as, with the proceeds of the sale of said locomotives, is sufficient for the payment in full of all taxes and expenses aforesaid, together with all accrued interest warrants and the principal of all of the said certificates.

The Trustee assumes no liability however saving for its own wilful or gross neglect; for the neglect of its agents it assumes no such liability. It shall undertake no active duty however, in the way of taking care of, or taking possession of, equipment, until fully secured from all liability. No duty of insurance or of recording or of taking care of any of the Trust property is incumbent upon it.

(Then follows testimonium clause and Acknowledgments.)

EXHIBIT "ERIE 15."

(12)

LEASE.

Standard Steel Car Company to Erie Railroad Company. Dated July 1, 1913.

AGREEMENT OF ASSIGNMENT OF LEASE.

Between Standard Steel Car Company and Bankers Trust Company, Trustee, and Erie Railroad Company. Dated July 2, 1913. For Issue of \$2,350,000. Equipment Trust Certificates. Dated July 2, 1913. Series "U."

LEASE.

Agreement dated July 1, 1913, between Standard Steel Car Company and Erie Railroad Company. Witnesseth:

That for and in consideration of the sum of one dollar, paid by the railroad company to the Lessor, as well as of the rents and covenants hereinafter mentioned, the Lessor has let and leased, and by these

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presents doth let and lease to the Railroad Company, at and for the rent hereinafter set out, and upon the terms, conditions and covenants hereinafter expressed, for the term of ten years from the date hereof, unless sooner terminated as hereinafter provided, the cars, more particularly described as follows: (Then follows description of 1500 steel frame box cars, 500 steel hopper cars and 500 composite gondola cars.)

Said cars to be delivered beginning October 1, 1913 at the rate of not less than 20 cars per day thereafter.

Article First. The Railroad Company shall and will pay to the Lessor, or its assigns, at the office of the Bankers Trust Company in the City of New York, as rent or hire for the said railroad cars:

1. Upon demand after the execution of this agreement a payment of Four Hundred and Seventy-nine Thousand Three Hundred and Seventy-six dollars and Sixty-six cents (\$479,376.66), of which amount Three Hundred and Twenty-one Dollars and Sixty-six cents (\$321.66) shall be paid in cash at the office of the Bankers Trust Company in the City of New York and the balance by causing to be furnished, delivered at the works where the cars are to be constructed certain materials for equipping said cars of an aggregate value of Four Hundred Seventy-nine Thousand Fifty-five dollars (\$479,055.00) consisting of the following:

For the one thousand five hundred (1,500) box cars: journal bearings, draft gears, truck bolsters, truck side frames, and break beams.

For the five hundred (500) hopper cars: journal bearings, draft gears, truck bolsters and truck side frames.

For the five hundred (500) composite gondola cars: draft gears, truck bolsters, truck side frames, and brake beams.

Said materials are to be furnished from time to time as needed for the construction of said cars.

Exhibit Eric 15—(12).

Article Second. The Railroad Company agrees to keep the said cars in good order and to mark the same in a certain manner; and to pay a certain sum if the car is lost or destroyed.

Article Third. The Railroad Company agrees to furnish an inventory.

Article Fourth. The Railroad Company agrees that there shall be no assignment or transfer without the consent of the Lessor. 10

Article Fifth. In case the Railroad Company (a) shall make default in the payment of any part of said rental for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and servicable condition, or to perform any other obligations and covenants herein contained to be performed on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Lessor, then, and in each and every case of default aforesaid, the Lessor may declare this lease terminated, and thereupon all installments of rent reserved herein, whether said installments shall have fallen due or not, shall at once become due and payable, and the Lessor may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein said cars may be, and may retake said cars and withdraw the same from said railroad or premises. 20 30

Article Sixth. In case of such retaking the Railroad Company agrees to draw and deliver the cars to such point as designated by the Lessor.

Article Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, and all other payments which it may have agreed to make, it, the said Lessor, shall and will upon payment by the 40

Railroad Company to the Lessor, or its assigns, of the additional sum of One Dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad cars held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter the absolute ownership in said railroad cars shall be and become vested in the Railroad Company, its successors and assigns, and also shall and will repay to the Railroad Company all amounts theretofore paid to it by the Railroad Company in accordance with Article Second hereof on account of cars worn out, lost or destroyed, together with the interest thereon accrued and unpaid.

Provided, however, and it is hereby understood, that it is the intention of the Lessor forthwith upon the execution of this instrument, to assign, transfer, and set over unto the Bankers Trust Company, as Trustee, all its right, title and interest in and to said cars hereby leased unto the said Railroad Company, and as well all its claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Bankers Trust Company as Trustee, or any duly appointed successor Trustee, conveying such title as it has received, delivered unto the Railroad Company, its successors or assigns, as in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; the Lessor shall, however, join in any such bill of sale and warrant the title of the said cars against any and all claiming title to, or a lien upon, said cars through the Lessor.

(Then follows the testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated July 2, 1913, between Standard Steel Car Company, Bankers Trust Company and Erie Railroad Company:

Recites the above lease; that the Car Company has secured subscriptions to the amount of \$2,350,000 to Erie Railroad Equipment Trust, Series "U," to be repaid in 20 instalments, to wit, 10 annual payments of \$117,000 each, payable January 1st of each year, beginning January 1, 1914, and ten annual payments of \$118,000 each, payable July 1st of each year, beginning July 1st, 1914. This agreement witnesseth:

First. That the Car Company assigns and sets over to the Bankers Trust Company, as Trustee, for the holder of the certificates hereinafter set forth, all the right, title and interest of the said Car Company in and to said railroad cars leased, as aforesaid, unto the Railroad Company, and as well all the claims, demands and remedies of the said Car Company accruing or to accrue under the lease aforesaid.

The Car Company also hereby assigns and sets over to the Bankers Trust Company, as Trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of said Car Company in and to the above described lease and to rentals therein reserved, excepting only the payments aggregating four hundred and seventy-nine thousand three hundred seventy-six dollars and sixty-six cents (\$497,376.66), which the railroad company upon demand of the Car Company after the execution of said lease, is to cause to be made as provided in Article First of said lease. But nothing herein contained shall be deemed or construed in any manner to impair the right, title and interest of said Bankers Trust Company, as Trustee, to said cars, including all the materials caused to be furnished from time to time to the car company, as provided in Paragraph L of Article First of said lease. It being understood and agreed, however, that the

Exhibit Eric 15—(12).

Trustee neither incurs nor assumes any responsibility for the delivery of said cars by the Car Company, as in said lease provided.

Second. Trustee to execute and deliver Equipment Trust Certificates. (Then follows form of certificate, etc.)

10 Third. As all of the certificates to be executed by the Trustee and secured by said Indenture of Lease will bear date the second day of July, 1913, and the interest thereon represented by the dividend warrants attached thereto, will run from the first day of July, 1913, the Car Company agrees to pay to the Railroad Company, in cash, such sum as may represent the interest which may accumulate on the said certificates from July 1st, 1913, to the average date the cars referred to in the Indenture of Lease are delivered; said
20 payment of interest by the Car Company to the Railroad Company to become due and payable immediately following the delivery of the last of the said cars.

The Railroad Company covenants and agrees that when and as said equipment trust certificates and dividend warrants shall mature as therein and herein provided, the said equipment trust certificates and dividend warrants shall be paid in accordance with the terms thereof and hereof.

30 The dividend warrants to be attached to the equipment trust certificates shall be authenticated by the fac-simile signature of the present or any future Treasurer of the Trustee, and the Trustee may adopt and use for that purpose the fac-simile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such officer at the time when such certificates shall be actually executed and delivered.

40 Fourth. The Trustee, as assignee of the said Car Company, Lessor, further covenants to apply and distribute the rentals payable on and after January 1,

Exhibit Eric 15—(12).

1914, under said lease, when and as the same shall be received by it, for the following purposes and in the following order of priority, to wit:

(a) To the payment of any taxes upon the railroad cars leased which it may be required to pay and to the payment of expenses and charges as set forth in subdivisions "c," "d," and "e" of Article First, Paragraph II, of said lease hereinbefore referred to.

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(b) To the payment of the dividend warrants attached to the said equipment trust certificates when and as the same shall become payable.

(c) To the payment and redemption of the principal of the said equipment trust certificates when and as the same shall become payable. The said dividend warrants and equipment trust certificates shall be cancelled upon payment thereof.

The Trustee further covenants to execute a bill of sale of its interest in the equipment subject hereto and to said lease, when and as and in the manner provided for in Article Seventh of said lease. Until payment by the Railroad Company to the Trustee and to the holders of the equipment trust certificates, of all the installments and amounts as specified herein and in said lease, and until all the obligations of the Railroad Company hereunder and under said lease shall have been fully complied with and performed, the title to said cars shall not pass to or vest in the Railroad Company but shall remain in the Trustee, its successors and assigns, for the benefit of the holders of said certificates, notwithstanding the delivery to and possession and use of said cars by the Railroad Company. The Trustee also assumes the obligation of the Car Company to pay to the Railroad Company interest on any moneys deposited with it for cars worn out, lost or destroyed, as provided in Article Second of said lease. It is distinctly understood that neither the Trustee nor any successor in the trust shall be liable

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or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. The Railroad Company assents to the assignment.

Sixth. It is further herein agreed and provided that in case the Railroad Company (a) shall at any time
 10 make default in the payment of any part of the rental in said lease reserved for more than thirty days after the same shall have become payable, or in case (b) the Railroad Company shall fail to keep the said cars in good and serviceable condition or to perform all other obligations and covenants in said Lease contained to be performed, on its part, and such last mentioned default or defaults shall have continued for a period of thirty days after written notice thereof from the Trustee, then and in each and every case of default as afore-
 20 said, the Trustee shall have the right, as assignee of the Car Company, to enforce all the terms and stipulations of said lease subject to the right of the Railroad Company to exercise its option of purchase as therein set out, and in case the said Trustee shall retake possession of the said cars, it may either hold or lease, or dispose of said cars or so many thereof as it may deem necessary in such manner at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial, and the proceeds of said lease or sale,
 30 together with all moneys in the hands of the Trustee in lieu of lost, worn out or destroyed cars, and any unpaid interest thereon, shall be applied by the Trustee to the payment, after deducting all taxes which the Trustee may by law be required to pay in respect to the railroad cars covered by the said lease:

First, of the dividend warrants then due, and,

Second, of the principal of all of the said outstanding certificates whether the same shall then have matured by their terms or not, in full, if such proceeds
 40 shall be sufficient, and if not, then *pro rata*.

Exhibit Erie 13—(13).

And such retaking possession of the said railroad cars by the said Trustee shall not be a bar to the recovery by the Trustee from the Railroad Company of all instalments of rent due, or which may thereafter become due, until such sum is realized as, with the proceeds of the sale of said cars, may be sufficient for the payment in full of all taxes, expenses and charges aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates. (Then follows agreement by the railroad to waive any benefit of valuation, or appraisement, or redemption law; the Trustee assumes no liability except for gross neglect.) 10

Seventh. The Trustee may execute temporary receipts.

Eighth. The Trustee to receive reasonable compensation.

Ninth. The Car Company agrees to indemnify the Trustee from all claims for patents, etc. 20

Tenth. The Trustee may resign on serving notice thereof; successor may be appointed.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 13."

(13).

AGREEMENT, dated February 1, 1907, between American Car and Foundry Company and Erie Railroad Company, witnesseth: 30

The Car Company agrees to sell certain railroad equipment, to wit, 1,000 produce cars, to be delivered at Berwick, Pennsylvania, on or before February 28, 1907.

One. The Railroad Company to keep an inspector at the works.

Two. The purchase price of said cars to be paid by said Vendee as follows, to wit: 40

Exhibit Eric 15—(13).

Upon delivery of all cars, a cash payment of seventy-seven thousand five hundred dollars (\$77,500) ; and in addition to said cash payment, said Vendee agrees to execute and deliver its negotiable promissory notes to said Vendor, payable to the order of bearer in gold coin of the United States of America, of or equivalent to the present standard of weight and fineness, bearing date of the average delivery of said cars and payable as follows: (Then follows provision for payment by a series of notes, 20 notes for \$1,000 each being in the first series, payable six months after date, the second series in 12 months, etc., and the last series payable in 120 months from date; each note bearing interest at the rate of four and one-half per cent.)

Three. Title to the property to remain in the Car Company.

Four-Five. Provides for sale of equipment in case of default in payment of the notes.

Sixth. In the event of a sale made as herein provided, the proceeds thereof shall be applied as follows:

(a) First. To the payment of the costs and expenses of the recovery, transportation, custody and disposition of said cars, with all charges incident thereto;

(b) Second. To the payment of any balance that may be then due and owing upon said notes, or any of them, or other indebtedness from the Vendee to the Vendor arising hereunder; it being expressly agreed that in the event default is made in the payment of any one of said notes, or of any indebtedness from the Vendee to the Vendor arising hereunder, then and in such event, each and every of said notes shall thereupon become due and payable, whether due and payable on its face or not.

(c) Third. If the proceeds of such sale or sales shall be more than sufficient to fully pay each and every of said notes and interest thereon, and all other indebtedness due hereunder from said Vendee to said

Exhibit Eric 15—(13).

Vendor, and all said costs and expenses, then the surplus shall be paid to said Vendee; but if there should be a deficit, then said Vendee shall pay such deficit upon the demand of the Vendor.

Seventh. Provides for insurance and for replacement of cars destroyed by fire or otherwise.

Eighth. The Railroad to keep the cars in repair.

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Ninth. The Railroad to pay taxes, licenses, etc.

Tenth. Ownership plates to be fastened to each car.

Eleventh. Agreement to be recorded.

Twelfth. No modification of the agreement whereby the total sum due as purchase price is to be diminished. No modification to be made which changes or affects the title or ownership of the equipment.

Thirteenth. In the event of the assignment by the Car Company of this agreement, or of any notes, and default in the notes, the Car Company may elect to pay the notes.

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Fourteenth. The Railroad Company agrees to pay the notes promptly.

Fifteenth. On performance of the conditions of the agreement the Car Company to have the equipment conveyed to the Railroad Company by bill of sale.

Sixteenth. The Car Company to have the power to sell, transfer, pledge or assign said notes.

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Seventeenth. This agreement to inure to the benefit of the purchaser, assignee or pledgee.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(14).

EXHIBIT "ERIE 15."

(14)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated August 1, 1911.

10 AGREEMENT OF ASSIGNMENT OF LEASE.

Between EDWARD T. STOTESBURY and FIDELITY TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of \$4,600,000. Equipment Trust Certificates Series "Q," dated August 2, 1911.

LEASE.

Agreement dated August 1, 1911, between Edward T. Stotesbury, called the Lessor, and Erie Railroad Company, Witnesseth:

20 The Lessor leases to the Railroad Company for the term of ten years from August 1, 1911, to August 1, 1921, unless sooner terminated certain railroad equipment as follows:

1,000 Steel Under and Upperframe box cars.

1,000 Triple-hopper Gondola cars.

1,000 Composite Gondola cars.

500 Fifty Ton Steel Underframe flat cars.

300 Automobile Cars.

100 Steel Underframe Refrigerator cars.

30 100 Steel Underframe Refrigerator cars.

25 Suburban Passenger Coaches.

10 Through line Passenger Coaches.

5 Combination Passenger and Baggage cars.

20 Mikado type freight locomotives.

15 Mikado type freight locomotives.

5 Switching locomotives.

5 Switching locomotives.

10 Type 0-6-0 Switching locomotives.

40 which said railroad equipment shall be delivered to the Railroad Company as it shall from time to time

Exhibit Eric 15—(14).

be received by the Lessor from the Builders; at and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First: The Railroad Company shall and will pay to the Lessor or his assigns, at the office of Fidelity Trust Company in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment:

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I. Upon demand after August 1st, 1911, cash payments aggregating Eight hundred twenty five thousand one hundred thirty four dollars (\$825,134).

II. Half-yearly on the first days of February and August in each year, the first payment to be made on the first day of February, 1912, the following sums:

(a) A sum equal to two and one-fourth per cent on four million six hundred thousand dollars (\$4,600,000) which sum thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of four million six hundred thousand dollars, as specified in paragraph III of this article;

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(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes on the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

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III. Half yearly for ten years on the first day of February and the first day of August in each year, beginning with the first day of February, 1912, the following sums, respectively:

On February 1st, 1912.....\$230,000

On August 1st, 1912.....230,000

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Exhibit Eric 15—(14).

(Then follows provision for further payments of \$230,000 each on February 1st and August 1st of each year down to and including August 1st, 1921.)

- 10 Second. The Railroad Company covenants and agrees with the Lessor in addition to its agreement to pay the said rent on the days and in the manner above provided to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each car or locomotive with the words "E. T. Stotesbury, Lessor, Fidelity Trust Company, Trustee, Owner," and that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Eric" for convenience of identification of its lessee interest therein.
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- 30 The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third. The Railroad Company agrees to furnish an inventory.

Fourth. No assignment to be made without consent of the Lessor.

- 40 Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall

Exhibit Eric 15—(14).

have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all instalments of rent, reserved herein whether said instalments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Sixth. In case of such retaking the Railroad Company agrees to draw the equipment to such point as may be designated by the Lessor and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor, shall and will, upon the payment by the Railroad Company to the Lessor or his assigns, of the additional sum of one dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that, thereupon and thereafter, the absolute ownership in said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Eighth. It is hereby understood, that it is the intention of the Lessor forthwith upon the execution of this instrument, to assign, transfer and set over unto the Fidelity Trust Company, as Trustee, all his

Exhibit Erie 15—(14).

right, title and interest in and to said railroad equipment hereby leased unto the railroad company as well as all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Fidelity Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that the said Trustee, or any successor to it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor.

Ninth. The Lessor assigns to the Railroad Company all rights and claims against the builder of the equipment under the contracts under which the equipment is built.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated August 2nd, 1911, between Edward T. Stotesbury, Fidelity Trust Company and Erie Railroad Company.

Recites the above lease; also that certain bankers have secured subscriptions to the amount of \$4,600,000 to the Erie Railroad Equipment Trust, Series "Q"; further that the subscriptions are to be repaid in semi-annual instalments of \$230,000 each, beginning February 1st, 1912, and ending August 1st, 1921, with interest at the rate of four and one-half per cent. This agreement Witnesseth:

First: That the said Edward T. Stotesbury hereby assigns and sets over unto the Fidelity Trust Com-

Exhibit Eric 13—(14).

pany, as Trustee for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid unto the Railroad Company, and to said Lease and all claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved excepting only the cash payments aggregating Eight hundred twenty five thousand one hundred and thirty four dollars (\$825,134) due on demand after August 1, 1911, which said cash payments are to be paid to him, the said Edward T. Stotesbury when and as collected by the Trustee and to be used by him in part payment for said railroad equipment. 10

Second: Trustee agrees to deliver five thousand certificates, &c. 20

(Then follows form of certificate, dividend warrant and guarantee.) 20

Third: Trustee agrees to keep a register.

Fourth: The Trustee, as assignee of the said Edward T. Stotesbury, Lessor under said Lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said Lease, and to acquire and distribute the rentals payable on and after February 1st, 1912, thereunder when and as the same shall be received for the following purposes, to wit: 30

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be 40

Exhibit Eric 15—(14).

deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be canceled upon payment thereof.

It is distinctly understood and agreed that neither the Trustee or any successor in the Trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth: Railroad Company assents to the assignment by Stotesbury to the Trust Company.

Sixth: It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said Lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said Lease, that the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the lease terminated and to enforce all the terms and stipulations of said Lease, and in case the Trustee shall retake possession of the said railroad equipment it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may by law be required to pay in

Exhibit Erie 15—(15).

respect to the trust property, or the certificates aforesaid, or the dividends thereon:

- (1) To the dividend warrants then due;
- (2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata*.

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company for the future accruing rent until such sum is realized, as with the proceeds of the sale of said railroad equipment is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates. 10

Seventh: No duty on the Trustee to insure or repair or take care of the trust property, &c. 20

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(15)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY,
dated August 1, 1912. 30

AGREEMENT OF ASSIGNMENT OF LEASE.

BETWEEN EDWARD T. STOTESBURY and COMMERCIAL TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of \$2,160,000 Gold Equipment Trust Certificates, dated August 1st, 1912, Series "R."

LEASE.

Agreement dated August 1st, 1912, between Edward T. Stotesbury, called the Lessor, and Erie Railroad Company, Witnesseth: 40

Exhibit Eric 15—(15).

The Lessor leases to the Railroad Company for the term of ten years from August 1st, 1912, and ending August 1st, 1922, unless sooner terminated, certain equipment, as follows:

- 25 Suburban Passenger Coaches.
- 11 Combination passenger and baggage cars.
- 300 Automobile cars.
- 500 Coke cars.
- 5 Mikado type freight locomotives.
- 15 Mikado type freight locomotives.
- 30 Mikado type freight locomotives.

Which said railroad equipment shall be delivered to the Railroad Company as it shall from time to time be received by the Lessor from the Builder and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

- First. The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment:

I. Upon demand after August 1st, 1912, cash payments aggregating four hundred and seventy-two thousand eight hundred and seventy (\$472,870) dollars.

- II. Half-yearly, on the first days of February and August in each year, the first payment to be made on the first day of February, 1913, the following sums:

(a) A sum equal to two and one-fourth per cent. on two million one hundred and sixty thousand (\$2,160,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of two million one hundred and sixty thousand (\$2,160,000) dollars, as specified in paragraph III of this article.

Exhibit Erie 15--(15).

(b) A sum equal to all reasonable expenses incurred by the said Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

III. Half-yearly, for ten years on the first day of February and the first day of August in each year, beginning with the first day of February, 1913, the following sums respectively:

On February 1st, 1913.....	\$108,000
On August 1st, 1913.....	108,000

(Then follows provision for further payments of \$108,000 each on February 1st and August 1st of each year, down to and including August 1st, 1922.)

Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each car or locomotive with the words: "E. T. Stotesbury, Lessor, Commercial Trust Company, Trustee, Owner."

And that it the said Railroad Company will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein.

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own

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Exhibit Erie 15—(15).

cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

10 Third. The Railroad Company agrees to furnish an inventory.

Fourth. No assignment to be made without consent of the Lessor.

20 Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated and thereupon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

30 Sixth. In case of such retaking the Company agrees to draw the equipment to such point as designated by the Lessor and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent, which it has herein covenanted to pay, he, the said Lessor or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar (\$1.00)
40 sell, assign and transfer, or cause to be sold, assigned

and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence each sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the absolute ownership in said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Eighth. It is hereby understood that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Commercial Trust Company, as Trustee, all his right, title and interest in and to said railroad equipment hereby leased unto the Railroad Company as well as all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Commercial Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that said Trustee, or any successor to it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor.

Ninth. The Lessor assigns to the Railroad Company all rights and claims under contracts with the builders.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated August 2nd, 1912, between Edward T. Stotesbury, Commercial Trust Company and Erie Railroad Company.

Exhibit Erie 15—(15).

10 Recites the above lease; also that certain bankers have secured subscriptions to the amount of two million one hundred and sixty thousand dollars (\$2,160,000) to a fund to be known as "Erie Railroad Equipment Trust, Series R"; further that the subscriptions are to be repaid in twenty semi-annual instalments, each for the sum of \$108,000, beginning February 1st, 1913, and ending August 1st, 1922, with interest at the rate of four and one-half per cent. This Agreement witnesseth:

20 First. That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company as Trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash payments aggregating four hundred and seventy-two thousand eight hundred and seventy (\$472,870) dollars due on demand after August 1st, 1912, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

30 Second. Trustee agrees to deliver certificates.
(Then follows form of certificate and guarantee.)

Third. Trustee agrees to keep a register.

40 Fourth. The Trustee as assignee of the said Edward T. Stotesbury, Lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of said lease, and to apply and distribute the rentals payable on and after February 1st, 1913, thereunder, when and as the same shall be received for the following purposes, to wit:

Exhibit Eric 15—(15).

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

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(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be canceled upon payment thereof.

It is distinctly understood and agreed that neither the Trustee nor any successor in the Trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

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Fifth. Erie Railroad Company assents to the assignment of the lease.

Sixth. It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said car trust certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said railroad

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Exhibit Erie 15—(15).

equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon,

(1) To the dividend warrants then due,

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata*.

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company of the future accruing rent until such sum is realized, as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates.

Seventh. No duty upon the Trustee to insure or repair or take care of the property.

(Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(16).

EXHIBIT "ERIE 15."

(16)

LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY,
dated July 31, 1914.

AGREEMENT OF ASSIGNMENT OF LEASE. 10

BETWEEN EDWARD T. STOTESBURY and COMMERCIAL TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of \$900,000 Gold Equipment Trust Certificates, dated August 1, 1914, Series "BR."

LEASE.

Agreement dated July 31, 1914, between Edward T. Stotesbury, called the Lessor, and the Erie Railroad Company, Witnesseth:

The Lessor leases to the Railroad Company for the term of ten years from August 1st, 1914, and ending August 1st, 1924, unless sooner terminated, certain equipment as follows: 20

- 1 Triple Articulated locomotive.
- 1 2-10-2 Type Locomotive.
- 4 K-4 Pacific type, freight locomotives.
- 7 All-steel suburban passenger coaches.
- 4 Steel underframe club cars.
- 200 46-foot composite, drop-end, gondola cars.
- 200 50-ton, side-dump, hopper cars. 30
- 200 50-ton, side-dump, hopper cars.
- 200 50-ton, side-dump, hopper cars.

Which railroad equipment shall be delivered to the Railroad Company as it shall from time to time be received by the Lessor from the Builders, and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First: The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia. 40

Exhibit Eric 15—(16).

State of Pennsylvania, as rent or hire for the said railroad equipment:

I. Upon demand after August 1, 1914, cash payments aggregating two hundred and three thousand three hundred and twelve and 15/100 (\$203,312.15) dollars.

10 II. Half-yearly, on the first days of February and August in each year, the first payment to be made on the first day of February, 1915, the following sums:

20 (a) A sum equal to two and one-fourth per cent. on nine hundred thousand (\$900,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-fourth per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of nine hundred thousand (\$900,000) dollars as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the Lessor or his assigns in enforcing the covenants and terms of this lease.

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax (except any Federal Income Tax) which may by law be charged against the Lessor on account of the payment of rentals hereunder.

30 III. Half-yearly, for ten years on the first day of February and the first day of August in each year, beginning with the first day of February, 1915, the following sums respectively:

On February 1st, 1915.....\$45,000

On August 1st, 1915..... 45,000

(Then follows provision for further payments of \$45,000 each on February 1st and August 1st of each year down to and including August 1st, 1924.)

40 Second: The Railroad Company covenants and agrees, with the Lessor, in addition to its agreement

Exhibit Erie 15—(16).

to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each locomotive or car with the words: "E. T. Stotesbury, Lessor, Commercial Trust Company, Trustee, Owner." 10

And that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim of ownership. Provided, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein. 20

The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third: The Railroad Company agrees to furnish an inventory. 30

Fourth: No assignment to be made without consent of Lessor.

Fifth: In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and there- 40

Exhibit Eric 15—(16).

upon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad
10 equipment and withdraw the same from the said railroad or premises.

Sixth: In case of such retaking the Railroad Company agrees to draw the equipment to such point as shall be designated by the Lessor and to deliver same.

Seventh: The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay,
20 he, the said Lessor or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the absolute ownership of said railroad equipment shall be and
30 become vested in the Railroad Company, its successors and assigns.

Eighth: It is hereby understood, that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Commercial Trust Company, as Trustee, all his right, title and interest in and to said railroad equipment hereby leased unto the Railroad Company as well as all his claims, demands and remedies under this lease accruing or to accrue; and that any bill
40 of sale of said equipment of any part thereof at any

Exhibit Erie 15—(16).

time hereafter executed by said Commercial Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that said Trustee, or any successor of it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor. 10

Ninth: Lessor assigns all rights and claims against the Builders.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated August 1st, 1914, between Edward T. Stotesbury, Commercial Trust Company and Erie Railroad Company, Witnesseth: 20

Recites the above lease; also that certain bankers have secured subscriptions to the amount of \$900,000 to the Erie Railroad Equipment Trust, Series "BB"; further that the said sum is to be repaid in twenty semi-annual instalments beginning February 1st, 1915, and ending August 1st, 1924. This agreement Witnesseth: 30

First: That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company, as trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash 40

Exhibit Eric 15—(16).

payments aggregating two hundred and three thousand three hundred and twelve and 15/100 (\$203,312.15) dollars due on demand after August 1st, 1914, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

- 10 Second: Trustee agrees to deliver certificates.
(Then follows form of certificates, warrant and Guarantee.)

Third: Trustee agrees to keep a register.

- Fourth: The Trustee, as assignee of the said Edward T. Stotesbury, lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to
20 apply and distribute the rentals payable on and after February 1st, 1915, thereunder, when and as the same shall be received for the following purposes, to wit:

- (a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.
- (b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes (except any Federal
30 Income taxes) which may by law be deductible from the principal of said certificates or the dividends thereon.
- (c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.
- (d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

- The said warrants and certificates to be canceled
40 upon payment thereof.

Exhibit Erie 15—(16).

It is distinctly understood and agreed that neither the Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth: Erie Railroad assents to the assignment of lease.

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Sixth: It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved, for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said equipment certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the said railroad equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon.

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(1) To the dividend warrants then due.

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata*.

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Exhibit Erie 15—(17).

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company of the future accruing rent until such sum is realized as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all of the said certificates.

Seventh: No duty on Trustee to insure or repair or take care of the property.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE-15."

(17)

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LEASE.

EDWARD T. STOTESBURY to ERIE RAILROAD COMPANY, dated September 1, 1913.

AGREEMENT OF ASSIGNMENT OF LEASE.

Between EDWARD T. STOTESBURY and COMMERCIAL TRUST COMPANY, TRUSTEE, and ERIE RAILROAD COMPANY, for issue of \$1,120,000 Gold Equipment Trust Certificates, dated September 2, 1913, Series "AA."

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LEASE.

Agreement dated September 1st, 1913, between Edward T. Stotesbury, called the Lessor, and the Erie Railroad Company, Witnesseth:

The Lessor leases to the Railroad Company for the term of ten years from September 1st, 1913, and ending September 1st, 1923, unless sooner terminated, certain railroad equipment as follows:

- 40 Mikado type freight locomotives.
- 40 10 K-4 Pacific type freight locomotives.

Exhibit Eric 15—(17).

Which said railroad equipment shall be delivered to the Railroad Company as it shall from time to time be received by the Lessor from the Builders, and for the rent hereinafter set out, and upon the terms, conditions and covenants following, to wit:

First. The Railroad Company shall and will pay to the Lessor, or his assigns at the office of the Commercial Trust Company, in the City of Philadelphia, State of Pennsylvania, as rent or hire for the said railroad equipment: 10

I. Upon demand after September 1, 1913, cash payments aggregating two hundred and ten thousand eight hundred and ninety and 52-100 dollars. (\$210,890.52.)

II. Half-yearly, on the first days of March and September in each year, the first payment to be made on the first day of March, 1914, the following sums: 20

(a) A sum equal to two and one-half per cent. on one million one hundred twenty thousand (\$1,120,000) dollars, which sums thus paid shall be reduced from time to time by an amount equal to two and one-half per cent. on such sums as the Railroad Company shall have paid to the Lessor to be applied in reduction of said sum of one million one hundred twenty thousand (\$1,120,000) dollars as specified in paragraph III of this article.

(b) A sum equal to all reasonable expenses incurred by the said lessor or his assigns in enforcing the covenants and terms of this lease. 30

(c) A sum equal to the taxes upon the property hereby leased which the Lessor may be liable to pay, and any tax which may by law be charged against the Lessor on account of the payment of rentals hereunder.

III. Half-yearly for ten years on the first day of March and the first day of September in each year,

Exhibit Eric 15—(17).

beginning with the first day of March, 1914, the following sums respectively:

On March 1st, 1913.....\$56,000

On September 1st, 1914..... 56,000

(Then follows provision for further payments of \$56,000 each on March 1st, and September 1st of each year down to and including September 1st, 1923.)

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Second. The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair, and to cause the said railroad equipment to be kept numbered as hereinbefore mentioned, and all of said railroad equipment to be plainly marked upon both sides of each locomotive with the words: "E. T. Statesbury, Lessor, Commercial Trust Company, Trustee, Owner."

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And that it, the said Railroad Company, will not allow the name of any person, association or corporation to be placed on any of said railroad equipment as a designation which might be interpreted as a claim by ownership. PROVIDED, however, that the Railroad Company may cause the said railroad equipment and each of them to be lettered "Eric," for convenience of identification of its lessee interest therein.

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The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of the said equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as those destroyed and of substantially as good material, character and construction, and marked in like manner.

Third. The Railroad Company agrees to furnish an inventory.

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Fourth. No assignment to be made without consent of Lessor.

Fifth. In case the Railroad Company shall make default in the payment of any part of the said rentals for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or his assigns may declare this lease terminated, and thereupon all installments of rent reserved herein, whether said installments shall then have fallen due or not, shall at once become due and payable, and the Lessor, or his assigns, may by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

Sixth. In case of such retaking the Railroad Company agrees to draw the equipment to such point as shall be designated by the Lessor and to deliver same.

Seventh. The said Lessor hereby covenants and agrees with the said Railroad Company that, when it, the said Railroad Company, shall have fully paid all the rent which it has herein covenanted to pay, he, the said Lessor or his assigns, shall and will, upon the payment by the Railroad Company to the Lessor, or his assigns, of the additional sum of one dollar (\$1.00), sell, assign and transfer, or cause to be sold, assigned and transferred to the Railroad Company, its successors and assigns, as its absolute property, all the railroad equipment held under this lease, and evidence such sale and transfer by an appropriate bill of sale, so that thereupon and thereafter the absolute ownership of said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

Eighth. It is hereby understood that it is the intention of the Lessor to forthwith upon the execution of this instrument, assign, transfer and set over unto the Commercial Trust Company, as Trustee, all his right, title and interest in and to said railroad equipment hereby leased unto the Railroad Company as well all his claims, demands and remedies under this lease accruing or to accrue; and that any bill of sale of said equipment or any part thereof at any time hereafter executed by said Commercial Trust Company, as Trustee, or any duly appointed successor Trustee, and delivered unto the Railroad Company, its successors and assigns, in pursuance of the terms of this instrument, shall operate in all respects to vest as good title in and to the equipment intended to be covered thereby as if the same had been so executed and delivered by the Lessor; and that said Trustee, or any successor to it in the trust, shall be entitled to all rights and remedies provided by the terms of this instrument for the benefit of the Lessor.

Ninth. Lessor assigns all rights and claims against the Builders.

(Then follows testimonium clause and acknowledgments.)

AGREEMENT.

Agreement dated September 2nd, 1913, between Edward T. Stotesbury, Commercial Trust Company, Trustee, and Erie Railroad Company, Witnesseth:

Recites the above lease; also that certain bankers have secured subscriptions to the amount of \$1,120,000 to the Erie Railroad Equipment Trust, Series "AA"; further that the said sum is to be repaid in twenty semi-annual instalments beginning March 1st, 1914, and ending September 1st, 1923. This agreement witnesseth:

That the said Edward T. Stotesbury hereby assigns and sets over unto the Commercial Trust Company, as

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trustee, for the holders of the certificates hereinafter set forth, all the right, title and interest of the said Edward T. Stotesbury in and to said railroad equipment leased as aforesaid, unto the Erie Railroad Company and to said lease and as well all the claims, demands and remedies of the said Edward T. Stotesbury accruing or to accrue thereunder, and to all rentals therein reserved, excepting only the cash payments aggregating two hundred and ten thousand eight hundred and ninety and $52/100$ (\$210,890.52) dollars due on demand after September 1st, 1913, which said cash payments are to be paid to him the said Edward T. Stotesbury when and as collected by the Trustee and used by him in part payment for said railroad equipment.

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Second. Trustee agrees to deliver certificates.

(Then follows form of certificates, warrants and guarantee.)

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Third. Trustee agrees to keep a register.

Fourth. The Trustee, as assignee of the said Edward T. Stotesbury, lessor under said lease, further covenants to perform and so far as possible, to enforce the performance of all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals payable on and after March 1st, 1914, thereunder, when and as the same shall be received for the following purposes, to wit:

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(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment and usual in cases of trust estates.

(b) To the payment of any taxes upon the income or property of the trust which it may by law be required to pay, and any taxes which may by law be deductible from the principal of said certificates or the dividends thereon.

(c) To the payment of the dividend warrants attached to the said certificates when and as the same shall become payable.

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(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable.

The said warrants and certificates to be cancelled upon payment thereof.

10 It is distinctly understood and agreed that neither the Trustee nor any successor in the trust shall be liable or responsible for any matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fifth. Erie Railroad assents to the assignment of lease.

20 Sixth. It is further covenanted and agreed that in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease, reserved for more than thirty (30) days after the same shall become payable or shall fail to keep and perform all the terms and covenants of said lease, the Trustee shall have the right as assignee of the said Edward T. Stotesbury to declare the principal of all of said equipment trust certificates hereby intended to be secured to be due, so far as the rights of the holders thereof are concerned, and to thereupon enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of the
30 said railroad equipment, it may either hold or lease or dispose of said railroad equipment or so much thereof as it may deem necessary, in such manner, at public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of said lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust and all taxes which the Trustee may, by law, be required to pay in respect to the trust property, or the certificates aforesaid, or the dividends thereon,

40 (1) To the dividend warrants then due.

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(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and, if not, then *pro rata*.

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company of the future accruing rent until such sum is realized, as, with the proceeds of the sale of said railroad equipment, is sufficient for the payment in full of all taxes and expenses and the principal of all of the said certificates. 10

Seventh. No duty on Trustee to insure or repair or take care of the property.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE-15."

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(18)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, TRUSTEE. COLLATERAL INDENTURE, dated April 1, 1912, securing \$10,000,000, three-year 5 per cent. Collateral Gold Notes. Interest payable April 1, and October 1.

Indenture dated April 1st, 1912, between Erie Railroad Company and Bankers Trust Company, called the Trustee. 30

Recites that the Railroad Company has resolved to issue and to dispose of its Three Year 5% Collateral Gold Notes, dated April 1, 1912, hereinafter described, for the aggregate principal sum of \$10,000,000, and to secure the payment of such notes by pledging with the Trustee under this indenture the corporate bonds hereinafter specified; and further recites by what officers of the Railroad Company said notes are to be executed; and further that said notes are to be paid 40

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on April 1, 1915, and are to bear interest at the rate of 5% per annum, payable in gold coin, semi-annually, on the first day of April and first day of October, until the principal shall have been paid; each of said notes to be for the principal sum of \$1,000. or of \$5,000, or of any multiple of \$1,000 that shall be authorized by the Railroad Company, such notes to be in the form following:

(Then follows form of note and coupons.)

That on each of said notes is to be endorsed a certificate of the Trustee that it is one of the notes described in this indenture.

(Then follows form of Trustee's certificate.)

That each of said coupons attached to the notes is to be authenticated by the engraved signature of the Treasurer of the Railroad Company.

This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of said notes, and the performance of the covenants herein, and in consideration of the purchase and acceptance of such notes by the holders thereof; and of the sum of one dollar to be paid by the Trustee;

The Railroad Company hereby does sell, assign, transfer and set over, and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, the following described property—hereinafter sometimes termed, collectively, "pledged securities"—viz.:

I. All and singular the following described bonds of the several corporations, and of the aggregate principal sums, specified respectively, which bonds, with all unmatured coupons thereto appertaining, herewith are delivered to the Trustee, to wit:

Principal Sum.

Erie Railroad Company General Mortgage

4% Convertible 50-Year Gold Bonds,

Series C. \$10,000,000

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Erie Railroad Company First Consolidated Mortgage General Lien 4% Gold Bonds	\$1,000,000
Erie and Jersey Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	3,000,000
Genesee River Railroad Company First Mortgage 4% 50-Year Gold Bonds....	2,000,000

11. Also all property of ever name and nature, 10
from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of the bonds issued or to be issued hereunder, and to hold and apply any and all such property according to the terms 20
hereof.

That the lien and security of this indenture shall take effect from the date hereof, without regard to the date of the issue, sale and negotiation of said notes, that said notes are to be issued, sold and held, and the bonds pledged hereunder, as aforesaid, subject to the conditions of such pledge, are to be held by the Trustee upon and subject to the trusts, uses, conditions, covenants and agreements hereinafter set forth; and it is covenanted between the parties hereto and 30
for the benefit of the holders from time to time of the notes intended to be secured hereby, as follows, viz.:

ARTICLE ONE.

Section 1. The amount of notes hereby secured, which may be executed by the Railroad Company, and which may be certified by the Trustee, is limited, so that never at any time shall there be outstanding notes hereby secured, for an aggregate principal sum ex- 40
ceeding \$10,000,000.

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From time to time, the notes to be secured hereby shall be executed by the Railroad Company, and by it shall be delivered to the Trustee, and thereupon, as provided in this article, and not otherwise, the Trustee shall certify, and shall deliver the same.

10 The said notes and the coupons thereto attached respectively shall be substantially of the tenor and purport above recited. The said notes each shall be for the principal sum of \$1,000, or of \$5,000, or of any other multiple of \$1,000 that shall have been authorized by the Railroad Company by resolution of its Board of Directors or of its Executive Committee.

Each note hereby secured of the denomination of \$1,000 shall bear a distinctive serial number, the numbers to be from one upwards consecutively.

20 Likewise each note of a denomination greater than \$1,000 shall be consecutively numbered from one upwards, and shall have prefixed to the number the Roman numeral or numerals designating the number of times the principal sum of the note is divisible by the sum of \$1,000.

Each note hereby secured of a denomination greater than \$1,000 shall bear thereon an endorsement in substantially the following form, viz.:

30 "The within note was issued in lieu of or in exchange for notes for \$1,000 each, bearing serial numbers and is exchangeable upon the conditions prescribed in the within mentioned indenture, for notes of the said denomination bearing such serial. The notes bearing the said serial numbers are not now outstanding."

40 Whenever any note shall be originally issued for a principal sum greater than \$1,000, there shall be reserved by the Railroad Company unissued notes each for the principal sum of \$1,000 of an aggregate principal sum equal to the principal sum of the note of greater denomination than \$1,000 so issued, and the serial numbers of the \$1,000 notes so reserved unis-

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sued shall by the Railroad Company be endorsed on the note of greater denomination issued in lieu thereof.

Only such notes as shall bear thereon a certificate, substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture, or shall be entitled to any lien or benefit hereunder. Every such certificate of the Trustee upon any note executed by the Railroad Company, shall be conclusive evidence, and the only evidence that the note so certified was duly issued hereunder and is entitled to the benefit of the trust hereby created for the benefit of the holder of such note. 10

The Trustee shall not certify or deliver any note hereby secured, until all coupons thereof then matured shall have been detached and shall have been cancelled.

Section 2. In case any of the officers of the Railroad Company who shall have signed any of the notes shall die or cease to be officers before notes shall have been actually certified by the Trustee, or delivered or sold, upon the request of the Railroad Company such notes shall be certified and delivered as provided as though the persons who signed said notes had not died or ceased to be officers. The coupons attached to the notes to be authenticated by the engraved signature of the Treasurer. 20

Section 3. Notes authorized to be issued for sum of \$10,000,000 to be executed by the Railroad Company and delivered to the Trustee as soon as possible after execution hereof. 30

Section 4. Railroad Company may issue temporary notes pending the preparation of the definite notes, which shall thereafter be exchanged.

Section 5. In case notes shall become mutilated or destroyed, Trustee shall certify and deliver a new note in place thereof. 40

Section 6. Two or more notes may be surrendered to the Trustee in exchange for a single note of higher denomination, and any note of \$2,000 or over may be surrendered in exchange for notes of a lower denomination.

10 Section 7. Nothing herein is intended to give any person or corporation, other than the parties hereto and the holders of said notes, any rights in respect to this indenture.

ARTICLE TWO.

The Railroad Company covenants as follows:

20 Section 1. Duly and punctually the Railroad Company will pay the interest and the principal of the notes issued hereunder at the time and in the manner specified in said notes without deduction from either such principal or interest for any tax or taxes which the Railroad Company or the Trustee may be required to pay thereon or to retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein, and the Railroad Company hereby covenants and agree to pay all such tax or taxes.

30 Section 2. From time to time the Railroad Company promptly shall and will pay and discharge or cause to be paid and discharged, all taxes, rates, lawful levies or assessments and charges, special or general, ordinary or extraordinary, levied or imposed upon or in respect of the pledged property, the lien whereof might or could be held to be prior or equal to the lien of these presents, so that the same shall not fall into arrears, and so that the priority of this indenture of pledge shall be duly preserved; provided, however, that the Railroad Company, in good faith and by appropriate legal proceedings, shall have the right to contest any such tax, assessment or charge, and pending such contest may delay or defer the payment thereof.

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Section 3. Railroad Company at its own expense to keep in full repair all its properties.

Section 4. Railroad Company to keep a register.

ARTICLE THREE.

Section 1. From time to time upon the written request of the President or of any Vice-President of the Railroad Company, authorized by resolution of the Board of Directors, the Trustee shall release from the lien and operation of this indenture, and shall deliver to the Railroad Company, any of the pledged securities then subject thereto; provided, however, that none of such pledged securities shall be so released, unless contemporaneously there shall be deposited with the Trustee a sum of money equal to the withdrawal value of such pledged securities so released, such withdrawal value being hereby fixed at the percentage of the face value of the pledged bonds of each issue (exclusive of interest) respectively indicated, to wit:

Erie Railroad Company General Mortgage 4% convertible 50-Year Gold Bonds, Series C...	70%	10
Erie Railroad Company First Consolidated Mortgage General Lien 4% Gold Bonds....	80%	20
Erie and Jersey Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	75%	
Genesee River Railroad Company First Mortgage 4% 50-Year Gold Bonds.....	70%	30

Section 2. Any and all moneys received by the Trustee upon the release of pledged securities pursuant to the provisions of the foregoing Sections 1 of this Article, shall be held and applied by the Trustee upon and to the following trusts and purposes—to wit:

After the receipt of such moneys, the Trustee from time to time shall use and apply the same in the purchase of any of the notes hereby secured at such price

not in excess of their par value and accrued interest, and in such manner, as the Railroad Company shall deem best.

Any and all moneys which shall not be used and applied in the purchase of notes issued hereunder as aforesaid shall be held by the Trustee upon the trusts of this indenture as part of the trust estate.

10 Until so expended in the purchase of such notes, and no default hereunder existing, a reasonable allowance for interest on moneys held by the Trustee for such purpose shall be made to the Railroad Company by the Trustee.

All notes purchased as heretofore provided forthwith shall be cancelled by the Trustee and be delivered to the Railroad Company.

Section 3. The Trustee shall give consent to any merger or consolidation with any other company.

20 Section 4. Trustee shall detach from the bonds of the Railroad Company the interest coupons which shall have matured prior to the date of maturity of the interest paid on the notes issued hereunder and shall cancel and deliver same to Railroad Company. Unless there shall be default in the payment of interest on notes secured hereby or in the payment of the principal of any note when same shall become payable, or in the performance of any of the covenants or conditions herein required to be kept by
30 the Railroad Company, and such default shall have continued for a period of sixty days after notice by the Trustee, the Railroad Company shall be entitled to receive all interest paid on any of the pledged securities, and the Trustee shall deliver to it any coupons for interest in order that the Railroad Company may receive payment thereof or cause same to be cancelled. (Then follows other provisions in reference to the payment of interest, &c.)

Section 5. In case Railroad Company shall make default in any covenants in the mortgages securing any bonds, the Trustee shall not surrender or cancel any coupons or interest obligations, and shall collect the amount payable thereon; and for all purposes the Trustee shall be considered the legal holder of the pledged bonds and coupons.

Section 6. Trustee authorized to register in its name, as Trustee, all coupon bonds pledged with it, or cause same to be exchanged for registered bonds without coupons of any denomination. 10

ARTICLE FOUR.

Section 1. In case (1) default shall be made in the payment of any interest on any of said notes, and any such default shall continue for a period of sixty days, or in case (2) default shall be made in the payment of the interest, or any part thereof, upon any bonds outstanding under the mortgage securing any of the aforesaid pledged Erie bonds at the time subject to this indenture, and such default shall continue for the period of sixty days; or in case (3) upon a default by the Railroad Company in any of the covenants of the mortgage securing any of such pledged Erie bonds, the Trustee under such mortgage shall have declared due the principal sum of the bonds secured thereby, then and in each and every such case the Trustee may, and, upon the written request of the holders of twenty-five per cent. in amount of the notes hereby secured at such time outstanding, the Trustee shall, declare the principal of all notes then outstanding hereunder to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this indenture or in said notes contained to the contrary notwithstanding. 20 30

Then provision, however, is subject to the condition that if, at any time after the principal of said notes shall have been so declared due and payable, and before any sale of the pledged property or any thereof shall have been made pursuant to the provisions of Section 2 of this Article, all arrears of interest upon all such notes shall be paid by the Railroad Company, and the Railroad Company also shall have remedied any and every default by it theretofore made under this indenture or in respect to any of such pledged Erie bonds, then and in every such case the holders of a majority in amount of the notes hereby secured then outstanding, by written notice to the Railroad Company and to the Trustee, may rescind and annul such declaration and its consequences; provided however, that in case the principal of any of such pledged Erie bonds shall have been declared due as aforesaid, no such rescission or annulment shall be made unless or until the declaration of the maturity of the principal of the pledged Erie bonds shall have been rescinded or annulled by the Trustee under the mortgage securing the same as provided therein; and provided, further, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railroad Company and the Trustee shall be restored respectively to their several positions and rights hereunder in respect of the pledged securities, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 2. In case (1) default shall be made in the payment of any interest on any of said notes, and any

such default shall continue for a period of sixty days; or in case (2) default shall be made in the due and punctual payment of the principal of any of said notes; or in case (3) default shall be made in the due observation and performance of any other covenant or condition herein required to be kept or performed by the Railroad Company, and any such last-mentioned default shall have continued for a period of sixty days after written notice thereof from the Trustee to the Railroad Company, then, and in each and every such case of default (a) the Trustee, personally or by attorney, may sell either all, or from time to time any part, of the securities pledged hereunder as security for said notes, or which in any manner shall be subject to this indenture, and all right, title and interest, claim and demand therein, and right of redemption thereof, which sale or sales, if deemed best by the Trustee, or so directed by the holders of a majority in amount of said notes, may be made privately, but otherwise shall be made in the City of New York, either at the New York Stock Exchange, according to the rules and customs thereof, or publicly at such other place or places, and at such time or times, and upon such terms, as the Trustee may fix and briefly specify in the notice or notices of sale to be given by publication thereof in at least two newspapers published in the City of New York, for five days in the week next preceeding such sale; or (b) the Trustee may proceed to protect and to enforce its rights and the rights of noteholders under this indenture, by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of its rights or duties hereunder.

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The Trustee may adjourn from time to time any sale by it to be made under the provisions of this indenture by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

10 Section 3. Upon written request of holders of 25% of the notes hereby secured, in case of default as aforesaid, the Trustee upon being indemnified, shall take steps for the protection of its rights and the rights of holders of the notes; but holders of a majority in amount of notes shall have the right to direct whether the Trustee shall proceed to sell any of the pledged securities, or shall proceed in equity or at law, and to direct and control the method and place of any sale, etc.

20 Section 4. Upon sale under this indenture the Trustee shall endorse or assign and deliver to the purchasers.

Section 5. The receipt of the Trustee for the purchase money shall be sufficient; but purchasers shall not be bound to see to the application of purchase money.

30 Section 6. In case of such sale the whole of the principal sum of the notes hereby secured shall at once become due and payable.

Section 7. States how proceeds of any such sale shall be applied.

Section 8. Upon sale by Trustee or otherwise, the Trustee or any noteholder or any other person may bid for and purchase the property offered for sale, and without accountability in respect thereof, except for payment of purchase price. (Then states how payments may be made.)

Section 9. The Railroad Company covenants that (1) in case default shall be made in the payment of any interest on any note at any time outstanding and secured by this indenture, and such default shall continue for a period of sixty days, or (2) in case default shall be made in the payment of the principal of any such note when the same shall become payable, whether at the maturity of said notes or by declaration as authorized by this indenture, or upon a sale as mentioned in Section 6 of this Article—then, upon demand of the Trustee the Railroad Company will pay to the Trustee, for the benefit of the holders of the notes hereby secured, then outstanding, the whole amount which then shall have become due and payable on all such notes then outstanding for interest or principal or both, as the case may be; and, in case the Railroad Company shall fail to pay the same forthwith upon such demand, the Trustee in its own name and as Trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture upon the pledged securities, and the right of the Trustee to recover such judgment shall not be affected by any sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture; and in case of a sale as provided in this Article of the pledged securities, and of the application of the proceeds of sale to the payment of the notes secured hereby, the Trustee, in its own name and as trustee of an express trust, shall, for the benefit of the holders thereof, be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the said notes then outstanding, and shall be entitled to recover judgment for any

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10 portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of execution upon any such judgment upon the pledged securities, or upon any other property, shall in any manner or to any extent affect the lien of this indenture upon the pledged securities or any part thereof, or any rights, powers or remedies of the Trustee hereunder, but such lien, rights, powers and remedies of the Trustee and of the noteholders shall continue unimpaired as before.

20 Any moneys thus collected by the Trustee under this section (less expenses, Trustee's compensation and indemnification and other proper deductions), shall be applied by the Trustee toward payment of such amounts then due and payable upon such notes ratably and without any preference or priority of any kind, upon presentation of the respective notes and stamping such payments thereon, if partly paid, or upon cancellation thereof, if paid in full.

30 Section 10. Holder of any note shall not have right to institute suit for enforcement of this indenture, unless the holder shall give the Trustee written notice of default; nor unless the holders of twenty five percent of the notes secured hereby and outstanding shall have made written request upon Trustee and afforded it a reasonable opportunity to proceed, nor unless also they shall have offered Trustee security against costs, &c. All rights under this indenture may be enforced by the Trustee without possession of any of the notes or production thereof upon trial.

Section 11. No delay or omission of the Trustee or any note holder to exercise any right accruing upon default shall impair any such right or power.

ARTICLE FIVE.

No recourse under any agreement of this indenture or any note hereby secured, or the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director of the Railroad Company; it being understood that this indenture and the obligations thereby secured are solely corporate obligations, and all personal liability against any stockholder, officer or director is expressly waived. 10

ARTICLE SIX.

Section 1. Any request or other indenture required by this instrument to be signed and executed by noteholders maybe in any number of concurrent instruments of similar tenor.

Section 2. Railroad Company and Trustee may treat the bearer of any note not registered or of any coupon, as the absolute owner of such note or coupon, and shall also treat the registered holder of any such note as the absolute owner thereof for the purpose of receiving payment. 20

ARTICLE SEVEN.

Section 1. If, when all the notes hereby secured shall have become due and payable, the Railroad Company well and truly shall pay, or shall cause to be paid, the whole amount of the principal moneys and interest due upon all of such notes, or shall provide for such payment by depositing with the Trustee, for the payment of such notes and coupons, the entire amount then due thereon for principal and interest, and also shall pay, or shall cause to be paid all other sums payable hereunder by the Railroad Company, and well and truly shall keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this 30 40

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indenture, then, and in that case, all the pledged securities subject to this indenture shall revert to the Railroad Company, and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and in such case the Trustee, on demand of the Railroad Company, and at its cost and expense, shall execute proper instruments, acknowledging satisfaction of and discharging this indenture and shall redeliver to the Railroad Company the pledged securities accompanied by proper instruments of assignments and transfer; otherwise this indenture shall be, continue and remain in full force and virtue.

Section 2. All covenants, &c., on behalf of the Railroad Company shall bind its successors or assigns.

Section 3. For the use of this indenture the words "Railroad Company" include the party of the first part and also any successor corporation.

ARTICLE EIGHTH.

Section 1. Trustee shall not be answerable for default or misconduct of any agent or attorney, if such agent or attorney shall have been selected with reasonable care; or for anything in connection with trust, except wilful neglect or misconduct. The Trustee shall not be under any obligation to take any action unless furnished with indemnity satisfactory to the Trustee, nor shall the Trustee take notice of any default unless notified in writing. Any action taken by the Trustee upon the request of any owner of any note shall be conclusive and binding upon all future owners of the same note.

The Trustee shall incur no liability in acting upon any notice or paper believed by it to be genuine. The recitals and statements herein and in said notes and coupons shall be considered as statements by the party of the first part. The Trustee may become the owner of

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notes secured hereby. Trustee in its discretion may advise with legal counsel selected by it and at the expense of the Railroad Company. The Trustee shall be entitled to reasonable compensation, and for the payment thereof the Trustee shall have a lien on all the property. The trustee shall be under no obligation to see to the application of any note. The Trustee shall be protected in the giving of proxies to the Railroad Company. 10

Section 2. The Trustee may resign or be discharged of the trust by giving notice.

Section 3. In case Trustee shall resign or be removed, a successor may be appointed by the holders of a majority in amount of the notes. Such new trustee so appointed shall deliver to the Trustee last in office and to the Railroad Company an instrument accepting such appointment, and the Trustee ceasing to act shall make transfer to the new Trustee of all its right, powers and trusts. 20

(Then follows testimonium clause and acknowledgment.)

EXHIBIT "ERIE-15."

(19)

AMERICAN CAR AND FOUNDRY COMPANY, COLUMBIA TRUST COMPANY and ERIE RAILROAD COMPANY.

CONDITIONAL SALE AGREEMENT, dated October 1, 1907. 30

Agreement dated October 1st, 1907, between American Car and Foundry Company, called the Car Company, Columbia Trust Company as Trustee, called the Trustee, and the Erie Railroad Company, called the Railroad; Witnesseth:

Recites that the Railroad has requested the Trustee to secure for its use the cars hereinafter specified, which cars are herein called the "Trust Equipment," and the Trustee has agreed so to do and has applied 40

Exhibit Erie 15—(19).

to the Car Company to construct and deliver such equipment, which the Car Company has agreed to do as hereinafter set forth;

10 First. The Car Company agrees to manufacture for and to deliver to the Trustee during the months of October, November and December, 1907 (all deliveries to be completed not later than January 31, 1908) and in the lots hereinafter specified, three thousand forty-ton, steel underframe box cars lettered "Erie" and numbered 109500 to 112499 inclusive (comprising the "trust equipment" in this instrument mentioned), which said cars are to be built in accordance with the Car Company's specifications No. 809 and subject to inspection and approval by the representatives of the Railroad. Two thousand of said cars shall be delivered on tracks at the Car Company's works at Berwick, Pa., and one thousand on
20 tracks at its works at Detroit, Mich.

The Car Company agrees to accept as full payment for said cars the principal sum of Three million, four hundred and eighty thousand seven hundred dollars (\$3,480,700), of which sum Four hundred and forty thousand, seven hundred Dollars (\$440,700) shall be in cash or in materials for use in the construction of said trust equipment, and the remaining Three million and forty thousand Dollars (\$3,040,000) of said principal sum shall be in the "equipment notes" (hereinafter described) of the Railroad to be issued and delivered as hereinafter provided for.
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Second. The Trustee agrees to, and does hereby lease unto the Railroad, and the Railroad does hereby hire and lease from the Trustee, all and singular the said trust equipment constructed as aforesaid, from the dates of the respective deliveries thereof and until October 1, 1917 (or the earlier termination of this lease as hereinafter provided for), at the rental and upon and subject to the terms and conditions
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Exhibit Eric 15—(19).

hereinafter stated, which said cars shall be delivered to the Railroad as they shall from time to time be received by the Trustee from the Car Company.

Third. The Railroad agrees to receive and accept upon and subject to all the terms and conditions of this agreement, said trust equipment, built as herein provided, as and when the same shall be ready for delivery at the places and within the times herein specified; and to pay as rental therefor the amount in the manner and at the times as hereinafter set forth. 10

And it is distinctly and specially stipulated, covenanted and agreed that the delivery to and the acceptance of the trust equipment, or any part thereof, by the Railroad shall not vest any right or interest therein or title thereto in the Railroad other than as defined in this indenture; and that until payment by the Railroad of all the equipment notes by this agreement provided for and of the coupons belonging thereto, and until all the obligations of the Railroad hereunder shall have been fully complied with and performed, the title to the trust equipment or to any part thereof shall not pass to or vest in the Railroad, but shall remain in the Trustee on the Trust to perform and enforce this agreement for the equal benefit of the holders, of the equipment notes herein mentioned, notwithstanding the delivery of the trust equipment to and its possession and use by the Railroad. 20

And it is further covenanted and agreed by and between the parties: 30

I. The Railroad agrees, as a consideration for the leasing to it of the trust equipment, to faithfully observe and comply with all and every the terms, provisions and conditions of this agreement by it to be observed and complied with; and agrees to pay to the Trustee, to and for the account of the Car Company, as part payment for the trust equipment to be manufactured by the Car Company, the sum of Four hundred and forty thousand, seven hundred dollars (\$440,- 40

Exhibit Erie 15—(19).

700), in cash or in materials for use in the construction of said trust equipment. The Railroad agrees also to pay as rental for said trust equipment:

10 (a) The entire principal of the equipment notes issued in accordance with the provisions hereof, according to their tenor, as the same severally mature, together with interest at the rate of five per cent. per annum upon the principal of said notes, according to the tenor of the coupons thereto attached—all such payments both of principal and interest to be in gold coin of the United States of the present standard of weight and fineness, or its equivalent; and

20 (b) Any and all taxes which may be assessed or levied upon the trust equipment, or any part thereof, and any and all taxes which may be assessed or levied upon the equipment notes issued hereunder and the interest coupons thereon, and which the Railroad may be required to pay thereon or deduct therefrom.

30 II. The Railroad agrees to forthwith execute and deliver to the Trustee its notes (herein designated "equipment notes") aggregating in principal amount three million and forty thousand dollars (\$3,040,000). Such notes shall be designated as "Erie Railroad Equipment Notes, Series N," shall be for the principal sum of One thousand dollars each; shall be dated and bear interest (to be evidenced by interest coupons attached) from October 1, 1907, at the rate of five per cent. per annum, payable semi-annually on the first days of April and October in each year; shall be numbered consecutively from one to three thousand and forty, both inclusive; shall have endorsed thereon a certificate of the Trustee as hereinafter specified; and shall mature at the rate of \$152,000 face amount thereof on the first day of April and the first day of October in each year, beginning April 1, 1908, and ending October 1, 1917.

40 (Then follows form of note and coupon and Trustee's certificate.)

Exhibit Eric 45—(19).

All equipment notes to be signed by such officers of the Railroad as from time to time shall be authorized; and if the officers who have so signed shall cease to be officers before the certification and delivery of the notes by the Trustee, such notes may be issued, certified and delivered by the Trustee as provided.

Coupons to be authenticated by the engraved signature of the Treasurer of the Railroad. 10

All interest on said notes shall cease after the principal shall become due, unless the Railroad shall fail to pay the principal and interest in full.

Equipment notes shall not be issued in excess of the sum of \$3,040,000.

Only such notes as shall bear a certificate in the form hereinbefore recited and duly executed shall be entitled to any benefit.

Temporary notes, without coupons, to be executed and delivered in lieu of the permanent notes until same can be engraved. 20

If any of the temporary or permanent notes or receipts shall be mutilated or destroyed or lost, the Railroad may issue new notes or receipts or like tenor and date.

III. The Car Company agrees to make deliveries in lots of 100 cars each, beginning October, 1907, and continuing until all equipment shall have been delivered, which shall not be later than January 31, 1908. 30

The Car Company agrees to pay to the Railroad the interest on the equipment notes which represent the unpaid part of the purchase price of the equipment not theretofore delivered.

IV. The Railroad to keep an inspector at the works of the Car Company.

V. The Railroad agrees that upon delivery of each one hundred cars it will execute and deliver to the 40

Car Company a certificate showing the number of cars delivered and the road numbers.

Such certificate to be taken and acted on by the Trustee as evidence of its right to certify and issue the equipment notes.

Any balance of the equipment notes not theretofore paid or delivered shall be adjusted upon the delivery to the Trustee of the certificate of the Railroad respecting the last lot of cars delivered.

VI. The Railroad shall have and be entitled to the possession and use of the trust equipment. A metal plate bearing the words "Columbia Trust Company, Trustee, owner" in plain letters shall be placed on the side of each car comprising the trust equipment, and the Railroad shall do all things as shall be reasonably necessary for the protection of the Trustee as the owner of the trust equipment.

The Railroad shall not allow during the life of this agreement the name of any person, association or corporation to be placed upon any of the trust equipment; provided, however, that the Railroad may cause the cars comprising the trust equipment to be lettered "Erie."

VII. The Railroad agrees that it will keep all of said trust equipment in proper order and complete repair, to the satisfaction of the Trustee, and the Railroad will renew and replace from time to time such of the trust equipment as may be worn out, lost or destroyed—provided, however, that the Railroad may at its option pay to the Trustee the sum of \$1,013.33 for each car so worn out, lost or destroyed. All new equipment to be subject to all the terms and conditions of this indenture. The Railroad if required by the Trustee to furnish once in each year a full and complete statement of the trust equipment.

If the Railroad shall receive money on account of the trust equipment damaged, lost or destroyed, it

shall be applied by the Railroad to the replacement or repair of the trust equipment.

VIII. The Railroad agrees not to assign or transfer this indenture, or transfer or sublet the trust equipment, without the consent of the Trustee. If Receiver should be appointed for the Railroad, such Receiver shall have the right to retain possession of the trust equipment so long as he shall comply with the terms and provision of this agreement. 10

The Railroad shall pay when due all taxes and charges of every kind against the trust equipment, except that the Railroad may contest any such tax assessments and charges. In case the Railroad shall neglect to pay such taxes and charges the Trustee may pay the same, and the Railroad will repay any such amounts so paid with interest.

The Railroad shall not sell, assign transfer, sublet or encumber, unless subject hereto, the trust equipment, but may dispose of its equity therein. 20

IX. The Railroad agrees with regard to the trust equipment to comply with all acts of Congress and with the laws of the United States and all States and Territories in which the trust equipment may be operated.

X. The Car Company agrees to protect the Trustee against all claims and demands incurred by or accruing upon the use of any patented invention employed in the Trust equipment. And the Railroad agrees to protect the Trustee against all claims in any way arising out of the use of any patented inventions. 30

XI. The Railroad agrees that the equipment notes and coupons shall be paid at maturity, and shall be cancelled, and that no notes or interest coupons in substitution thereof shall be issued; nor shall the Railroad consent to the extension of the time of payment of the principal of any equipment notes or coupons, and if such extension be made, the equipment 40

note or interest coupon so extended shall be subject to prior payment in full of the principal of the other notes and coupons the payment of which shall not have been extended.

XII. The Railroad to make, execute and deliver all further or supplemental agreements or other instruments as may be deemed advisable or necessary.

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XIII. That upon the payment by the Railroad of all of the equipment notes in full, together with the interest thereon, in the manner and form herein and therein provided, and upon performance by the Railroad of all the covenants, obligations and agreements herein contained and by it to be performed, the title to the trust equipment shall pass to and vest in the Railroad; and the Trustee shall thereupon execute, at the expense of the Railroad, any bill of sale or other instrument which may be reasonably required by the Railroad, as evidence of its title to said equipment and of its compliance with the terms of this agreement and as evidence that the absolute ownership of said trust equipment is vested in the Railroad, its successors and assigns. Until payment in full, however, of all of said equipment notes and interest thereon, and the performance of all the obligations and covenants on the part of the Railroad hereunder, all and singular the trust equipment shall remain the absolute property of, and the title thereto shall continue to be vested in, the Trustee, as owner thereof, to all intents and purposes whatsoever, but subject to the Railroad's lessee interest therein under this agreement.

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XIV. The Railroad shall be entitled to the possession of the trust equipment at all times during the life of this agreement, so long as it shall observe the conditions and obligations hereof; but (1) in case default shall be made by the Railroad in the payment of the principal of any of the equipment notes issued

hereunder, or of any interest coupons, as and when the same may be due and payable, and upon such default continuing for a period of thirty days; or (2) in case default shall be made in the due observance or performance of any other of the terms, provisions, covenants, conditions or obligations of this agreement, and upon such default continuing for thirty days after notice in writing by the Trustee requiring the Railroad to comply therewith (which notice the Trustee shall serve at the request of the holders of at least one-fourth in amount of the equipment notes outstanding), the Trustee shall be entitled to and may, at its option, retake the trust equipment and every part thereof, retaining all payments which up to that time may have been made on account of such equipment (principal and interest); and for the purpose of taking such possession, the Trustee shall be entitled to enter upon and take and remove all of said equipment (including all substitutions therein and additions thereto) from the premises of the Railroad or wherever the same may be found; and the Railroad will afford the Trustee every possible facility and means of assistance to such end. And the Railroad agrees that in the event of any default continuing as aforesaid, it will, upon written demand by the Trustee and as promptly as possible, deliver to the Trustee, without cost or charge, each and every piece of said trust equipment, at such place or places upon the lines of the Railroad as the Trustee shall require. The Trustee shall, upon application to any court of equity having jurisdiction in the premises, be entitled to a decree against the Railroad requiring specific performance hereof.

The Railroad shall have the right upon payment by it of all outstanding notes and of the accrued interest thereon to date of such payment, and all other sums that it is obligated to pay, to have redelivered to it such of the trust equipment as may have been retaken by the Trustee.

Upon the election by the Trustee to take the trust equipment, and the failing such payment by the Railroad and the vesting in it full title to the trust equipment, the whole of the principal of the equipment notes may be declared by the Trustee due and payable, with all accrued interest.

Upon such election the Trustee may sell the trust
10 equipment at public or private sale.

The Trustee may in its discretion resort to any proceedings in its judgment necessary or proper for the enforcement of this indenture.

The holders of seventy-five per cent in amount of the equipment notes at the time outstanding shall have the right to waive any default upon the part of the Railroad upon any of the equipment notes.

In the event of a sale under the decree of any court, or by the Trustee, the Trustee may become the pur-
20 chaser.

In case of a sale hereunder the principal of the equipment notes, if not previously due, shall become immediately due and payable.

XV. States that the Trustee shall not be liable for any delay in the delivery of said equipment or for any failure or default on the part of the Railroad or for any defect in any of said equipment, &c.

The Trustee shall be under no obligation with refer-
30 ence to the recording or filing of this indenture, etc.

The Railroad shall pay to the Trustee all reasonable and proper expenses incurred by the Trustee in the performance of its duties hereunder. The Trustee shall be indemnified in all its acts hereunder.

XVI. Any notice or demand by the Trustee hereunder may be mailed by registered letter to the Railroad.

XVII. The Trustee may resign by giving the Railroad and the Car Company written notice, and to
40 the stockholders notice by publication, etc.

Exhibit Erie 15—(20).

Every trustee appointed hereunder in place of its predecessor trustee shall execute and deliver to the Railroad an instrument accepting such appointment.

XVIII. The bearer of any note or coupon hereunder shall be treated as the absolute owner of such note or coupon.

XIX. Except when expressly indicated herein the words "Car Company" shall be held to mean and include the American Car and Foundry Company; and the words "Trustee" shall be held to mean and include the Columbia Trust Company, and the word "Railroad" shall be held to mean and include "Erie Railroad Company, their successors and assigns." 10

XX. Wherever mention is made of the life hereof it shall mean and include the whole time until all the notes hereunder and the coupons have been fully paid.

XXI. That this agreement may be simultaneously executed in several counterparts. 20

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15.))

(20)

LEASE.

CENTRAL TRUST COMPANY OF NEW YORK, TRUSTEE, to ERIE RAILROAD COMPANY, dated August 31st, 1907.

AGREEMENT 30

Between CENTRAL TRUST COMPANY OF NEW YORK, TRUSTEE and ERIE RAILROAD COMPANY, for an issuance of \$1,000,000 Gold Equipment Trust Certificates, dated August 31st, 1907, Series "O."

LEASE.

Agreement dated August 31st, 1907, between Central Trust Company, Trustee, called the Lessor, and Erie Railroad Company, called the Railroad Company, Witnesseth: 40

Exhibit Erie 15--(20).

The Lessor leases to the Railroad Company for the term of ten years from October 1st, 1907, unless sooner terminated, certain railroad equipment, to wit:

1,000 Steel Hopper Cars;

Which said cars shall be delivered to the Railroad Company as they shall from time to time be received from the builders at McKees Rocks or Allegheny, Penna; being the same cars purchased by the Lessor from the Pressed Steel Car Company by contract dated August 31st, 1907, said cars being manufactured by said Car Company in accordance with specifications furnished by the Erie Railroad Company for the rent hereinafter set forth, and upon the terms, conditions and covenants following, to wit:

First. The Railroad Company shall and will pay to the Lessor or its assigns, at its office in the City of New York, as rent and hire for said railroad equipment:

I. Half-yearly, on the first day of April and the first day of October, the first payment to be made on the first day of April, 1908:

(a) A sum equal to two and one-half per cent. ($2\frac{1}{2}\%$) of one million dollars (\$1,000,000), which sum shall be reduced from time to time by an amount equal to two and one-half per cent. ($2\frac{1}{2}\%$) on such portions as the Railroad Company shall pay to the Lessor on said one million dollars (\$1,000,000) as specified in paragraph III of this Article.

(b) A sum equal to the reasonable expenses incurred by the Lessor in enforcing the covenants and terms of this lease.

(c) A sum equal to the tax upon the income or property of the trust which the Lessor or its assigns may be liable to pay, and any tax which it, the Lessor, or its assigns, may by law be required to deduct from the principal of the certificates hereinafter referred to or the dividends thereon.

Exhibit Erie 15—(20).

II. On demand after October 1st, 1907, the sum of two hundred and twenty-eight thousand eight hundred and seventy-six dollars (\$228,876).

III. Semi-annually, on the first day of April and October in each year, beginning with the first day of April, 1908, the following sums respectively:

On the 1st day of April, 1908.....\$50,000

On the 1st day of October, 1908..... 50,000

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(Then follows provision for further payments of \$50,000 each on April 1st and October 1st of each year down to and including October 1st, 1917.)

The payments of rentals above recited to be evidenced by car trust notes executed by the Trust Company.

Second: The Railroad Company covenants and agrees with the Lessor, in addition to its agreement to pay the said rent on the days and in the manner above provided, to keep and maintain at its own expense the said railroad equipment in good order and repair and to cause said railroad equipment to be marked on both sides of each car by permanently and securing, placing and fastening upon each side of each car composing the said equipment a metal plate bearing the words in plain letters "Central Trust Company of New York, Trustee, Owner and Lessor"; said metal plate to be placed so as to be plainly visible and to indicate plainly the ownership of said equipment. In case any of such plates shall be at any time removed, defaced or destroyed, the Railroad Company shall and will immediately restore the same, so that every piece of the original equipment and every piece of equipment replacing any of the same shall always bear the plate above described on each side of each car, with the name of the Lessor, its successor or assigns, as the owner of said equipment. The Railroad Company may cause the said cars and each of them to be lettered "Erie" for convenience of identification of its lessee interest therein.

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Exhibit Eric 15—(20).

10 The Railroad Company covenants and agrees that it, the said Railroad Company, will replace at its own cost any of said railroad equipment which may be destroyed from any cause whatever during the continuance of this lease, by other railroad equipment of equal value as that destroyed, and of substantially as good material, character and construction.

20 Provided, however, that the Railroad Company may at its option instead of replacing any of said cars which may be worn out, lost or destroyed, pay to the lessor the sum of \$1000, for each car so worn out, lost or destroyed, all such money to be held by the lessor until the termination of this lease, and in the event that the Railroad Company exercise the option of purchase herein provided, after default or otherwise, to be turned over to the Railroad Company at the time of such purchase, and the lessor agrees to pay the Railroad Company interest thereon at a reasonable rate, not less than the highest rate paid general depositors of the Central Trust Company of New York, said interest to be retained by the Lessor, its successors or assigns, until all payments have been made, in accordance with Article First, Paragraphs I, II, and III.

30 Third: The Railroad Company agrees to furnish an inventory.

40 Fourth: The Railroad Company covenants and agrees that in case the Railroad Company shall make default in the payment of any part of said rental for more than thirty (30) days after the same shall have become payable, or shall fail to keep the said railroad equipment in good serviceable condition, or to perform any of the other covenants herein contained to be performed on its part, the Lessor or its assigns may declare this lease terminated, and thereupon all installments of rent reserved hereunder, whether said installments shall have then fallen due or not, shall

Exhibit Eric 15—(20).

at once become forthwith due and payable, and the Lessor or its assigns may, by an agent or agents to be appointed for the purpose, enter upon the railroad or premises whereupon or wherein the said railroad equipment may be, and may retake the said railroad equipment and withdraw the same from the said railroad or premises.

But in any such case of default the Railroad Company shall have the right within thirty days after the lessor shall have declared the lease terminated to pay all outstanding certificates and interest thereon to the date of such payment. Thereupon, upon receipt of evidence of such payment and of the cancellation of all such certificates and interest coupons thereon, the lessor, its successors or assigns, will make and deliver to the Railroad Company a bill of sale of all of its right, title and interest in and to the cars covered by this lease and return to the Railroad Company all sums desposited by the Railroad Company with the lessor, its successors or assigns, on account of cars worn out or destroyed, with accrued and unpaid interest.

Fifth: In case of such retaking the Railroad Company agrees to draw the equipment to such point as shall be designated by the Lessor and to deliver same.

Sixth. The said Lessor hereby covenants and agrees with the said Railroad Company that upon the due and proper payment of the last installment of fifty thousand dollars (\$50,000) hereinbefore referred to, and upon the due and proper payment of the rentals, interest, prior installments and moneys which the Railroad Company has herein covenanted to pay, it, the said Lessor, shall and will upon the payment to it of ten dollars, sell, assign and transfer, or cause to be sold, assigned or transferred to the Railroad Company, its successors and assigns, as its absolute property, all of the railroad equipment held under this lease, and evidence such sale and transfer by a proper bill of

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Exhibit Eric 15—(26).

sale, so that thereupon and thereafter the absolute ownership in said railroad equipment shall be and become vested in the Railroad Company, its successors and assigns.

10 Until payment by the Railroad Company to the said Trustees, its successors or assigns, and to the holders of the certificates referred to in that certain agree-
ment of even date herewith between the Trustee and
the Railroad Company, to which reference is hereby
made, of the entire purchase price of said equipment,
and all of the installments and amounts as herein
specified, and until all the obligations of the Railroad
Company hereunder shall have been fully complied
with and performed, the title to the equipment afore-
said shall not pass to or vest in the Railroad Com-
pany, but shall remain in said Trustee, its successors
and assigns, for the benefit of the holders of said cer-
20 tificates, notwithstanding the delivery to and posses-
sion and use of said equipment by the said Railroad
Company.

Trustee, holders of certificates or subscribers men-
tioned in agreement shall not be liable for delay in
the delivery to the Railroad Company of any of the
cars composing the equipment; and nothing herein
contained shall be construed as a warranty in respect
to the value of the equipment.

30 The Trustee agrees to assign to the Lessee all rights,
claims and demands against the manufacturer of the
cars by reason of delay, default or defect in the de-
livery and construction of the cars.

The Railroad Company agrees to protect the Lessor
from all claims and demands which may accrue from
the use of any patented invention used or employed on
the said equipment.

Seventh. This instrument to be simultaneously
executed in several counterparts.

(Then follows testimonium clause and acknowledg-
40 ments.)

AGREEMENT.

Agreement dated August 31st, 1907, between CENTRAL TRUST COMPANY OF NEW YORK, called the Trustee, and the Erie Railroad Company, called the Railroad Company, Witnesseth:

Recites the above lease; also that subscriptions have been secured for a fund to be known as the Erie Railroad Equipment Trust, Series O. This Agreement Witnesseth: 10

First. The Trustee covenants and agrees as soon as it shall have contracted for the manufacture and delivery of said equipment and the amount of moneys necessary to pay for said equipment according to the terms of the contracts therefor shall have been deposited with it, to pay to certain of the subscribers two hundred and twenty-eight thousand eight hundred and seventy-six dollars (\$228,876) in cash and to deliver to others of the subscribers one thousand (1,000) 20
Certificates in the following form to wit:

(Then follows form of certificate and dividend warrant.)

(Statement as to how the certificates shall be numbered and when payable and in reference to the dividends.)

Second. The Trustee agrees to keep a register.

Third. The Trustee further covenants to perform and as far as possible to enforce the performance of 30
all and singular the terms, conditions and covenants of the said lease, and to apply and distribute the rentals payable on and after April 1, 1908, thereunder when and as the same shall be received for the following purposes, to wit:

(a) To the payment of the necessary and reasonable expenses of the trust connected with the said railroad equipment which are usual in cases of trust estates.

Exhibit Eric 13—(20).

(b) To the payment of any taxes upon the income or property of the trust which it, the lessor or its assigns, may be liable to pay and any tax which it, the Lessor, or its assigns, may by law be required to deduct from the principal of said certificates or the dividends thereon.

10 (c) To the payment of the dividend warrants attached to the said trust certificates when and as the same shall become payable.

(d) To the payment and redemption of the principal of the said certificates when and as the same shall become payable. The said warrants and certificates shall be cancelled upon payment thereof.

20 It is distinctly understood and agreed that neither the trustee nor any successor in the trust shall be liable or responsible for any failure to record said Indenture of Lease, or for any other matter or thing connected with the trust intended to be hereby created except for its own or their own wilful and intentional breach thereof.

Fourth. Railroad Company agrees to pay all reasonable expenses of the Trustee and all taxes for which the Trustee may be liable.

30 Fifth. It is further covenanted and agreed that, in case the Railroad Company shall at any time make default in the payment of any part of the rental in said lease reserved for more than thirty (30) days after the same shall have become payable, or shall fail to keep and perform all the terms and covenants of the said lease, the Trustee shall have the right to declare the principal of all of the said car trust certificates hereby intended to be secured to be due so far as the rights of the holders thereof are concerned, and thereupon to enforce all the terms and stipulations of said lease, and in case the Trustee shall retake possession of said railroad equipment it may either hold or lease or dispose of said railroad equipment, or so much

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thereof as it may deem necessary, in such manner, at such public or private sale, for cash or upon credit, as the Trustee may deem most beneficial; and the proceeds of such lease or sale shall be applied by the Trustee to the payment, after deducting the expenses of the trust, and all taxes which the Trustee may by law be required to pay in respect to the trust property or the certificates aforesaid, or the dividends thereon:

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(1) To the dividend warrants then due, and

(2) To the principal of all of the said outstanding certificates, whether the same shall then have matured by their terms or not, in full, if such proceeds shall be sufficient, and if not, then *pro rata*.

And such retaking possession of the said railroad equipment by the Trustee shall not be a bar to the recovery by the Trustee from Erie Railroad Company for the future accruing rent until such sum is realized as with the proceeds of the sale of said railroad equipment is sufficient for the payment in full of all taxes and expenses as aforesaid, together with all accrued dividend warrants and the principal of all the said certificates.

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Sixth. This instrument to be simultaneously executed in several counterparts.

(Then follows testimonium clause and acknowledgment.)

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Exhibit Erie 15—(21).

EXHIBIT "ERIE-15."

(21)

(20 Notes as below)

UNITED STATES OF AMERICA STATE OF NEW YORK.

Series C

10 Number

\$4,500.00

ERIE RAILROAD COMPANY SERIAL FIVE PER CENT. GOLD NOTE.

On or before June 1, 1915, for value received, ERIE RAILROAD COMPANY promises to pay to the N. Y. P. & O. Dock Company, or order, Four Thousand Five Hundred Dollars (\$4,500.00) in gold coin of the United States of the present standard of weight and fineness, or its equivalent, and to pay interest there-
20 on from the first day of June, 1912, in like gold coin at the rate of five per centum (5%) per annum, payable semi-annually on the first day of December, 1912, and the first day of June and December in each year thereafter, upon presentation and surrender of the annexed coupons as they severally mature; principal and interest payable at the office of said Erie Railroad Company in the City of New York, N. Y.

This note is one of a series of twenty (20) notes, of like tenor, date and amount, and numbered consecutively from one to twenty, both inclusive, which
30 together with four other series, each of the same number and amount, are issued under and in accordance with a conditional bill of sale of even date herewith, executed and delivered by said the N. Y. P. & O. Dock Company to said Erie Railroad Company, and duly filed and recorded in the office of the Recorder of Cuyahoga County, State of Ohio, and in the office of the Secretary of State of the State of Ohio, to which bill of sale reference is hereby made for the terms and conditions thereof. Said series are lettered A, B, C, D,
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Exhibit Erie 13—(21).

and E and mature, said Series A on the first day of June, 1913, said Series B on the first day of June, 1914, said Series C on the first day of June, 1915, said Series D on the first day of June, 1916, and said Series E on the first day of June, 1917; and all of said notes, of whatever series, are equally secured by said conditional bill of sale, to all the terms and conditions of which this note and the rights of the holder thereof are subject.

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If default shall be made in payment of the principal of any of said notes or of any semi-annual instalments of interest on any of said notes, when the same shall become due, and any part of the amount so due shall remain unpaid for sixty days thereafter, the principal of this note and all other of said notes then issued and outstanding shall immediately become due and payable at the option of the holders of a majority in amount of said notes then outstanding and unpaid.

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IN WITNESS WHEREOF, said Erie Railroad Company has caused its corporate seal to be hereto affixed and this note to be signed by its President or Vice-President and attested by its Secretary, as of the first day of June, 1912.

ERIE RAILROAD COMPANY,

By

Attest

President.

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Secretary.

(Coupons attached.)

Exhibit Erie 15—(21).

(20 Notes as per below.)

**UNITED STATES OF AMERICA
STATE OF NEW YORK.**

Series D

\$4,500.00

Number.....

ERIE RAILROAD COMPANY**10 SERIAL FIVE PER CENT. GOLD NOTE.**

On or before June 1, 1916, for value received, ERIE RAILROAD COMPANY promises to pay to the N. Y. P. & O. Dock Company, or order, Four Thousand Five Hundred Dollars (\$4,500) in gold coin of the United States of the present standard of weight and fineness, or its equivalent, and to pay interest thereon from the first day of June, 1912, in like gold coin at the rate of five per centum (5%) per annum, payable semi-annually on the first day of December, 1912, and the first day of June and December in each year thereafter, upon presentation and surrender of the annexed coupons as they severally mature; principal and interest payable at the office of said Erie Railroad Company in the City of New York, N. Y.

This note is one of a series of twenty (20) notes, of like tenor, date and amount, and numbered consecutively from one to twenty, both inclusive, which together with four other series, each of the same number and amount, are issued under and in accordance with a conditional bill of sale of even date herewith, executed and delivered by the said The N. Y. P. & O. Dock Company to said Erie Railroad Company, and duly filed and recorded in the office of the Recorder of Cuyahoga County, State of Ohio, and in the office of the Secretary of State of the State of Ohio, to which bill of sale reference is hereby made for the terms and conditions thereof. Said Series are lettered A, B, C, D and E and mature, said Series A on the first day of June, 1913, said Series B on the first day of June,

Exhibit Erie 15—(21).

1914, said Series C on the first day of June, 1915, said Series D on the first day of June, 1916 and said Series E on the first day of June, 1917; and all of said notes, of whatever series are equally secured by said conditional bill of sale, to all the terms and conditions of which this note and the rights of the holder thereof are subject.

If default shall be made in payment of the principal of any of said notes or of any semi-annual instalment of interest on any of said notes, when the same shall become due, and any part of the amount so due shall remain unpaid for sixty days thereafter, the principal of this note and all other of said notes then issued and outstanding shall immediately become due and payable at the option of the holders of a majority in amount of said notes then outstanding and unpaid.

IN WITNESS WHEREOF, said Erie Railroad Company has caused its corporate seal to be hereto affixed and this note to be signed by its President or Vice President and attested by its Secretary, as of the first day of June, 1912.

ERIE RAILROAD COMPANY

By.....
President.

Attest.....

Secretary.

(Coupons attached.)

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Exhibit Erie 15—(21).

(20 Notes as per below.)

**UNITED STATES OF AMERICA
STATE OF NEW YORK.**

Series E.	\$4,500.00
Number.....	

**ERIE RAILROAD COMPANY
10 SERIAL, FIVE PER CENT. GOLD NOTE**

On or before June 1, 1917, for value received, ERIE RAILROAD COMPANY, promises to pay to the N. Y. P. & O. Dock Company, or order, Four Thousand Five Hundred Dollars (\$4,500) in gold coin of the United States of the present standard of weight and fineness, or its equivalent, and to pay interest thereon from the first day of June, 1912, in like gold coin at the rate of five per centum (5%) per annum, payable semi-annually on the first day of December, 1912, and the first day of June and December in each year thereafter, upon presentation and surrender of the annexed coupons as they severally mature; principal and interest payable at the office of said Erie Railroad Company in the City of New York, N. Y.

30 This note is one of a series of twenty (20) notes, of like tenor, date and amount, and numbered consecutively from one to twenty, both inclusive, which, together with four other series, each of the same number and amount, are issued under and in accordance with a conditional bill of sale of even date herewith, executed and delivered by said The N. Y. P. & O. Dock Company to said Erie Railroad Company, and duly filed and recorded in the office of the Recorder of Cuyahoga County, State of Ohio, and in the office of the Secretary of State of the State of Ohio, to which bill of sale reference is hereby made for the terms and conditions thereof. Said series are lettered A, B, C, D, and E and mature, said Series A on the first day of June, 1913, said Series B on the first day of June,

Exhibit Erie 15—(21).

1914, said Series C on the first day of June, 1915, said Series D on the first day of June, 1916, and said Series E on the first day of June, 1917; and all of said notes, of whatever series are equally secured by said conditional bill of sale, to all the terms and conditions of which this note and the rights of the holder thereof are subject.

If default shall be made in payment of the principal of any of said notes or of any semi-annual instalment of interest on any of said notes, when the same shall become due, and any part of the amount so due shall remain unpaid for sixty days thereafter, the principal of this note and all other of said notes then issued and outstanding shall immediately become due and payable at the option of the holders of a majority in amount of said notes then outstanding and unpaid. 10

IN WITNESS WHEREOF, said Erie Railroad Company has caused its corporate seal to be hereto affixed and this note to be signed by its President or Vice President and attested by its Secretary, as of the first day of June, 1912. 20

ERIE RAILROAD COMPANY

By.....

Attest

President.

Secretary.

(Coupons attached.)

30

EXHIBIT "ERIE 15."

(22)

EQUIPMENT AGREEMENT.

SERIES "V."

Between PRESSED STEEL CAR COMPANY, ERIE RAIL-
ROAD COMPANY and THE NEW YORK TRUST COMPANY,
10 Trustee, dated June 16, 1913.

Agreement dated June 16, 1913, between Pressed
Steel Car Company, called the Car Company, Erie
Railroad Company, called the Railroad, and The New
York Trust Company, called Trustee. Witnesseth:

Recites that the Railroad is desirous of securing the
use upon and in connection with its railway of the
equipment hereinafter mentioned, and the Car Com-
pany is willing to construct and deliver said equipment
20 to the Railroad upon the terms and conditions here-
inafter set forth:

First. The Car Company agrees to construct and
deliver to the Railroad the equipment herein described
as follows:

1000 fifty-ton steel self-clearing hopper cars, num-
bered 31,500 to 32,499, inclusive, as follows,—125
during the month of October, 1913; 420 during the
month of November, 1913, and 455 during the month
of December, 1913, unless delayed by strikes, &c.

30 Second. Railroad will purchase and accept said
equipment upon the terms and conditions of this
agreement.

Third. Until payment by the Railroad as herein-
after specified the title to said equipment to remain
in the Trustee.

Fourth. The Railroad as a consideration for the
sale will pay the amounts of principal and interest
as follows:

Exhibit Eric 15—(22).

The principal sum of \$1,186,436.67, of which amount \$186,436.67 to be paid in cash to the Trustee for account of Car Company, and the balance to be paid to the holders of the notes hereinafter mentioned, according to the terms thereof, in ten annual instalments of \$100,000 each, payable June 15th of each year, commencing on June 15, 1914, and ending on June 15, 1923; each of said instalments shall be evidenced by 100 notes of the Railroad of \$1,000 each. 10

(Then follows statement as to how said notes are to be numbered and how the coupons thereon shall be paid; also copy of note and coupon.)

Fifth. Notes to be executed and delivered by the Railroad to the Trustee simultaneously with the execution of this agreement, or as soon thereafter as possible; and said Trustee shall certify and deliver same to or on order of the Car Company. Temporary notes to be executed in lieu of the engraved notes, until said notes can be engraved. 20

The Railroad to keep a register of said notes.

No recourse to be had on said notes against any incorporator, stockholder, office or director of said Railroad.

Sixth. The Car Company assigns to the Trustee all its right, title and interest in the equipment.

Seventh. The Railroad to keep an inspector at the works of the Car Company for the purpose of inspecting the construction of said equipment. 30

Eighth. (a) The Railroad agrees that upon delivery of each twenty-five (25) cars of the trust equipment, and from time to time as the same are delivered, it will execute and deliver in duplicates, to the Car Company and to the Trustee a certificate or certificates executed by its President or by one of its Vice-Presidents, and by either its Secretary, or one of its Assistant Secretaries, showing the number (in every case twenty-five (25) or a multiple thereof) of the 40

cars so delivered and the road numbers thereof— which certificate shall be taken and acted on by the Trustee as conclusive evidence of its right to pay to the Car Company the cash or the equipment notes, as hereinafter specified, for the cars so delivered.

10 (b) The Railroad agrees to pay the Trustee the sum of \$186,436.67 specified in Article Fourth of this agreement and to pay said sum to the Trustee at such times and in such amounts as will enable the Trustee forthwith to make to the Car Company the payments hereinafter specified for the cars as delivered.

20 (c) Upon or at any time after the Trustee shall have received from the Railroad the equipment notes (whether permanent or temporary) above mentioned, it shall upon the written request of the President or Treasurer of the Car Company, authenticate and deliver all of said notes; provided, however, that such authentication and delivery shall not be made unless the Trustee shall receive for the notes so authenticated and delivered an amount in cash equal to the face value of the notes so authenticated and delivered with the accrued interest thereon to the date of such authentication and delivery. In the event of such authentication and delivery of the equipment notes, the cash so received by the Trustee shall be held by it in trust for the benefit of the holders of the Equipment Notes but subject to the obligation to pay the same to the Car Company upon the delivery of the cars as hereinafter provided for, viz: Whenever there shall be delivered to the Trustee a certificate executed as specified in the foregoing subdivision (a) hereof, together with a duly executed certificate of inspection as specified in Article Seventh of this agreement, the Trustee shall pay over in cash to the car company from the moneys paid to it pursuant to the provisions of this Subdivision (c), an amount equal to \$25,000.00 for each 25 cars covered by said certificates, and shall also pay over in cash to the Car Company

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Exhibit Eric 15—(22).

from the moneys paid to it by the Railroad for the account of the Car Company, pursuant to the provisions of Article Fourth of this agreement, an amount equal to \$4,650.00 for each twenty five (25) cars covered by said certificates, retaining the balance of the moneys so received by it in trust for the benefit of the holders of the equipment notes, but subject to its prior obligation to pay the same to the Car Company for cars forming part of the trust equipment that shall thereafter be delivered by the Car Company in conformity with the provisions hereof.

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In no event shall the Trustee be liable to the holders of the outstanding equipment notes, nor to the Car Company for an amount in excess of the cash which it shall receive under the provisions of this Article and of Article Fourth of this agreement.

(d) If there shall be no authentication and delivery of the equipment notes as provided for in the preceding subdivision (c) hereof, then the Trustee, upon the presentation to it of certificate or certificates executed as specified in preceding subdivision (a) hereof, together with a duly executed certificate of inspection as specified in Article Seventh of this agreement; and upon payment to it of the moneys specified in Article Fourth of this agreement, in accordance with the provisions of subdivision (b) of this Article Eighth, shall pay to the Car Company, with respect to each lot of twenty-five (25) cars, the sum of \$4,650.00 out of the moneys to be paid to it by the Railroad for the account of the Car Company, as specified in Article Fourth of this agreement; and shall also certify and deliver to the Car Company, or in its order, with respect to each lot of twenty-five (25) cars, the equipment notes of the Railroad of the face value of \$25,000.00—in each case of the earliest maturities then remaining undelivered by the Trustee.

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Any balance of the cash or of the equipment notes not theretofore paid or delivered by the Trustee to the

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Car Company shall be adjusted upon the delivery to the Trustee of the certificate of the Railroad respecting the last lot of cars to be delivered hereunder. And as soon as may be after the delivery of the last lot of cars, the Railroad and the Car Company shall account together respecting such allowance of interest as may be due from the Car Company to the Railroad.

10 As the cars comprising the trust equipment are paid for, as hereinbefore specified, title thereto shall vest in the Trustee, and the Trustee shall be entitled to have from the Car Company a bill or bills of sale, or other instrument or instruments evidencing that fact.

20 Anything herein contained to the contrary notwithstanding, in the event that any of the cars deliverable by the Car Company hereinunder shall remain undelivered on April 1, 1914, all moneys theretofore deposited with the Trustee by the Car Company or the Railroad as hereinbefore provided and then remaining on deposit unapplied to cars delivered, shall be applied by the Trustee under the direction of the Railroad to the purchase of steel hopper cars of the same general design as the cars hereinbefore described and bearing the same lettering as to interest or ownership, and the cars so purchased shall be and become subject to this agreement as fully and in all respects as though said cars had been cars manufactured and delivered by the Car Company to the Railroad hereunder; and the title to all equipment so purchased shall be vested in the Trustee for the protection of the holders of the notes issued hereunder in like manner as the title to the other equipment herein described.

30 Ninth. Railroad entitled to the possession and use of said equipment, subject to the terms and conditions hereof.

The words "The New York Trust Company, Trustee, Owner," shall upon the delivery of said equipment to the Railroad, be permanently and distinctly marked
40 upon each side of the cars composing said equipment

Exhibit Erie 15—(22).

in such manner as to render such marks readily visible and so as to indicate plainly the ownership of said equipment. In case any such marks shall at any time be removed, defaced or destroyed, the Railroad shall and will immediately restore and replace the same. The Railroad will not allow the name of any person, association or corporation to be placed on any of said equipment, as a designation which might be interpreted as a claim of ownership by the Railroad thereof; provide, however, that the Railroad may cause the said cars composing said equipment, and each of them, to be lettered "Erie Railroad Company," "E. R. R. Co.," "Erie," or in some other substantially similar manner, for convenience of identification of its interest therein. The Railroad shall not change the numbers upon any of the cars composing said equipment during the life hereof, without the written consent thereto of the Trustee, its successors or assigns, and in that event only as hereinafter provided in Paragraph Fourteenth.

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Tenth. Railroad to keep all of said equipment in proper order and repair, and to renew such part of the equipment as may be worn out, lost or destroyed, such new equipment to be subject to the terms of this agreement. The Railroad to furnish from time to time a full statement of the equipment covered hereby. The Trustee to make inspection of same.

Eleventh. The Railroad to pay all taxes, assessments, &c., levied against said equipment.

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Twelfth. Right, title and interest of Trustee not to be prejudiced or impaired by failure of the Railroad to comply with any laws.

Thirteenth. The Railroad to protect the Trustee from all claims resulting from the use of any patented invention.

Fourteenth. Railroad to execute and deliver to Trustee all further or supplemental agreements, &c., as may be deemed necessary by the Trustee.

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Fifteenth. Railroad agrees that when said notes and interest coupons mature, said notes and interest coupons shall be paid and cancelled, and no notes or interest coupons in substitution thereof shall be issued, and nothing shall operate to keep the said notes or coupons alive.

10 Sixteenth. Upon the payment by the Railroad of all the aforesaid notes in full, together with the interest thereon, in the manner and form herein and in said notes provided, and upon the performance by the Railroad of all the covenants, obligations and agree-
ments herein contained, the title to the said cars shall pass to and vest in said Railroad; and the Trustee will thereupon execute at the expense of the Railroad any
20 bill of sale or other instrument which may be reasonably required by the Railroad as evidence of its title to said equipment and of its compliance with the terms of this Agreement. The Railroad shall not have any
power during the life of this Agreement to assign, sell or otherwise dispose of any interest in said equipment or to lease, pledge, mortgage or otherwise encumber
the same, save and subject to this Agreement.

Seventeenth. Railroad to be entitled to the possession of the equipment during the life of this agreement, so long as it observes the conditions and obligations hereof; but in case shall be made by the Railroad in the payment of the principal of any of the
30 notes issued hereunder, or of any of the interest coupons, as and when the same may be due and payable, whether or not demand be made for the payment thereof, and upon such default continuing for a period of sixty (60) days, or in case default shall be made in the due observance or performance of any
other of the terms, provisions, covenants, conditions or obligations of this agreement, and upon such last
40 mentioned default continuing for a period of sixty (60) days after notice in writing from the Trustee

requiring the Railroad to make good such default, the Trustee shall be entitled to, and at its option may, repossess itself of the cars composing said equipment and of every one thereof, retaining all payments which up to that time may have been made on account of such equipment notes and interest, and shall be entitled to collect, receive and retain any unpaid mileage and per diem and all other charges earned by said equipment, and for the purpose of taking such possession the Trustee shall be entitled to enter upon and take and remove said equipment from the premises of the Railroad, or wherever it shall find said equipment, and the Railroad will afford the Trustee every possible facility and means of assistance to such end; and the Railroad agrees that in event of any default continuing as aforesaid it will as promptly as possible upon demand in writing by the Trustee, deliver to the Trustee each and every piece of the equipment at such place or places upon the tracks of the Railroad as the Trustee shall require, and will relinquish all claims or rights in or to the same. The Trustee shall be entitled to a decree requiring specific performance hereof.

As soon as the right to repossess itself of the equipment shall accrue to the Trustee it may declare the principal of all of said outstanding notes due and payable, and may sell the said equipment and apply the proceeds to the payment *pro rata* of the outstanding notes.

In case of a sale as above provided, any equipment not sold and any surplus of the proceeds of sale remaining after the payments above provided for shall be transferred and paid to the Railroad. In case the proceeds of sale shall not be sufficient, the Railroad shall be liable for such deficiency.

The Trustee, if it so elects, may become a purchaser at such sale.

Exhibit Erie 15—(22).

Eighteenth: The Trustee shall have the right to resign, upon written notice, and a successor Trustee shall be appointed by an instrument in writing executed by the majority of the then outstanding notes.

Every Trustee appointed hereunder shall execute an instrument accepting the appointment.

10 Nineteenth: The Trustee shall not be liable for delay in the delivery of the cars nor for any default on the part of the manufacturers.

The Trustee may perform its duties through such attorneys, agents, &c., as it may appoint. Trustee shall not be liable for anything in connection with the trust, unless same shall happen through the bad faith of the Trustee.

Trustee to have the right to act upon any certificate, order or paper purporting to be executed by the proper person or boards.

20 Trustee to receive payment of all its expenses hereunder and a reasonable compensation for services. The Trustee not to be liable for any tax, assessment or other charge upon the property.

Twentieth: Persons in whose names notes are registered shall be considered the owners.

20 Twenty-First: The words "Car Company" used herein shall be held to mean and include Pressed Steel Car Company its successors, &c., the word "Trustee" to mean and include The New York Trust Company, and the word "Railroad" to mean and include "Erie Railroad Company."

Twenty-Second: This agreement to be executed in several counterparts.

The Railroad agrees to pay the expense of engraving, execution and certification of its notes, &c.

Twenty-Third: The parties hereto appoint attorneys to execute this instrument.

40 (Then follows testimonium clause and acknowledgments.)

Exhibit Erie 15—(23).

EXHIBIT "ERIE 15."

(23)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, Trustee.

COLLATERAL INDENTURE, dated April 1, 1914, securing \$5,000,000 Notes due October 1, 1914.

Indenture dated April 1st, 1914, between Erie Railroad Company, termed the "Railroad Company" and Bankers Trust Company, termed the "Trustee." 10

Recites that under date of March 2, 1914, the Railroad Company executed sixteen promissory notes for the principal sum of \$5,000,000, two of such notes being for the sum of \$1,000,000, four being for the sum of \$500,000, and ten being for the sum of \$100,000, each; and all of said notes being in the following form, viz:

(Then follows form of note.) 20

And for the purpose of obtaining moneys to discharge liabilities due and payable by the Railroad Company the Railroad Company endorsed such notes in blank and thereupon sold and delivered the same, and the Railroad Company agreed to secure said notes by the execution of a collateral indenture, wherein the Railroad Company would assign, transfer and set over to a trustee all its right, title and interest in certain stocks, bonds and other securities, subject to the several and respective liens thereon herein specified. 30

Now this Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said notes according to the tenor, purport and effect thereof, and to secure the performance and observance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such notes by the holders thereof, and of the sum of 40

Exhibit Erie 15—(23).

one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged:

The Railroad Company has sold, assigned, transferred and set over and by these presents does sell, assign, transfer and set over unto the Trustee, all the right, title and interest of the Railroad Company in and to the following, viz:

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I. All and singular the following bonds and notes of the several corporations and of the aggregate principal sums specified respectively, and all and singular the following shares of stock of the several corporations and of the aggregate par value specified respectively—which bonds and notes and the certificates of which shares of stock, have been or are to be delivered to and pledged with Bankers Trust Company as Trustee under a Collateral Indenture dated April 1, 1914, between the Railroad Company and said Trust Company—to wit:

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Principal Sums.

Erie Railroad Company First Consolidated	
Mortgage General Lien 4% Gold Bonds.	14,829,000
Erie Railroad Company General Mortgage	
4% Convertible 50-Year Gold Bonds,	
Series B.	985,000
Elmira Corning & Waverly Railway Com-	
pany First Mortgage 5% Bonds.	600,000
30 Mutual Terminal Company of Buffalo 4%	
Note payable July 1st, 1924.	95,000
Shares.	Par Value.
63,060 New York, Susquehanna & West-	
ern Railroad Company Preferred Stock.	6,306,000
1,631 Lehigh & Hudson River Railway	
Company.	163,100
1,457 Temple Iron Company.	
	145,700
7,500 New Jersey & New York Railway	
Company Preferred Stock.	750,000

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Par Value.

10,000 New Jersey & New York Railroad

Company Common Stock 1,000,000

Subject, however, to the lien created by said Collateral Indenture dated April 1, 1914, as security for the payment of the notes issued and to be issued thereunder for the aggregate principal sum of \$13,500,000, and to all the terms and provisions of said Collateral Indenture, including the right, without any action by the Trustee hereunder, to withdraw any of said bonds, notes and stock either by the payment of money or the substitution of other security as provided in said Collateral Indenture dated April 1, 1914, and to dispose of the same free from the lien of this indenture; and also subject to the prior lien and all the provisions of any other indenture or indentures which may hereafter be made for the purpose of extending or refunding said \$13,500,000 of notes or any part thereof.

It being understood that the Railroad Company has and reserves the right from time to time to extend, renew or refund said \$13,500,000 of notes, or any part thereof, for such period and at such rate of interest as it may deem advisable, and in connection therewith to execute a new collateral indenture or indentures which shall be a first lien upon the property and securities held as collateral for said \$13,500,000 of notes, or for any notes issued for the renewal or refunding thereof, and to exercise the right of withdrawal and substitution as provided in said Collateral Indenture of April 1, 1914, or in any similar indenture securing notes issued for the renewing or refunding of said \$13,500,000 of indebtedness or any part thereof, and to dispose of the securities so withdrawn, as if this indenture had not been made.

II. All and singular the following described bonds of the several corporations, and of the aggregate principal sums specified respectively, which bonds now are held by Bankers Trust Company as Trustee under a

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Exhibit Erie 15—(23).

Collateral Indenture dated April 1, 1912, between the Railroad Company and said Trust Company, to wit:

Principal Sum.

Erie Railroad Company General Mortgage	
4% Convertible 50-Year Gold Bonds,	
Series C	\$10,000,000
Erie Railroad Company First Consolidated	
10 Mortgage General Lien 4% Gold Bonds.	1,000,000
Erie and Jersey Railroad Company First	
Mortgage 4% 50-Year Gold Bonds....	3,000,000
Genesee River Railroad Company First	
Mortgage 4% 50-Year Gold Bonds.....	2,000,000

Subject, however, to the lien created by said Collateral Indenture dated April 1, 1912, as security for the payment of notes issued and to be issued thereunder for the aggregate principal sum of \$10,000,000 and to all the terms and provisions of said Collateral Indenture, including the right, without any action by the Trustee hereunder, to withdraw any of said bonds either by the payment of money or the substitution of other securities as provided in said Collateral Indenture dated April 1, 1912, and to dispose of the same free from the lien of this indenture; and also subject to the prior lien and all the provisions of any other indenture or indentures which may hereafter be made for the purpose of extending, renewing or refunding said \$10,000,000 of notes or any part thereof.

30 It being understood that the Railroad Company has and reserves the right from time to time to extend, renew or refund said \$10,000,000 of notes, or any part thereof, for such period and at such rate of interest as it may deem advisable, and in connection therewith to execute a new collateral indenture or indentures which shall be a first lien upon the property and securities held as collateral for said \$10,000,000 of notes, or for any notes issued for the renewal or refunding thereof, and to exercise the right of withdrawal and substitution as provided in said Collateral Indenture of

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Exhibit Erie 15—(23).

April 1, 1912, or in any similar indenture securing notes issued for the refunding of said \$10,000,000 of indebtedness or any part thereof, and to dispose of the securities so withdrawn, as if this indenture has not been made.

III. All and singular the following described bonds of the several corporations, and of the aggregate principal sums specified respectively, which bonds now are held by Bankers Trust Company as Trustee under a Collateral Indenture dated October 2, 1911, between the Railroad Company and said Trust Company, to wit:

Principal Sum.

Erie and Jersey Railroad Company First

Mortgage 4% 50-Year Gold Bonds. . . . \$4,000,000

Genesee River Railroad Company First

Mortgage 4% 50-Year Gold Bonds. . . . \$3,000,000

Subject, however, to the lien created by said Collateral Indenture dated October 2, 1911 as security for the payment of notes issued and to be issued thereunder for the aggregate principal sum of \$4,550,000. and to all the terms and provisions of said Collateral Indenture, including the right, without any action by the Trustee hereunder, to withdraw any of said bonds either by the payment of money or the substitution of other securities as provided in said Collateral Indenture dated October 2, 1911, and to dispose of the same free from the lien of this indenture; and also subject to the prior lien and all the provisions of any other indenture or indentures which may hereafter be made for the purpose of extending, renewing or refunding said \$4,550,000 of notes or any part thereof.

It being understood that the Railroad Company has and reserves the right from time to time to extend, renew or refund said \$4,550,000 of notes, or any part thereof, for such period and at such rate of interest as it may deem advisable, and in connection therewith to

Exhibit Erie 15—(23).

execute a new collateral indenture or indentures which shall be a first lien upon the property and securities held as collateral for said \$4,550,000 of notes or for any notes issued for the renewing or refunding thereof, and to exercise the right of withdrawal and substitution as provided in said Collateral Indenture of October 2, 1911, or in any similar indenture securing
 10 notes issued for the refunding of said \$4,550,000 of indebtedness, or any part thereof, and to dispose of the securities so withdrawn as if this indenture had not been made.

IV. All and singular the following described bonds of the several corporations, and of the aggregate principal sums specified respectively, which bonds have been or are to be pledged with and delivered as collateral security for the payment of a certain note for the principal sum of \$1,000,000 dated April 8, 1914, and
 20 payable October 1, 1914, made by the Railroad Company to Bankers Trust Company, to wit:

	Principal Sum.
Erie and Jersey Railroad Company First	
Mortgage 4% 50-Year Gold Bonds.....	\$400,000
Genesee River Railroad Company First	
Mortgage 4% 50-Year Gold Bonds.....	1,000,000
Elmira, Corning & Waverly Railway Company First Mortgage 5% Bonds.....	200,000

30 Subject, however, to the lien created by said pledge of such bonds as security for the payment of said notes for the principal sum of \$1,000,000 and subject also to any pledge of said bonds hereafter made as security for any note or notes of the Railroad Company for an aggregate principal sum not exceeding \$1,000,000 and from time to time made in renewal or successive renewals of said \$1,000,000 note or any part thereof, or from time to time made for the purpose of
 40 refunding or taking up said note or any renewal thereof.

Exhibit Eric 15—(23).

It being understood that the Railroad Company has the right to extend, renew or refund said \$1,000,000 note, or any part thereof, and to pledge said bonds as collateral security for such renewal or refunding note or notes as if this indenture had not been made.

V. Also all the right, title and interest of the Railroad Company in and to any and all stocks, bonds, securities or money from time to time hereafter pledged or held as security for any of the obligations specified in the foregoing clauses I, II, III or IV as additional security or as substituted security as provided in the instruments securing such obligations or any obligations issued for renewing or refunding the same, respectively; subject, however, to the lien of the instrument pursuant to which such property or securities are so pledged and held and to all the terms and provisions thereof. 10

VI. Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purpose hereof, pledged, assigned, or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and to hold and apply any and all such property according to the terms hereof. 20

To Have and To Hold the same, etc. 30

In Trust, Nevertheless, for the equal use and benefit of all present and future holders of the notes, etc.

That the date of payment of notes may be extended from time to time or new notes may be issued by the Railroad Company from time to time as it may determine, which shall be secured by this indenture.

That the property assigned and transferred to the Trustee hereunder is to be held by the Trustee upon and subject to the further trusts, conditions, covenants and agreements hereinafter set forth; and it is 40

Exhibit Erie 15—(23).

covenanted between the parties hereto and for the benefit of the respective holders from time to time of the notes intended to be secured hereby, as follows, viz.:

ARTICLE ONE.

Section 1. So long as property subject to the lien of this indenture shall be subject to the prior lien of
10 any other indenture or of any pledge whether now existing, or hereafter created, such prior lien and all provisions of such other indenture shall be respected and observed, and such property shall remain subject to such prior lien.

Sec. 2. All stocks, bonds, coupons, and other property subject to such prior lien, may be used and disposed of in accordance with the provisions of the instrument creating such lien.

20 Sec. 3. When such prior liens shall have been satisfied the Trustee shall be entitled to receive all bonds, shares of stock and other property in the possession of the holder of such prior lien, and the Railroad Company to execute assignments, &c.

ARTICLE TWO.

Section 1. In case default shall be made in the payment of the notes hereby secured, the Trustee may
30 sell the property subject to this indenture, etc. (stating method of sale).

Section 2. Upon written request of the holders of twenty-five per cent. of notes hereby secured, in case of default it shall be the duty of the Trustee to take all steps needful for the protection of its rights and the rights of the holders of the notes, etc.

Sec. 3. Upon sale the Trustee shall assign to the purchasers.

40 Sec. 4. The receipt of the Trustee for the purchase money shall be sufficient discharge to any purchaser of the property.

Exhibit Eric 15--(23).

Sec. 5. The purchase money of said sale to be applied as follows:

First. To the payment of costs and expenses of sale, including compensation to Trustee, &c.

Second. To the payment of the amount owing upon the notes.

Third. To the payment of the surplus, if any, to the Railroad Company. 10

Sec. 6. Upon sale as aforesaid the Trustee or any noteholder may bid for and purchase the property offered.

Sec. 7. No holder of any note shall have the right to institute any suit without giving the Trustee written notice of default nor unless the holders of twenty five per cent of the notes outstanding shall have made written request upon the Trustee and given it an opportunity to proceed. 20

All rights and actions may be enforced without the possession by the Trustee of the notes.

Section 8. No delay by the Trustee or any noteholder shall impair any right or power or shall be a waiver of any default.

ARTICLE THREE.

Section 1. (Refers to any request or other instrument required by this indenture to be signed and executed by noteholders.) 30

Sec. 2. Railroad Company and Trustee may deem and treat the bearer of any note endorsed in blank as the owner of such note.

ARTICLE FOUR.

Section 1. When notes shall become due and payable the Railroad Company will pay or cause to be paid the whole amount due upon such notes. 40

Exhibit Erie 15—(23).

ARTICLE FIVE.

Section 1. Trustee not to be answerable for default or misconduct of any agent, &c., and shall incur no liability in acting upon any notice; and the statements herein shall not be considered as imposing any obligation or liability upon the Trustee.

The Trustee may advise with counsel.

10 The Trustee shall be entitled to reasonable compensation and the Railroad Company agrees to pay same.

The Trustee shall be protected in the giving of any proxy.

The Trustee may become the owner of notes hereby secured.

Sec. 2. The Trustee may resign by giving notice.

Sec. 3. In case Trustee shall resign or shall be removed successor may be appointed by the noteholders.

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The new Trustee shall execute and deliver an instrument accepting such appointment.

ARTICLE SIX.

Section 1. All covenants, stipulations, &c., on behalf of the Railroad Company shall binds its successors and assigns.

30 Sec. 2. For the purposes of this indenture the terms "Railroad Company" and "Erie Railroad Company" mean not only the party of the first part, but also any successor, &c.

Sec. 3. The words "the Trustee" or "said Trustee" shall be held to mean Trustee or Trustees.

Bankers' Trust Company, party of the second part, accepts trusts in this indenture.

(Then follows testimonium clause and acknowledgments.)

40 ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, TRUSTEE. SUPPLEMENT of October 1, 1914, to

Exhibit Eric 15—(23).

COLLATERAL INDENTURE, dated April 1, 1914, securing \$5,000,000 Notes due March 1, 1915.

Supplemental Indenture dated October 1, 1914, between Erie Railroad Company, termed the "Railroad Company," and Bankers Trust Company, as Trustee under the Collateral Indenture dated April 1, 1914, termed the "Trustee."

Recites Collateral Indenture dated April 1, 1914; and further that the Railroad Company purposes to issue note notes, hereinafter termed "notez" or "renewel" "notes," payable March 1, 1915, for the principal sum of \$5,000,000, and for that purpose the Railroad Company purposes to assign and transfer to the Trustee the property hereinafter described, in addition to the property assigned in the Collateral Indenture dated April 1, 1914; and further such renewal notes of the Railroad Company are to be negotiable notes of the principal sum of \$5,000,000 and in the form following,—

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(Then follows form of note.)

That on each of said renewal notes is to be endorsed a certificate of the Trustee.

(Then follows form of certificate.)

That the purpose of this indenture is to supplement Collateral Indenture dated April 1, 1914, and to provide further security for the payment of said renewal notes; and that all things necessary to make such renewal notes valid and binding have been done.

30

This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said renewal notes at any time issued and outstanding under this indenture, according to the tenor, purpose and effect thereof, and to secure the performance and observance of all the covenants and conditions herein and in said Collateral Indenture dated April 1, 1914, contained, and in consideration of the premises and of the purchase and

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Exhibit Eric 15—(23).

acceptance of such notes by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged: The Railroad Company hereby does sell, assign, transfer and set over and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, as aforesaid, the following described property, hereinafter sometimes termed, collectively, "pledged securities," viz:

I. All and singular the following shares of stock and the certificates therefor, to wit:

55,000 shares of the common capital stock of the New York, Susquehanna & Western Railroad Company, of the aggregate par value of \$5,500,000.

II. Also any and all obligations, for an aggregate principal amount not exceeding \$7,000,000, which the Railroad Company hereafter shall be authorized to issue to reimburse it for capital expenditures heretofore and hereafter made by the Railroad Company, in respect of which capital obligations have not heretofore been issued, and which the Railroad Company is or shall be authorized to pledge hereunder.

III. Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also when and as hereinafter provided, as substituted security, for the payment of the said renewal notes, and to hold and apply any and all of such property according to the terms hereof.

The Railroad Company does hereby confirm the sale made by said Collateral Indenture dated April 1, 1914.

To Have and To Hold the same, etc.

In trust for the equal use and benefit of all present and future holders of the said renewal notes, etc.

Exhibit Eric 15—(23).

That the payment of said renewal notes may be extended from time to time.

The Railroad Company expressly covenants and declares that said renewal notes are to be held by the Trustee subject to the trusts expressed in said Collateral Indenture dated April 1, 1914, and the further trusts hereinafter set forth; and it is further covenanted and agreed as follows:

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ARTICLE ONE.

Section 1. The amount of said renewal notes is limited to the aggregate principal sum of \$5,000,000.

All such notes to be executed by the Railroad Company and delivered to the Trustee for certification.

On such notes as shall bear a certificate of the Trustee shall be secured by this indenture.

Sec. 2. (States how said notes are to be drawn as to amount and serial number, &c.)

20

Each note of \$1,000 or more shall bear an endorsement in form following.

(Then follows form of endorsement.)

Sec. 3. Two or more notes may be surrendered to the Trustee in exchange for a single note.

Sec. 4. (Refers to the officers signing notes dying or ceasing to be such officers.)

Sec. 5. Temporary notes to be delivered in lieu of the definite notes.

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Sec. 6. (Refers to notes becoming lost or destroyed.)

ARTICLE TWO.

Section 1. The Railroad Company to have the right to vote upon or give any consent in respect to all shares of stock pledged under this indenture.

The Trustee shall be protected in the giving of any proxy.

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Exhibit Eric 15—(23).

Sec. 2. Unless default be made in the payment of the principal and interest of said renewal notes, the Trustee shall not collect the principal or interest of any of the obligations pledged under this indenture, etc.

Sec. 3. The Trustee to be considered and held to be the legal owner and holder of the pledged securities.

10 Sec. 4. The Trustee may transfer into its name as Trustee all or any shares of stock pledged with it hereunder.

Sec. 5. Trustee authorized to register in its name coupon bonds.

ARTICLE THREE.

Section 1. Notes subject to redemption by the Railroad Company.

20 Sec. 2. In case the Trustee shall receive from the Railroad Company a sum in cash sufficient to redeem the notes, the Railroad Company may publish notice that said notes will be redeemed.

Sec. 3. In case the Trustee shall hold or receive from the Railroad Company a sum less than the amount required to redeem and pay all of the notes, the Railroad Company shall draw by lot notes issued hereunder.

30 Sec. 4. Notice of redemption to be mailed by the Railroad Company to the holders of the notes, etc.

ARTICLE FOUR.

Section 1. Each of the provisions of the Collateral Indenture dated April 1, 1914, shall be applicable in respect of the renewal notes, &c.

40 Sec. 2. Nothing in this indenture is intended to give any person, firm or corporation, other than the parties hereto, any right, remedy or claim.

Exhibit Erie 15—(24).

ARTICLE FIVE.

Section 1. If the Railroad Company shall keep and perform all the things herein required to be kept, then all stocks, bonds, securities and other property subject to this indenture to revert to the Railroad Company.

Bankers Trust Company accepts the trusts in this indenture contained.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 15."

(24)

\$1,000,000.00

New York, October 1, 1914.

On March 1st, 1915, for value received, the undersigned promise to pay to the Bankers Trust Company, or order, at its office in the City of New York, in funds at the New York Clearing House, with interest from the date hereof, at the rate of six per cent. per annum, payable on the first days of January, April, July and October, One Million and 00/100 Dollars, and the following is hereby deposited with said Trust Company, as collateral security, for the payment of this and any other liability or liabilities of the undersigned, or of the grantors hereof, or which may hereafter be contracted or existing, due or to become due to, or held or to be paid by said Trust Company, viz:

\$1,000,000 Genesee River R. R. Co. 1st Mtge. 4s, 1957.

400,000 Erie & Jersey R. R. Co. 4s, 1955.

200,000 Elmira, Corning & Waverly Ry. 1st Mtge. 5s, 1957.

of an estimated market value of Dollars, and said Trust Company is also given a lien for the amount of all of said liabilities upon all property or securities now or hereafter given unto, or left in the possession or custody of said Trust Company by or for account of the undersigned, or in which the under-

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Exhibit Eric 15—(24).

signed may have an interest (all remittances and property to be deemed left with said Trust Company, as soon as put in transit to it, by mail or carrier) and also upon the balance of the deposit account of the undersigned with said Trust Company existing from time to time.

- 10 The undersigned shall deliver to said Trust Company additional collateral satisfactory to it whenever called for by it, so that there will, at all times be with said Trust Company a margin of security satisfactory to it; and in case of failure so to do forthwith, this note (and at the option of said Trust Company, all other said liabilities) shall become at once due and payable without demand of payment hereof, and upon non-payment or non-fulfillment of any term, of this note or of any of said liabilities, then this note or any of said liabilities or any designated part thereof shall
- 20 become immediately due and payable at the option of said Trust Company on presentation hereof or thereof, or of said part, for payment, and should this note or any of said liabilities become immediately due and payable as herein provided, said Trust Company may immediately sell and apply said property or securities in the manner and with the effect hereinafter provided.

- 30 Said Trust Company is hereby authorized and empowered at its option at any time to appropriate and apply to the payment and extinguishment hereof and/or of any other of said obligation or liabilities, whether now existing or hereafter contracted, any and all moneys, or other property or proceeds thereof, now or hereafter in the hands of said Trust Company on deposit or otherwise for account of, to the credit of, or belonging to, the undersigned, whether this note, said obligations or liabilities are then due or not due. In the event of the insolvency of, or the appointment of a receiver of the property of, or an assignment for
- 40 the benefit of creditors of the undersigned, this note

Exhibit Erie 15—(24).

and all said obligations and liabilities shall become and be immediately due and payable without demand of payment.

Said Trust Company is hereby authorized, upon the non-payment of any of said liabilities when due, to sell, assign and deliver the whole of said securities or from time to time any part thereof, or any substitutes therefor, or any additions thereto, or any other securities or property at any time given unto or left in the possession or custody of said Trust Company by or for the undersigned, or in which the undersigned may have any interest, at any Brokers' Board, or at public or private sale, for cash, upon credit, or for future delivery, all at the option of said Trust Company, or of any of its officers, without either advertisement or notice, which are hereby expressly waived.

10

Upon any sale or sales at public auction or Brokers' Board of Exchange above provided for, said Trust Company, or the holder hereof, may bid for and/or purchase the whole or any part of such securities or property, free from any right of redemption, which is hereby waived and released.

20

In case of any sale by said Trust Company, of any of said securities or property on credit or for future delivery, the securities and property sold may be retained by said Trust Company until the selling price is paid by the purchaser, but said Trust Company shall incur no liability in case of failure of the purchaser to take up and pay for the securities or property so sold. In case of any such failure the securities and/or property may be again sold.

30

In case of sale for any cause, after deducting all costs or expenses of every kind for collection, sale or delivery, said Trust Company may apply the residue of the proceeds of the sale or sales to pay either one or more or all of said liabilities to said Trust Company, including this note, whether then due or not, as it shall deem proper; making proper rebate

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Exhibit Erie 15—(24).

for interest on liabilities not then due and returning the overplus, if any, to the undersigned, who agree to pay and to be and remain liable to said Trust Company for any deficiency, with legal interest, arising upon such sale or sales.

10 Upon any transfer of this note, said Trust Company may deliver the property held as security, or any part thereof, to the transferee, who shall thereupon become vested with all the powers and rights given to said Trust Company in respect thereof, and said Trust Company herein shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter.

20 Calls for collateral or any notices to the undersigned may be made or given by said Trust Company by leaving same at the address given below or the last known address of the undersigned or by mailing same to such address, with same effect as if delivered to the undersigned in person.

ERIE RAILROAD COMPANY,

By D. W. BIGONEY,

Treasurer.

DAVID BOSMAN,

Vice-President.

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EXHIBIT "ERIE 15."**(25)****New York, July 1st, 1914.****\$100,000.00.**

For value received, one year after date, **THE LONG DOCK COMPANY** promises to pay to the order of the **ERIE RAILROAD COMPANY**, at its office in the City of New York, 10

ONE HUNDRED THOUSAND DOLLARS

with interest at the rate of six per cent per annum, payable semi-annually

THE LONG DOCK COMPANY,**(Signed) D. W. BIGONEY,***Treasurer.***(Signed) DAVID BOSMAN,***Vice-President.***20**

(There were seven notes similar to the above for \$100,000.)

(Endorsement)**ERIE RAILROAD COMPANY,****(Signed) D. W. BIGONEY,***Treasurer.***EXHIBIT "ERIE-15."****(26)****30**

ERIE RAILROAD COMPANY and **BANKERS TRUST COMPANY**, Trustee. **COLLATERAL INDENTURE**, dated October 1, 1914, Securing \$4,550,000. One-Year 5% Collateral Gold Notes. Interest payable April 1 and October 1.

Indenture dated October 1, 1914, between Erie Railroad Company, termed the "Railroad Company" and Bankers Trust Company, termed the "Trustee."

Recites that on October 2, 1911, the Railroad Company and Bankers Trust Company entered into a collateral Indenture whereunder the Railroad Company 40

did pledge with said Trust Company, as Trustee, Erie and Jersey Railroad Company First Mortgage 4% Fifty Year Gold Bonds for the aggregate principal amount of \$4,000,000, and Genesee River Railroad Company First Mortgage 4% Fifty-Year Gold Bonds for the aggregate principal amount of \$3,000,000, as security for the payment of the Three-Year Five Per Cent, Collateral Gold Notes of the Railroad Company dated October 2, 1911, and payable October 1, 1914, for the aggregate principal amount of \$4,550,000; and for the purpose of refunding said notes payable October 1, 1914, the Railroad Company has resolved to issue and to dispose of its One-Year 5% Collateral Gold Notes, dated October 1, 1914, hereinafter described, for the aggregate principal sum of \$4,550,000, and to secure the payment of such notes by pledging with the Trustee under this indenture, as hereinafter specified, the said bonds pledged under said indenture dated October 2, 1911; that such notes shall be executed by its Treasurer and countersigned by its President or a Vice President, and authenticated by certificate of the Trustee; that such notes are to be negotiable notes for the aggregate principal sum of \$4,550,000, payable to bearer, or if registered in Gold Coin of the United States, or its equivalent, and are to bear interest at the rate of five per cent per annum, on the first day of April and the first day of October, 1915, and such notes to be for the principal sum of \$1,000 or of \$5,000, or of any multiple of \$1,000, and shall be in the form following:

(Then follows form of note, coupon and Trustee's certificate.)

That each of the coupons attached to the notes is to be authenticated by the engraved signature of the Treasurer of the Railroad Company; and that all things necessary to make such notes when certified by the Trustee valid and binding obligations of the Railroad Company have been done and performed.

Exhibit Eric 15—(26).

Now, therefore, This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said notes at any time issued and outstanding under this indenture, according to the tenor, purport and effect thereof, and to secure the performance and observance of all the covenants and conditions herein contained, and to declare the terms and conditions on which said notes are issued, received and held, and in consideration of the premises and of the purchase and acceptance of such notes by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged:

10

The Railroad Company hereby does sell, assign, transfer and set over and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, the following described property, hereinafter sometimes termed, collectively, "pledged securities"—viz.:

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I. All and singular the following bonds of the corporations, and for the aggregate principal sums, specified respectively, with all unmatured coupons there-to appertaining, to wit:

Principal Sum.

Eric and Jersey Railroad Company First

Mortgage 4% Fifty-Year Gold Bonds. . \$4,000,000

Genesee River Railroad Company First

Mortgage 4% Fifty-Year Gold Bonds. . 3,000,000

II. Also all property of every name and nature, from time to time hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also when and as hereinafter provided, as substituted security, for the payment of the notes issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

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Exhibit Eric 15—(26).

To Have and to Hold the same, &c.

In trust for the equal use and benefit of all present and future holders of the notes to be issued and secured under this indenture, without preference or priority as to lien or otherwise of one note over any other note, and that the corporate bonds pledged hereunder are to be held by the Trustee upon and subject to the further trusts, uses, conditions, covenants, and agreements hereinafter set forth; and it is covenanted between the parties hereto as follows, viz.:

ARTICLE ONE.

Section 1. The amount of notes limited so that never at any time shall there be outstanding notes hereby secured for an aggregate principal sum exceeding \$4,550,000.

From time to time notes secured hereby shall be executed by the Railroad Company and the Trustee shall certify and deliver the same.

The said notes and coupons shall be substantially of the tenor and purport above recited and shall be for the principal sum of \$1,000 or of \$5,000, or any multiple of \$1,000 that shall be authorized by the Railroad Company; each note secured hereby of the denomination of \$1,000 shall bear a distinctive serial number, the number to be from 1 upwards, and each note of a denomination greater than \$1,000 shall be numbered from 1 upwards and shall have prefixed to the number a letter or Roman numeral to distinguish such denomination; each note secured of a denomination greater than \$1,000 shall bear thereon the following endorsement:

(Then follows form of endorsement.)

Whenever any note shall be originally issued for a principal sum greater than \$1,000, there shall be reserved by the Railroad Company, unissued, notes each of the principal sum of \$1,000 equal to the sum of the note issued.

Exhibit Eric 15—(26).

Only such notes as shall bear thereon a certificate in the form hereinbefore recited shall be secured by this indenture.

Sec. 2. In case any officers of the Railroad Company who shall have signed any of the notes shall die or cease to be such officers, before the notes shall have been certified or delivered by the Trustee, such notes shall be certified and delivered as herein provided, &c. 10

Sec. 3. All notes hereunder shall be certified and delivered by the Trustee upon the written order of the Railroad Company, signed, &c.

Sec. 4. Pending the preparation of definite notes temporary notes may be issued.

Sec. 5. In case notes shall become mutilated or destroyed the Railroad Company may execute and the Trustee certify and deliver new notes of like tenor and date. 20

Sec. 6. Any two or more notes secured hereby may be surrendered to the Trustee in exchange for a single note of a higher denomination.

Sec. 7. Nothing in this indenture shall give to any person, firm or corporation, other than the parties hereto and the holders of the notes any right or claim under this indenture.

ARTICLE TWO.

30

The Railroad Company Covenants as follows:

Section 1. The Railroad Company will pay the principal and interest of the notes issued hereunder, at the times and in the manner specified in said notes, etc.

Section 2. The Railroad Company will pay and discharge all taxes, &c., levied or imposed or in respect to the pledged securities.

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Exhibit Eric 13—(26).

Sec. 3. The Railroad Company at its own expense will do all things necessary to preserve and keep in full repair all its premises and property, &c.

Sec. 4. The Railroad Company will keep a register for the registration of notes secured hereby.

ARTICLE THREE.

10

Section 1. The Trustee may give consent to any merger or consolidation with any other company, etc.

Sec. 2. Unless there be default, the Trustee shall not collect or be entitled to collect the principal or interest of the pledged bonds, and shall deliver to the Railroad Company any coupons for interest in the possession of the Trustee, except as in this indenture otherwise expressly provided.

20

Sec. 3. The Trustee to be the legal holder and owner of the pledged securities.

Sec. 4. The Trustee authorized to have registered in its name as Trustee all coupon bonds pledged hereunder or to cause same to be exchanged for registered bonds, and the Trustee shall cause to be transferred into its name as Trustee hereunder all registered bonds which shall have been assigned to it hereunder.

ARTICLE FOUR.

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Section 1. In case default shall be made in the payment of interest on any of the notes, Trustee may declare the principal of all notes then outstanding hereunder to be due.

Sec. 2. (Contains provisions in reference to defaults in payment of interest and principal.)

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Sec. 3. Upon written request of (twenty-five per cent. in amount of the notes, in case of default, it shall be the duty of the Trustee to take all steps needful for the protection of its rights and the rights of the holders of the notes.

Exhibit Erie 15—(26).

Sec. 4. Upon any sale under this indenture the Trustee shall assign, transfer and deliver to the purchaser such of the pledged securities as shall be sold.

Sec. 5. Receipt of Trustee for purchase money to be sufficient.

Sec. 6. In case of any sale the whole of the principal sums of the notes to become due and payable.

Sec. 7. The purchase money, proceeds of any sale, together with any other money held by the Trustee under this indenture shall be applied as follows: 10

First. To the costs and expenses of sale, including compensation to the Trustee, and payment of taxes, &c.

Second. To the payment of the amount then owing on the notes.

Third. Surplus, if any, to be paid to the Railroad Company. 20

Sec. 8. In case default shall be made in the payment of any interest, or in case default shall be made in the payment of the principal of any such note when the same shall become payable, then the Railroad Company will pay to the Trustee the whole amount which then shall have become due and payable on all notes then outstanding, and in case the Railroad Company shall fail to pay the same forthwith upon demand, the Trustee shall be entitled to recover judgment for the whole amount so due and unpaid. 30

(Then follows further clause in reference to the recovery of judgment.)

Any moneys thus collected by Trustee, less Trustee's expenses, &c., shall be applied by the Trustee towards the amounts then due and payable on the notes.

Sec. 10. Holders of notes shall not have right to institute suit for the enforcement of this indenture, unless holder shall first give Trustee written notice.

All rights under this indenture may be enforced by the Trustee without the possession of the notes. 40

Exhibit Eric 13—(26).

Sec. 11. No delay by the Trustee or note holders to exercise any right accruing upon any default shall be a waiver of any such default.

ARTICLE FIVE.

No recourse under any obligation or agreement of this indenture shall be had against any incorporators,
10 stockholder or officer of the Railroad Company.

ARTICLE SIX.

Section 1. Any other instrument required by this indenture to be signed and executed by noteholders may be in any number of concurrent instruments of similar tenor. (Then follows further statements in reference to execution, &c., of requests or other instruments.)

20 Sec. 2. The Railroad Company and the Trustee to treat the bearer of any note not registered or of any coupon as the absolute owner of such note or coupon.

ARTICLE SEVEN.

Section 1. When the Railroad Company shall pay the entire amount due for principal and interest on the notes and shall perform all the things herein required to be performed, all the bonds and other property sub-
30 ject to this indenture shall revert to the Railroad Company.

ARTICLE EIGHTH.

Section 1. Trustee not to be answerable for default or misconduct of any agent or attorney, and shall not be under obligation to do anything which will be likely to involve it in expense or liability, unless indemnified by holders of notes.

(Then follows further clauses in reference to ac-
40 tions by the Trustee and liability of the Trustee.)

The Trustee may become the holder and owners of notes hereunder, or of any stocks, bonds or other securities sold hereunder.

The Trustee may employ counsel at the expense of the Railroad Company.

The Trustee shall be entitled to reasonable compensation for all services rendered by it.

The Trustee shall be under no duty to see to the application of the proceeds of any note hereunder. 10

The Trustee shall be under no duty to record or file this indenture.

Any moneys received by the Trustee hereunder shall be treated by it as a deposit.

Sec. 2. Trustee may resign by giving notice. (Then follows further statement in reference to resignation or removal of Trustee.)

Sec. 3. A successor may be appointed to the Trustee by the holders of a majority in amount of the notes outstanding. 20

(Then follows further clause in reference to the appointment of a new trustee.)

ARTICLE NINE.

Section 1. All covenants, &c., by the Railroad Company to bind its successors and assigns.

Sec. 2. In case Railroad Company shall be consolidated or merged with any other corporation, such successor shall be substituted for the Railroad Company, etc. 30

Sec. 3. For the purposes of this indenture "Railroad Company" and "Eric Railroad Company," mean not only the party of the first part, but any successor corporation.

Sec. 4. (Contains further reference to successor.)

Sec. 5. Before exercise of any of the powers conferred by this Article, the Railroad Company by in- 40

Exhibit Erie 13—(27).

strument in writing and delivered to the Trustee, may surrender any of the powers reserved to it or any successor.

Sec. 6. The words "the Trustee" or "said Trustee" to mean the Trustee or Trustees for the time being.

Bankers Trust Company accepts the trusts in this indenture.

10 (Then follows testimonium clause and acknowledgments.)

EXHIBIT "ERIE 13."

(27)

ERIE RAILROAD COMPANY and BANKERS TRUST COMPANY, TRUSTEE. COLLATERAL INDENTURE, Dated April 1, 1914, Securing \$13,500,000 Three-Year 5½% Collateral Gold Notes, Interest payable April 1 and
20 October 1.

Indenture dated April 1, 1914, between Erie Railroad Company, termed the "Railroad Company," and Bankers Trust Company, termed the "Trustee."

Recites that the Railroad Company has resolved to issue and dispose of its Three-Year 5½% Collateral Gold Notes, dated April 1, 1914, hereinafter described, for the aggregate principal sum of \$13,500,000, and to secure the payment of such notes by pledging with the Trustee the bonds, notes and stocks hereinafter
30 specified; and further what officers of the Railroad Company shall execute such notes; that such notes are to be negotiable notes of the principal sum of \$13,500,000, payable to bearer or registered holder in gold coin of the United States at the office of the Railroad Company on or before April 1, 1917, and to bear interest at 5½% per annum, payable semi-annually on April 1st and October 1st; such notes to be each of the principal sum of \$1,000 or of \$5,000 or any multiple of \$1,000 that shall be authorized by
40 the Railroad Company, and to be substantially in the form following:

Exhibit Eric 15—(27).

(Then follows form of note and coupon.)

That on each of said notes is to be endorsed a certificate of the Trustee.

(Then follows form of certificate.)

That each of the coupons is to be authenticated by the fac-simile signature of the Treasurer of the Railroad Company; and that all things necessary to be done and performed by the Railroad Company have been done and performed and the issue of said notes have been duly authorized:

10

Now, Therefore, This Indenture Witnesseth:

That in order to secure the payment of the principal and interest of all of said notes at any time issued and outstanding under this indenture, according to the tenor, purport and effect thereof, and to secure the performance and observance of all the covenants and conditions herein contained, and to declare the terms and conditions on which said notes are issued, received and held, and in consideration of the premises and of the purchase and acceptance of such notes by the holders thereof, and of the sum of one dollar to it duly paid by the Trustee at the execution of these presents, the receipt whereof is hereby acknowledged:

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The Railroad Company hereby does sell, assign, transfer and set over, and does pledge to, and hypothecate with, Bankers Trust Company, as Trustee, the following described property, hereinafter sometimes termed, collectively, "pledged securities"—viz:

30

1. All and singular the following bonds and notes of the several corporations, and of the aggregate principal sums, specified respectively, with all unmatured coupons thereto appertaining, to wit:

Principal Sum.

Eric Railroad Company First Consolidated Mortgage General Lien 4%

Gold Bonds \$14,839,000

40

Exhibit Eric 15—(27).

		Principal Sum.
	Erie Railroad Company General Mortgage 4% Convertible 50-Year Gold Bonds, Series B.	\$985,000
	Elmira, Corning and Waverly Railway Company, First Mortgage 5% Bonds	600,000
10	Mutual Terminal Company of Buffalo 4% notes payable July 1, 1924.	95,000
	II. Also all and singular the following shares of stock of the several corporations, and of the aggregate par values, specified respectively, and the certificates therefor, to wit:	
	Shares.	Par Value.
	63,060 New York, Susquehanna and Western Railroad Company, preferred stock	\$6,306,000
20	1,631 Lehigh and Hudson River Railway Company	163,100
	1,457 Temple Iron Company	145,700
	7,500 New Jersey and New York Railroad Company preferred stock..	750,000
	10,000 New Jersey and New York Railroad Company common stock...	1,000,000

III. Also all property of every name and nature, from time to time, hereafter, by delivery or by writing of any kind, for the purposes hereof, pledged, assigned or transferred by the Railroad Company, or with its written consent by any one in its behalf, to the Trustee, which hereby is authorized to receive any property at any and all times, as and for additional security, and also, when and as hereinafter provided, as substituted security, for the payment of the notes issued or to be issued hereunder, and to hold and apply any and all such property according to the terms hereof.

To Have and to Hold the same, etc.

40 In Trust, Nevertheless, for the equal use and benefit of all present and future holders of the notes, etc.

with preference, priority or distinction as to lien or otherwise of one note over any other note; it being intended that the lien and security of this indenture shall take effect from the day of the date hereof; and it being expressly covenanted and declared by the Railroad Company that all such notes to be issued, and the said corporate stocks and corporate bonds and notes pledged hereunder, and any and all other stocks, bonds or obligations and other securities hereafter pledged hereunder, as aforesaid, subject to the conditions of such pledge, are to be held by the Trustee upon and subject to the further trusts, uses, conditions, covenants and agreements hereinafter set forth; and it is covenanted between the parties hereto and for the benefit of the respective holders from time to time of the notes intended to be secured hereby, as follows, viz:

ARTICLE ONE.

Section 1. The amount of the notes hereby secured is limited so that never at any time shall there be outstanding notes for an aggregate principal sum exceeding \$13,500,000.

From time to time the notes secured hereby shall be executed by the Railroad Company and the Trustee shall certify and deliver the same.

The notes and coupons thereto attached shall be of the tenor and purport above recited. The said notes each shall be for the principal sum of \$1,000 or of \$5,000, or of any other multiple of \$1,000 that shall have been authorized by the Railroad Company.

Each note of the denomination of \$1,000 shall bear a distinctive serial number, the numbers to be from one upwards. Likewise each note of a denomination greater than \$1,000 shall be numbered from one upwards and shall have prefixed to the number the Roman numeral designating the number of times the principal sum of each note is dividable by the sum of \$1,000.

Exhibit Erie 15—(27).

Each note of a denomination of \$1,000 shall bear thereon an endorsement in the following form:

(Then follows form of endorsement.)

10 Whenever any note shall be issued for a principal sum greater than \$1,000, there shall be reserved by the Railroad Company unissued, notes each for the principal sum of \$1,000 of an aggregate principal sum equal to the principal sum of the note of greater denomination than \$1,000.

Only such notes as shall bear a certificate in the form hereinbefore recited by the Trustee shall be secured by this indenture.

The Trustee shall not certify or deliver any note hereby secured, until all coupons then matured shall have been detached and canceled.

20 **Sec. 2.** If any officer of the Railroad Company who shall have signed any of the notes issued under this indenture shall die, or cease to be such officer, before the notes shall have been delivered by the Trustee, may be sold and disposed of by the Railroad Company as though the persons who signed such notes had not died.

Sec. 3. All notes authorized to be issued hereunder shall be executed by the Railroad Company and certified and delivered by the Railroad Company.

30 The Trustee shall certify and deliver all the notes prior to the delivery to it of the pledged securities, provided, however, that there shall be deposited with the Trustee an amount in cash equal to the value of the notes. Such money shall be held by the Trustee upon the trusts of this indenture.

Sec. 4. Pending the preparation of definite notes temporary notes may be issued, which shall be duly authenticated and delivered by the Trustee, and such temporary notes shall be exchanged for definite notes.

40 The Railroad Company will furnish without delay engraved definite notes.

Exhibit Erie 15—(27).

Sec. 5. In case any of the notes secured hereby or the coupons shall become mutilated or destroyed, the Railroad Company may execute and the Trustee certify and deliver new notes of like tenor and date.

Sec. 6. Any two or more notes secured hereby may be surrendered to the Trustee in exchange for a single note of a higher denomination.

Sec. 7. Nothing in this indenture or in the notes shall give to any person, firm or corporation other than the parties hereto and the holders of the notes, any legal right or remedy or claim in respect to this indenture. 10

ARTICLE TWO.

The Railroad Company covenants as Follows:

Section 1. The Railroad Company will pay the interest and the principal of the notes at the times and in the manner specified, without deduction. 20

Sec. 2. The Railroad Company will pay and discharge all taxes, &c. levied or imposed upon the pledged securities.

Sec. 3. The Railroad Company will do all things necessary to preserve and keep in full repair and efficiency all its premises, properties, &c.

Sec. 4. The Railroad Company will keep a register for the registration of notes.

Upon presentation at its office of any note so registered, such note shall be transferred. 30

(Then follows further clauses as to registration and transfer of notes.)

ARTICLE THREE.

Section 1. Upon request by the Railroad Company the Trustee shall release from the lien of this indenture and deliver to the Railroad Company any of the pledged securities then subject thereto; provided that 40

Exhibit Eric 15—(27).

none of said pledged securities shall be released unless there shall be deposited with the Trustee a sum equal to the withdrawal value of such securities, such withdrawal value being hereby fixed at the percentage of the par or face value thereof (exclusive of accrued interest or dividends) respectively indicated, to wit:

		Percentage of Par Value.
10	Erie Railroad Company First Consol. Mortgage General Lien 4% Gold Bonds.....	80%
	Erie Railroad Company General Mortgage 4% Convertible 50-Year Gold Bonds, Series B..	75%
	Elmira Corning & Waverly Railway Company First Mortgage 5% Bonds	80%
	Mutual Terminal Company of Buffalo 4% Notes	100%
20	New York, Susquehanna & Western Railroad Company preferred stock	50%
	Lehigh & Hudson River Railway Company stock	76%
	Temple Iron Company stock	150%
	New Jersey & New York Railroad Company preferred stock	50%
	New Jersey & New York Railroad Company common stock	25%
30	Any moneys received by the Trustee shall be held by the Trustee as part of the trust estate.	

Sec. 2. Upon the written request of the Railroad Company, the Trustee shall release from the lien of this indenture and deliver to the Railroad Company any of the pledged securities below specified, provided that there shall be deposited with the Trustee and substituted therefor other stocks, bonds, &c. of equal or greater value.

The pledged securities subject to release by the Trustee shall be any or all of the following:

- 40 Mutual Terminal Company of Buffalo 4% Notes.

Exhibit Eric 15—(27).

New York, Susquehanna & Western Railroad Company preferred stock.

Lehigh & Hudson River Railway Company stock.

Temple Iron Company stock.

New Jersey & New York Railroad Company preferred stock.

New Jersey & New York Railroad Company common stock.

10

Sec. 3. In case the Railroad Company shall not be in default in the payment of principal and interest of any of the notes, the Trustee shall give consent to any merger with any other company.

Sec. 4. Unless there shall be some default, the Railroad Company to have the right to vote upon or give any consent in respect of all shares of stock subject to this indenture, for all purposes not inconsistent with the provisions hereof.

The Trustee shall be protected in the giving of any proxies, &c.

20

Sec. 5. Unless there be default in the performance of any of the covenants or conditions herein, the Trustee shall not collect the principal and interest of any of the obligations pledged hereunder, and shall not enforce any of the provisions of the mortgages or other instruments under which such obligations were issued or secured.

(Then follows further provisions in reference to the bonds and obligations pledged hereunder.)

30

Sec. 6. The Trustee shall be considered and held to be the legal owner of the pledged securities.

Sec. 7. The Trustee may transfer into its name as Trustee all or any shares of stock pledged with it hereunder.

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ARTICLE FOUR.

Section 1. As soon as may be after the receipt of moneys by the Trustee under this indenture, the Trustee shall apply such moneys to the payment of notes.

10 Sec. 2. To the extent that said moneys applicable to the purchase or redemption of notes shall not be used in the purchase of notes as aforesaid, such moneys together with other moneys paid to the Trustee by the Railroad Company for such purpose, to the redemption of notes hereby secured in the manner hereinafter provided:

All notes hereby secured shall be subject to redemption at the option of the Railroad Company on April 1st, 1915, or thereafter on any semi-annual interest day prior to maturity, upon advertisement, etc.

20 Unless default shall be made in the payment of any notes mentioned in any notice of redemption, all interest after the date of redemption designated in the said notice shall cease to accrue upon said notes and the coupons shall become void.

Sec. 3. (Refers to publication of notice of redemption.)

Sec. 4. (Refers to redemption of notes and drawing by lot.)

30 Sec. 5. (Refers to the presentation for redemption of any note with which there shall be all unpaid coupons maturing on and prior to the date designated for such redemption.)

Sec. 6. Copy of notice of redemption or payment shall be mailed by the Railroad Company to the registered holder of each note; and the Railroad Company shall furnish the Trustee with evidence of such mailing of notice. All notes purchased, redeemed or paid shall be cancelled by the Trustee and delivered to the Railroad Company.

ARTICLE FIVE.

Section 1. In case default shall be made in the payment of interest on the notes or bonds or default by the Railroad Company in any of the covenants of the mortgage securing bonds, the Trustee shall declare due the principal sum of the bonds.

(Then follows further clause in reference to the power of Trustee in case of defaults.) 10

Sec. 2. In case of default the Trustee may sell either all or any part of the pledged securities.

Sec. 3. Upon written request of twenty-five per cent of the notes hereby secured in case of default as aforesaid, the Trustee, upon being indemnified, shall take all steps needful for the protection of its rights and the rights of the holders of the notes.

Sec. 4. Upon any sale under this indenture the Trustee shall assign and transfer and deliver to the purchasers such of the pledged securities as shall have been sold. 20

Sec. 5. The receipt of the Trustee for the purchase money shall be sufficient discharge to any purchaser.

Sec. 6. In case of sale the whole of the principal sums of the notes hereby secured shall at once become due and payable.

Sec. 7. The purchase money or proceeds of any sale shall be applied as follows: 30

First. To the payment of the costs and expenses of sale, including a reasonable compensation to the Trustee, its agents, &c.

Second. To the payment of the whole amount then owing upon the notes, with interest.

Third. The surplus, if any, to be paid to the Railroad Company.

Sec. 8. Upon sale of the Trustee or under judicial proceedings, the Trustee or any noteholder may bid. 40

Exhibit Eric 15—(27).

Sec. 9. In the case of default of the payment of principal or interest the Trustee shall be entitled to recover judgment for the amount due and unpaid, and any moneys thus collected shall be applied by the Trustee towards the payment of the amounts then due.

10 Sec. 10. Holders of notes shall not have right to institute suit for the enforcement of this indenture, unless notice is previously given to the Trustee.

All rights under this indenture shall or may be enforced by the Trustee without the possession of any of such notes.

Sec. 11. No delay or omission of the Trustee or of any note holder shall impair any right or power.

ARTICLE SIX.

20 No recourse under this obligation shall be had against any incorporator, stockholder, officer or director of the Railroad Company.

ARTICLE SEVEN.

Section 1. Any request or other instrument required by this indenture to be signed or executed by note-holders, may be in any number of concurrent instruments of similar tenor, etc.

30 Sec. 2. The Railroad Company and Trustee may deem and treat the bearer of any note not registered or any coupon hereby secured, as the absolute owner of such note or coupon, and shall also treat the registered holder of any such note as the absolute owner.

ARTICLE EIGHT.

40 Section 1. If, when all the notes hereby secured shall have become due and payable, the Railroad Company well and truly shall pay the whole amount of the principal and the interest due upon all of such notes, or shall provide for such payment, and shall cause to

Exhibit Eric 15—(27).

be paid all other sums hereunder, then and in that case all stocks, bonds and other securities subject to this indenture shall revert to the Railroad Company, and the right of the Trustee shall thereupon cease.

ARTICLE NINE.

Section 1. Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it, and shall incur no liability hereunder; and the Trustee shall be entitled to receive reasonable compensation for all services rendered. 10

The Trustee shall be under no duty or obligation to see to the application of the proceeds of any note under this indenture.

The Trustee shall be under no duty to record or file this indenture.

Any moneys received by the Trustee hereunder may be treated by it as a deposit. 20

Sec. 2. The Trustee may resign and be discharged of the trusts created by this indenture by giving notice to the Railroad Company, and to the noteholders, by publication. Such resignation to take effect on the day specified in such notice.

Sec. 3. In case the Trustee or any trustee hereafter appointed shall resign or become incapable of acting, a successor may be appointed by the holders of a majority in amount of the notes hereby secured. 30

Any new Trustee appointed hereunder shall execute and deliver to the Trustee last in office and to the Railroad Company, an instrument accepting such appointment.

ARTICLE TEN.

Section 1. All covenants, stipulations, promises and agreements in this indenture by or in behalf of the Railroad Company shall bind its successors and assigns. 40

Exhibit Erie 15—(28).

Sec. 2. In case Railroad Company shall be consolidated or merged with any other corporation, such successor corporation shall execute an instrument assuming the payment of the notes hereby secured and the performance of all the covenants and conditions of this instrument.

10 Sec. 3. For the purposes of this indenture the terms "Railroad Company" and "Erie Railroad Company" include and mean not only the party of the first part, but also any successor corporation.

Sec. 4. Any act to be done or performed by any board or officer of the Railroad Company shall be done and performed by the board, committee or officer of any successor of the Railroad Company.

Sec. 5. The Railroad Company may surrender any of the powers reserved to the Railroad Company.

20 Sec. 6. The words "the Trustee" or "said Trustee" shall be held to mean the Trustee or Trustees; and the words "Trustee," "note," "noteholder" shall signify the plural as well as the singular number, and the term "majority" shall signify "majority in amount."

Bankers Trust Company hereby accepts the trusts in this indenture.

(Then follows testimonium clause and acknowledgments.)

30 **EXHIBIT "ERIE 15."**

(28)

INDENTURE, dated April 24th, 1852, between THE TIOGA RAILROAD COMPANY and THEODORE DEBON, ALFRED S. FRASER and WATTS SHERMAN, WITNESSETH:

Recites that the Tioga Railroad Company have authorized their President and Secretary to execute in the corporate name of said Company Two Hundred
 40 Two Hundred Bonds of Five Hundred Dollars each,

Exhibit Eric 13—(28).

bearing date the first day of May, 1852, payable on the first day of May, 1872, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of May and the first day of November in each year, which bonds are convertible into the stock of the said company at par at any period prior to the first day of May, 1869, of the effect following, that is to say :

(Then follows copy of bond.)

That the said President and Secretary to secure the payment of the said bonds with interest as aforesaid were also duly authorized to execute a mortgage to the party of the second part of the whole of the Railroad property from the coal beds at and near Blossburg to the northern boundary line of the State of Pennsylvania near Lawrenceville and all the corporate rights, tolls, franchises and privileges thereto belonging, together with lands, depots and depot grounds, locomotives, engines, cars and all other real and personal property which said Company has acquired or may hereafter acquire and the income thereof, and in pursuance of the powers, rights and privileges aforesaid and authority of said Company the President and Secretary in the corporate name of said Company have executed two hundred and fifty bonds of one thousand dollars each, numbered consecutively from 1 to 250, two hundred bonds of five hundred dollars each numbered from 1 to 2,500, payable to the party of the second part or bearer on the first day of May, 1872, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of May and the first day of November in each year :

Now, this indenture witnesseth that the said Tioga Railroad Company to secure the payment of the said bonds and interest and in consideration of the sum of one dollar paid by the party of the second part, have granted, bargained, sold, etc., unto the party of the second part and their successors the whole of the said Railroad (describing same as above) and the income

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Exhibit Erie 15—(28).

thereof in trust for the holders of the bonds hereby secured, provided, however, if the said party of the first part shall and do well and truly pay and discharge or cause to be paid and discharged at maturity all the aforesaid bonds and the interest thereon as aforesaid, without any fraud, default or delay, and without any deduction or defalcation, then and from thenceforth as well the said bonds as this Mortgage and the estate, property and rights hereby granted shall cease, determine and become void, and provided further that in case the said party of the first part shall fail to pay the principal or any part thereof or the interest on said bonds as the same may become due and payable when demanded, according to the tenor thereof, then after sixty days from such default upon the request of the holders of any such bonds it shall and may be lawful at the discretion of the party of the second part their successor or successors in the trust to enter into and upon and take possession of all or any part of said premises hereby granted and as the attorney in fact or agent of the said party of the first part by himself or agents or substitute or substitutes duly constituted have use and employ the same making from time to time all such repairs as they may deem necessary and receiving the tolls, rents, issues and profits of said Railroad and appurtenances and after defraying out of the same the counsel fees and other legal charges and expenses of the Railroad and machinery thereof and such repairs as aforesaid, apply the proceeds thereof to the payment of the principal and interest of all such bonds due and unpaid or the interest which may be due and unpaid.

The said party of the second part, at the request of the holders of any of the bonds due and unpaid, shall cause the said premises, or so much thereof as they may deem necessary, to be sold, at auction (giving method of publication and notice), and the proceeds of such sale, after deducting the costs and expenses

Exhibit Erie 15—(29).

thereof and the expenses of this trust, to be applied to the payment of the principal and interest due and unpaid on said bonds, and any balance or residue not required for that purpose shall be restored to the party of the first part; and the said party of the first part agrees to execute any further reasonable conveyance of the property hereby conveyed to the party of the second part.

10

The party of the second part shall only be liable and accountable for reasonable diligence in the management thereof; and the party of the second part shall be entitled to receive reasonable compensation.

In case of death, incapacity or resignation of the said party of the second part, the bondholders may apply to court to appoint a new trustee or trustees.

(Then follows testimonium clause.)

EXHIBIT "ERIE 15."

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(29)

MORTGAGE to secure \$2,280,000 FIRST MORTGAGE RENEWAL BONDS of the BUFFALO, NEW YORK AND ERIE RAILROAD COMPANY, dated June 1st, 1876.

Indenture dated June 1st, 1876, between Buffalo, New York and Erie Railroad Company, party of the first part, and John A. C. Gray, party of the second part.

WITNESSETH: Recites that the party of the first part is a corporation of the State of New York, and did on or about October 29th, 1857 make to George C. Satterlee, as Trustee, a certain indenture of mortgage, wherein it mortgaged its entire line of railroad, &c. to secure the payment on the first day of December, 1877, of the bonds therein mentioned, amounting in the aggregate to \$2,000,000; and that the party of the first part on October 29th, 1857 made and executed to John Gamson, as Trustee, a certain other indenture of mortgage, wherein it further mortgaged all

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Exhibit Erie 15—(29).

- said line of railroad, etc. to secure the payment on the first day of November, 1872, of bonds therein mentioned amounting to the aggregate sum of \$380,000; and the party of the first part desiring to secure an extension of its bonded debt under date of May 1st, 1874, did execute and deliver to William Butler Duncan and Charles F. Hunter, as Trustees, a new mortgage on all said line of railroad, etc., known as its consolidated mortgage to secure the bonds therein mentioned, known as its consolidated mortgage bonds, said bonds being of the denomination of \$1,000 each, and bearing even date with said mortgage, and did issue seventy-eight of said consolidated mortgage bonds in exchange for said party's first mortgage bonds of the nominal value of \$78,000, and did issue one hundred and twenty four of said consolidated mortgage bonds in exchange for said party's second mortgage bonds of the nominal value of \$124,000, and did thereupon determine to retire its said consolidated mortgage and the bonds issued as aforesaid, and did cancel all of said consolidated mortgage bonds, except the one hundred and two bonds issued as aforesaid; that the amount of indebtedness secured by said mortgages and actually outstanding is in the aggregate \$2,380,000, with interest payable semi-annually, at the rate of seven per centum per annum, on said first and second mortgage bonds, and at the rate of seven per centum per annum on said consolidated mortgage bonds.

That on the 27th of February, 1863, the party of the first part did make and execute and deliver a certain indenture of lease wherein it did lease and rent unto the Erie Railway Company, a corporation of the State of New York, and to its successors and assigns, for the term of four hundred and ninety nine years from the first day of May, 1863, the said entire line of railroad and the said lands, &c. theretofore acquired, with the appurtenances, and all tolls, profits

Exhibit Erie 15—(29).

and income from sub-letting or otherwise, which might be received for or from said demised premises and also so much of its franchises and privileges as might be necessary or are actually exercised in or about the operation of the said railroad, &c., at an annual rental of \$233,100.

And Whereas in and by said indenture of lease, it was also and further provided that the rights taken, and acquired thereunder by said Erie Railway Company should be subject to the mortgages existing at the date of said lease and securing the said indebtedness of \$2,380,000 and that the said party of the first part hereto might procure an extension of its bonded debt or any part thereof, secured by its trust mortgages, and might execute a new and further mortgage or mortgages for the securing of its bonds and coupons, to be used solely in taking up said original bonds and such mortgage or mortgages; and that the bonds secured by said new mortgage or mortgages should be entitled to and have preference, and that the rights of the said Erie Railway Company under said lease should be subject to the said new bonds and mortgages in respect to the same property and to the same extent that the aforesaid then existing mortgages had priority.

That for the purpose of taking up and retiring its outstanding first and second mortgage bonds and its outstanding consolidated mortgage bonds, and of satisfying the aforesaid mortgages, and of extending the payment of said mortgage debt, and for the purpose of borrowing money for that purpose, the said party of the first part resolved to issue its First Mortgage Renewal Bonds, bearing even date herewith, to the aggregate amount of \$2,380,000, and each for the sum of \$1,000, payable forty years after date, and bearing interest at seven per centum per annum, payable semi-annually on the first days of June and December, and in the form following:

Exhibit Erie 15—(29).

(Then follows form of bond, certificate of Secretary and certificate of registration.)

10 Now therefore this indenture witnesseth that the better to secure the payment of said bonds and the interest to accrue thereon after issue thereof, according to the true intent and meaning thereof, and in consideration of the premises and of the loan of said money and of the sum of one dollar to said party of
the first part in hand paid by said party of the second
part, at and before the receipt, ensealing and delivery
of these presents, the receipt whereof is herby confessed and acknowledged, hath granted, bargained, sold
conveyed, &c., unto the party of the second part, his
successors and assigns, in trust, &c. All the real and
personal property and franchises of every kind and
description now belonging to the said party of the
first part, or that may thereafter be acquired by the
same, and including among other all and singular—
20 (then follows description of property).

Together with all and singular the tenements, hereditaments and appurtenances, &c.

To have and to hold to the said party of the second part, his successors and assigns; in trust for the payment of the said sum of \$2,380,000 of bonds, and the interest thereon, and for the uses and purposes herein expressed, and not otherwise, and upon the following conditions, to wit:

30 Article First: The said party of the first part agrees that the 2,380 bonds secured by this indenture or the proceeds thereof shall be used solely to take up and satisfy and retire the hereinabove mentioned prior bonds heretofore issued.

Article Second. Until default shall be made in the payment of the principal or interest of the bonds, or any of them, or until default shall be made in respect to something herein contained and required to be done or kept by the party of the first part, the said party
40 of the first part shall possess, manage, operate and en-

Exhibit Erie 15—(29).

joy the said railroads with their equipments and appurtenances and all other of the premises and property, etc. herein described.

Article Third. In case default shall be made in the payment of any interest, or any coupons, or default shall be made in the performance of any other thing by these presents required to be done, and such default shall continue for a period of six months after written demand, then the principal sum of all the bonds hereby secured and all interest thereon accrued shall become due and payable. 10

Article Fourth. In case default shall continue as aforesaid, then it shall be lawful for the said Trustee, his agents or attorneys, to enter upon the railroads, premises and property hereby conveyed and to have, hold and use the same and conduct the business thereof, and as soon as possible sell and dispose of said railroads and all other premises and property, &c. (Then follows statement as to how said sale shall be advertised, &c. and how the proceeds shall be applied.) 20

Article Fifth. The party of the first part shall keep at the office of the Erie Railway Company a register to be designated "Registry of First Mortgage Renewal Bondholders."

Article Sixth. The party of the first part, its successors or assigns, will well and truly pay or cause to be paid to the holders of the bonds and coupons the sums of money therein mentioned. 30

Article Seventh. The word "trustee used in these presents shall be construed to mean the trustee for the time being, and to refer to said party of the second part. In case of default and continuance thereof it shall be the duty of the Trustee to exercise the power of entry hereby granted. The Trustee shall be entitled to just compensation.

Article Eighth. The party of the first part covenants that it is lawfully seized in fee simple of the 40

Exhibits Erie 16 and 17.

premises and property hereby conveyed, and that they are free and clear of all encumbrances, except the aforesaid mortgages.

Article Ninth. These presents and the conveyance hereby are made upon the express condition that the party of the first part shall pay, without default, to the holders of the bonds and coupons the principal sums and interest therein mentioned.

(Then follows testimonium clause and acknowledgments.)

EXHIBIT ERIE 16.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF WIDENING ESSEX STREET UNDER-GRADE CROSSING ACCORDING TO ORDER OF BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, NEW JERSEY.

942,400 lbs. steel	@ .04c	\$37,696.00
6,500 sq. ft. waterproofing	.30c	1,950.00
2 track falsework	\$1,800.00	3,600.00
Dismantling old bridges		2,000.00
2 driveway bridges, 2,280 sq. ft.	3.00	6,840.00
400 cu. yds. grading	.75	300.00
1,745 cu. yds. old masonry removed	3.50	6,107.00
1,280 cu. yds. concrete	7.50	9,600.00
2,000 cu. yds. foundation excavation	.75	1,500.00
84 cu. yds. stone backfilling	2.00	168.00
		<hr/>
		\$69,761.50
	+15%	10,464.23
		<hr/>
		\$80,225.73

EXHIBIT ERIE 17.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF RELOCATION OF MARKET STREET STATION AS ORDERED BY BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, NEW JERSEY.

Station		\$ 95,200.00
Waiting Shed		6,000.00
Pedestrian Subway		5,000.00
5,000 sq yds. paving	@ \$2.00	10,000.00
4,000 sq. ft. sidewalk	.12	480.00
		<hr/>
		\$116,680.00

*Exhibits Erie 18, 19 and 20.***EXHIBIT ERIE 18.**

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF NEW BUILDING FOR MORRIS AND COMPANY AND FULLER'S EXPRESS COMPANY, AS ORDERED BY THE BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, N. J.

Morris & Company	\$40,000.00
Fuller's Express Company	12,000.00

EXHIBIT ERIE 19.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER
NEW YORK

ESTIMATED COST OF RELOCATION AND REBUILDING OF RIVER STREET PASSENGER STATION AS ORDERED BY BOARD OF PUBLIC UTILITIES COMMISSION, STATE OF NEW JERSEY, IN CONNECTION WITH THE ELIMINATION OF GRADE CROSSINGS, PATERSON, NEW JERSEY.

Station	\$ 9,500.00
Pedestrian Subway	5,000.00
Waiting Shed	3,500.00
Stairways	500.00
Platform	2,000.00
Intertrack fence	600.00
	<hr/>
	\$21,100.00
+15%	3,165.00
	<hr/>
	\$24,265.00

EXHIBIT ERIE 20.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 23rd, 1915.

ESTIMATE OF COST OF PROPOSED ELIMINATION OF GRADE CROSSINGS AT CLAY AND STRAIGHT STREETS, PATERSON, BY COMBINING INTO ONE UNDERGRADE CROSSING. TRACK RAISED TO ELEVATION ORDERED BY BOARD OF PUBLIC UTILITY COMMISSIONERS, STATE OF NEW JERSEY.

False work, 5 tracks	@ \$1,800.00	\$ 5,400.00
380,000 lbs. bridge metal	.04	15,200.00
2,380 sq. ft. waterproofing on bridge	.30	714.00
130 cu. yds. stone backfilling	2.00	260.00
250 lin. ft. drain tile	.30	75.00
12,000 cu. yds. grading	.50	6,000.00
300 cu. yds. foundation excavation	.75	375.00
1,050 lin. ft. concrete	7.50	7,875.00

Exhibit Eric 20.

1,570 cu. yds. curb	\$.70	\$1,099.00
2,560 sq. yds. stone block pavement	3.20	8,192.00
19,200 sq. ft. cement sidewalk	.12	2,304.00
100 lin. ft. street Railway Track lowered	8.00	800.00
1,200 cu. yds. backfilling	.50	600.00
Drainage		3,000.00
Underpinning buildings		500.00
		<hr/>
	+15%	\$ 52,344.00
		<hr/>
		\$ 60,253.10
Land and Damages		45,000.00
		<hr/>
		\$105,253.10

NOTE:

Estimate of plan ordered by B. P. U. C	\$164,204.23
Estimate of Erie Railroad Plan	105,253.10

In favor of Railroad Plan	\$ 58,951.13
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NOTE: No track work included in estimate, as the track changes are the same on both plans.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 23rd, 1915.

ESTIMATED COST OF ELIMINATION OF GRADE CROSSING
AT STRAIGHT STREET AND CLAY STREET, PATERSON, N.
J. AS ORDERED BY THE BOARD OF PUBLIC UTILITY COM-
MISSION, STATE OF NEW JERSEY.

STRAIGHT STREET:

False work, 3 tracks	@ \$1,800.00	\$ 5,400.00
500,000 lbs. bridge metal	.4c	22,400.00
4,284 sq. ft. Waterproofing—bridge	.30	1,285.20
1,515 cu. yds. Concrete	7.50	11,362.50
700 cu. yds. foundation excavation	.75	525.00
138 cu. yds. stone backfilling	2.00	276.00
240 lin. ft. drain tile	.30	72.00

STREET WORK:

7,200 cu. yds. grading	.50	3,600.00
310 cu. yds. foundation	.75	232.50
463 cu. yds. concrete	7.50	3,472.50
1,980 lin. ft. curb	.70	1,386.00
3,445 sq. yds. granite block pavement	3.20	11,024.00
19,800 sq. ft. sidewalk	.12	2,376.00
380 lin. ft. handrail on wall	1.25	475.00
800 lin. ft. 6" gas pipe	.80	640.00
800 lin. ft. 6" gas pipe	.80	640.00
300 lin. ft. 18" sewer pipe	1.50	450.00
600 lin. ft. electric Railroad Track	5.00	3,000.00

+15%

Damages

TOTAL

\$68,616.70

10,292.51

\$78,909.21

14,500.00

\$93,409.21

Exhibit Erie 20.

BETWEEN STRAIGHT & CLAY STS. AND AT CLAY ST.:

417 cu. yds. foundation excavation	\$.75	\$ 312.75
1,088 cu. yds. concrete	7.50	8,160.00
152 cu. yds. stone backfilling	2.00	304.00
310 lin. ft. drain tile	.30	93.00
180 lin. ft. handrail on wall	1.25	225.00
False work, 3 tracks	1,800.00	5,400.00
906,500 lbs. bridge metal	.04	36,260.00
2,150 sq. ft. waterproofing—bridge	.30	945.00

STREET WORK, CLAY STREET:

4,800 cu. yds. grading	.50	2,400.00
183 cu. yds. foundation excavation	.75	137.25
205 cu. yds. concrete	7.50	1,537.50
205 lin. ft. railing on wall	1.25	256.25
865 lin. ft. curb	.70	605.50
2,340 sq. yds. stone block pavement	3.20	7,488.00
10,180 sq. ft. sidewalk	.12	1,245.60
400 lin. ft. 40" brick sewer	12.00	4,800.00
425 lin. ft. 15" sewer	1.25	531.25
425 lin. ft. 12" water pipe	1.00	425.00

+15%
\$51,126.10
7,668.92

Damages
\$58,795.02
12,000.00

TOTAL
\$70,795.02

STRAIGHT STREET
\$93,460.21

BETWEEN STRAIGHT & CLAY STS. & AT
CLAY ST.
70,795.02

\$164,204.23

NOTE: No track work included in estimate, as the track changes are the same as in Plan of Railroad Company combining Clay and Straight Streets into one undergrade crossing.

EXHIBIT ERIE 20 (Continued).

Map entitled "Erie R. R. New York Division.
Prop. Separation of Grades at Straight and Clay
Streets, Paterson, N. J. By Combining to Single
Undergrading. Sept. 20, 1915. Office of Assistant
Engineer."

*Exhibits Erie 21 and 22.***EXHIBIT ERIE 21.****ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER**

New York, September 28th, 1915.

ESTIMATED COST OF PROPOSED UNDERGRADE CROSS-
ING AT TAYLOR STREET, PATERSON, NEW JERSEY, AS
ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION,
STATE OF NEW JERSEY.

False work, 3 tracks	@ \$1,800.00	\$ 5,400.00
543,400 lbs. bridge metal	.04	21,736.00
4,360 sq. ft. waterproofing	.30	1,308.00
457 cu. yds. foundation excavation	.75	342.75
1,088 cu. yds. concrete	7.50	8,160.00
160 cu. yds. stone backing behind abut.	2.00	320.00
350 lin. ft. drain tile	.30	105.00
5,033 cu. yds. grading	.50	2,516.50
Underpinning buildings		1,000.00
60 lin. ft. handrail on wall	1.25	75.00
1,570 lin. ft. curb	.70	1,099.00
3,000 sq. yds. granite block pavement	3.20	9,600.00
15,700 sq. ft. sidewalk	.12	1,884.00
		<hr/> \$55,546.25
	+15%	8,331.95
		<hr/> 63,878.20
Damages		8,000.00
		<hr/> \$71,878.20

EXHIBIT ERIE 22.**ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER**

New York, September 28th, 1915.

ESTIMATED COST OF PROPOSED UNDERGRADE CROSS-
ING AT NEW MONTGOMERY STREET, PATERSON, NEW JER-
SEY, AS ORDERED BY THE BOARD OF PUBLIC UTILITY
COMMISSION OF NEW JERSEY.

False work, 2 tracks	@ \$1,800.00	\$ 3,600.00
420,000 lbs. bridge metal	.04	18,240.00
3,360 sq. ft. waterproofing	.30	1,008.00
955 cu. yds. concrete	7.50	7,162.50
320 cu. yds. foundation excavation	.75	240.00
110 cu. yds. stone backing	2.00	220.00
140 lin. ft. drain tile	.30	42.00
2,000 cu. yds. grading	.50	1,000.00
400 lin. ft. curb	.75	300.00
4,000 sq. ft. sidewalk	.12	480.00
670 sq. yds. stone block pavement	3.20	2,144.00
		<hr/> \$31,136.50
	+15%	5,015.47
		<hr/> \$36,151.97

Exhibits Erie 23 and 24.

EXHIBIT ERIE 23.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 28th, 1915.

ESTIMATED COST OF CHANGING UNDERGRADE CROSSINGS AT GOVERNOR STREET AND FULTON STREET, PATTERSON, NEW JERSEY, AS ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION, STATE OF NEW JERSEY.

GOVERNOR STREET:

False work, 2 tracks	@ \$1,800.00	\$ 3,600.00
400 cu. yds. old masonry removed	6.00	2,400.00
200 cu. yds. foundation excavation	.75	150.00
1,300 cu. yds. concrete	7.50	9,750.00
Raising present bridge		2,500.00
116,000 lbs. bridge metal new track	.4	4,472.00
2,520 sq. ft. waterproofing	.30	756.00
		<hr/> \$24,628.00
	+15%	3,694.20
		<hr/> \$28,322.20

FULTON STREET:

False work, 2 tracks	@ \$1,800	\$ 3,600.00
400 cu. yds. old masonry removed	6.00	2,400.00
600 cu. yds. foundation excavation	.75	450.00
1,100 cu. yds. concrete	7.50	8,250.00
Raising Present Bridge		2,500.00
114,000 lbs. bridge metal—new track	.04	4,560.00
2,310 sq. ft. waterproofing	.30	693.00
		<hr/> \$22,453.00
	+15%	3,367.95
		<hr/> \$25,820.95

EXHIBIT ERIE 24.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 28th, 1915.

MEMO: PRESENT VALUE OF WORK DESTROYED

ESSEX STREET:

300,000 lbs steel	@ .03 1/4	\$ 9,750.00
950 lin. ft. bridge floor	2.50	2,375.00
2,400 sq. ft. waterproofing	.40	960.00
1,200 cu. yds. masonry	8.50	14,450.00
		<hr/> \$27,535.00

GOVERNOR STREET:

500 cu. yds. masonry	8.50	4,250.00
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FULTON STREET:

400 cu. yds. masonry	8.50	3,400.00
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Exhibit Erie 25.

EXHIBIT ERIE 25.

**ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER**

ESTIMATED COST OF ELIMINATION OF GRADE CROSSINGS AT STRAIGHT STREET, CLAY STREET AND CEDAR STREET, PATERSON, N. J. STRAIGHT STREET AND CLAY STREET COMBINED, TRACK RAISED FOUR FEET AND UNDER GRADE CROSSING AT CEDAR STREET, TRACK RAISED ABOUT 15 FEET.

UNDERGRADE CROSSING, STRAIGHT STREET AND CLAY STREET, COMBINED:

17,200 cu. yds. grading—excavation	@ \$.50	\$ 8,600.00
300 " " concrete mono. abuts. piers	7.50	2,250.00
3 tracks, false work	1,000.00	3,000.00
370 cu. yds. foundation excavation	.75	277.50
150 cu. yds. backfill—stone	2.00	300.00
495,000 lbs. bridge steel	.04	19,800.00
120 bridge ties	1.25	150.00
3,000 sq. ft. waterproofing on bridge	.30	900.00
180 lin. ft. tile drain back abutments	.20	36.00
250 cu. yds. stone ballast on bridge	1.00	250.00
600 lin. ft. 18" V. T. sewer	3.00	1,800.00
9 receivers	45.00	405.00
4 manholes	50.00	200.00
3,700 sq. yds. paving	3.50	12,950.00
1,500 lin. ft. curb	.70	1,050.00
Underpinning buildings and rearranging		7,000.00
21,300 sq. ft. sidewalks	.12	2,556.00
150 lin. ft. trolley tracks lowered	8.00	1,200.00

\$46,075.50

Engineering & Contingencies 15%

69,205.92

\$74,245.42

Land and damages

50,000.00

\$124,245.42

UNDERGRADE CROSSING, CEDAR STREET:

17,000 cu. yds. grading—excavation	\$.50	\$ 8,500.00
3,400 " " concrete mono. abuts. walls, steps	7.50	25,500.00
3 tracks—false work	1,000.00	3,000.00
1,730 cu. yds. foundation excavation	.75	1,297.50
370 " " backfill—stone	2.00	740.00
703,500 lbs. bridge steel	.04	28,140.00
200 bridge ties	1.25	250.00
3,000 sq. ft. waterproofing on bridge	.30	900.00
270 cu. yds. stone ballast on bridge	1.00	270.00
850 lin. ft. 12" V. T. sewer	45.00	38,250.00
4 Receivers	50.00	200.00
7 Manholes	5.00	35.00
1,040 sq. yds. paving	.32	332.80
2,500 sq. ft. sidewalks	.70	1,750.00
450 lin. ft. curb		315.00
270 lin. ft. railing on wall	1.25	337.50

Exhibit Erie 26.

Bridge over roadway to train tracks	\$ 2.000.00	\$ 2.000.00
220 lin. ft. moving sewer	\$ 2.00	400.00
		<hr/> \$103,706.50
Engineering & Contingencies 15%		15,555.48
		<hr/> \$119,261.98
Damages		12,000.00
		<hr/> \$131,261.98

TRACK WORK:

14,000 cu. yds. fill (bottom)	.50	7,000.00
24,200 lin. ft. track raised and surfaced	.10	2,420.00
2,700 cu. yds. rock ballast	1.00	2,700.00
2,200 " " gravel ballast	.20	440.00
1,000 main track ties	.60	600.00
200 side track ties	.75	150.00
64 cu. yds. concrete in retaining wall	7.50	480.00
600 cu. yds. foundation excavation	1.00	600.00
1 taking up & relaying No. 8 turnouts	40.00	40.00
1 sets No. 8 switch timber	61.00	61.00
200 lin. ft. track thrown	.10	20.00
50 ft. rock fill back of ret. wall	2.00	100.00
20 bags spikes	2.00	40.00
		<hr/> \$20,854.00
Engineering & Contingencies 12%		2,522.10
		<hr/> \$23,376.10
		<hr/> \$292,598.10

NOTE: The plan covers elimination in Section "C," under order of Board of Public Utility Commission of New Jersey.
 Section "C" as ordered by B. P. U. C. \$652,979.70
 Railroad Company's plan 292,598.10

Saving in favor of Railroad Plan \$360,381.60

EXHIBIT ERIE 25 (Continued).

Map entitled "Erie R. R. New York Division. Proposed Separation of Grades at Straight, Clay and Cedar Streets, Paterson, N. J. Sept. 27, 1915. Office of Assistant Engineer."

EXHIBIT ERIE 26.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

MEMO: VALUE OF SIDINGS DESTROYED

Pennac Steel Company,	No. 3	\$1,000.00
R. H. McDonald,	No. 4	920.00
Paterson Vehicle Company,	No. 19	375.00
Paterson Beef Company,	No. 20	375.00
David S. Rodges,	No. 24	200.00

Exhibits Erie 27 and 28.

EXHIBIT ERIE 27.

Blue print of plan of Board of Public Utility Commissioners, with notations thereon in red by Mr. Brameld.

EXHIBIT ERIE 28.

ERIE RAILROAD COMPANY
OFFICE OF ASSISTANT ENGINEER

New York, September 23rd, 1915.

ESTIMATED COST OF CHANGES TO MAINTAIN SWITCHING FACILITIES ON AND OFF THE PROPERTY OF THE ERIE RAILROAD COMPANY, AS ORDERED BY THE BOARD OF PUBLIC UTILITY COMMISSION OF THE STATE OF NEW JERSEY IN CONNECTION WITH THE ELIMINATION GRADE CROSSINGS, PATERSON, N. J.

		On RR. Co.'s Property	Off RR. Co.'s Property	Total
72 (b)				
G. A. Zabriskie,	No. 5	\$ 1,938.20		\$ 1,938.20
Commercial Lumber & Mill Works Co.,	No. 6	1,364.22	\$ 250.00	1,934.22
Christopher Kelley,	No. 7	1,850.00		1,850.00
M. Gobel,	No. 8	1,729.00		1,729.00
National Wood Co.,	No. 9	1,458.91		1,458.91
Standard Oil Co.,	No. 10	7,275.16	56.42	7,331.58
72 (c)				
John Agnew,	No. 11	6,919.25	10,101.25	17,020.50
72 (d)				
McNab & Harlin,	No. 15			
Graham Brewing Co.,	No. 16			
National Biscuit Co.,	No. 17	515.07	4,921.38	5,436.45
Hygienic Ice Co.,	No. 47			
Paterson Consolidated Ice Co.,	No. 50			
Bon Arbet Chemical Co.,	No. 55			
72 (e)				
Morris & Co.,	No. 19	60,023.58		60,023.58
Fullers Express Co.,	No. 60	13,172.41		13,172.41
72 (f)				
Herrman Co.,	No. 22	4,720.88	8,045.09	12,765.97
Sulzberger & Sons' Co.,	No. 30	61.55	6,473.15	6,534.70
72 (g)				
Armour & Co.,	No. 25	20,650.00		20,650.00
72 (h)				
Hinchliffe Brewery Co.,	No. 36	414.50	2,200.00	2,614.50
72 (i)				
Katz Brewery Co.,	No. 37	10,000.00		10,000.00

Exhibit Erie 28.

		On RR. Co.'s	Off RR. Co.'s	Total	
		Property	Property		
72 (j)					
P. S. Van Kirk Co.,	No. 28	\$6,354.99	\$ 414.00	\$ 6,768.99	
Diamond Coal Co.,	No. 33	6,833.39	1,352.40	8,185.79	
Oliver Oil Soap Co.,	No. 61	6,354.99	414.00	6,768.99	
72 (k)					
A. H. Smith,	No. 29	1,750.96	28.57	2,057.53	
72 (l)					
Meyer & De Vogel,	No. 30	2,604.77	600.00	2,604.77	10
72 (m)					
Armstrong Sams' Co.,	No. 31	8,883.75		8,883.75	
72 (n)					
G. H. Smith,	No. 32	42.32		42.32	
D. Fullerton & Co.,	No. 33	78.19	8,622.00	8,700.19	
72 (o)					
Atherton Grain Co.,	No. 34	3,684.87	8,000.00	11,684.87	
J. A. Lydecker,	No. 35	3,800.44	7,000.00	10,800.44	
72 (p)					
Public Service Gas Co.,	No. 36	30.47	3,574.68	3,605.15	
72 (q)					
J. Van Der Hendel,	No. 37				
Swift & Company,	No. 38	50.02		50.02	20
H. M. Post,	No. 39	267.50		267.50	
Ashley & Bailey,	No. 40	11.50		11.50	
National Silk Dyeing Co.,	No. 41	24.15	166.75	190.90	
Grasselli Chemical Co.,	No. 42	54.63	166.75	221.38	
Anger & Simon Company,	No. 49	40.25	109.25	149.50	
Center Paper Box Co.,	No. 56	31.51	40.25	71.76	
Wahle Silk Ribbon Co.,	No. 57	31.51	40.25	71.76	
		\$165,547.63	\$83,846.29	\$249,393.92	

TRANSCRIPT OF RECORD.

Supreme Court of the United States

OCTOBER TERM, 1920

Nov 10 1920 88-59

PLAINTIFFS IN ERROR

ERIE RAILROAD COMPANY
(Cases 1 and 2)

PUBLIC SERVICE RAILWAY COMPANY
PASSAIC WATER COMPANY
WESTERN UNION TELEGRAPH COMPANY
D. FULLERTON & COMPANY
JACOB MEYER, et al., PARTNERS, &c.
MORRIS & COMPANY

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
CITY OF PATERSON, AND BOARD OF FINANCE
OF SAID CITY.

vs.

SAME

vs.

SAME

vs.

SAME

vs.

SAME

vs.

SAME

vs.

SAME

In Error to the Court of Errors and Appeals of the
State of New Jersey.

VOLUME FIVE.

Opinions of Supreme Court and Appeal papers
therein. Opinion in New Jersey Court of Errors
and Appeals and Judgments therein. Papers on
Orders of the United States Supreme Court.

ERROR TO

(Pages 2257 to 2530.)

Filed APR 23 1918

(Number)

COLLINS & CORBIN,

Attorneys of Erie Railroad Company and Western
Union Telegraph Company.

FRANK BERGEN,

Attorney of Public Service Railway Company.

HUMPHREYS & SUMNER,

Attorneys of Passaic Water Company.

HUDSON & JOELSON,

Attorneys of D. Fullerton & Co.

WILLIAM B. GOURLEY,

Attorney of Jacob Meyer, et al., Partners, &c., and
Morris & Co.

L. EDWARD HERRMANN,

Attorney of Board of Public Utility Commissioners.

FRANK H. SOMMER,

Of Counsel.

FRANCIS SCOTT,

Attorney of City of Paterson and Board of Finance
of said City.

WILLIAM I. LEWIS

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Opinion of Supreme Court.

Filed June 23, 1916.

New Jersey Supreme Court.

November Term, 1915.

10

ERIE RAILROAD COMPANY,	}
<i>Prosecutor,</i>	
<i>vs.</i>	
BOARD OF PUBLIC UTILITY COM-	
MISSIONERS AND CITY OF PATER-	}
SON,	
<i>Defendants.</i>	

Argued December 23 and 24, 1915.
Decided June 23, 1916.

20

SYLLABUS.

1. The act of 1913, P. L. 1913, p. 91, known as the Fielder Grade Crossing Act, is not confined in its operation, to a single crossing, but in a proper case may include one or more crossings in the same petition.

2. The Supreme Court, upon *certiorari* under section 38 of the act of 1911, page 374, can review the action of the Board of Public Utility Commissioners, in ordering an alteration of the grade of a highway with a steam railroad, for the purpose of ascertaining whether or not such order is purely arbitrary; whether or not it has a reasonable basis to rest upon; whether or not it is supported to any extent by the facts submitted to the Board for its consideration.

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3. The evidence in the record is sufficient to support the findings of the Board, that such crossings

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are dangerous to public safety or the public travel is impeded, being the jurisdictional facts.

4. Where, upon the review of such an order, can additional testimony be taken under the provisions of the *certiorari* act?

10 5. The word "impede" in this statute means to place obstructions in the way of; obstruct; hinder; as, to impede progress. It is synonymous with check, hinder, delay.

6. The Erie Railroad Company, as the lessees of the Paterson and Hudson River Railroad Co. and the Paterson and Ramapo R. R. Co. is "the company operating such railroad" within the meaning of the statute. The order of the Board of Public Utility Commissioners was properly directed against the prosecutor, the Erie Railroad Company.
20 The dangerous conditions, to the elimination of which the act is directed, are the result of the operation of the railroad by the Erie R. R. Co.

7. The statute provides, the Board of Public Utility Commissioners "may" order the company operating, etc., to alter the crossing. As to the prosecutor, the statute is mandatory. The prosecutor is not concerned with what might happen to some one else. When in a statute the word "may" means must or shall.

30 8. Where the work is in itself a reasonable, proper and fair exaction, when considered with reference to the object to be obtained, the expense is not a reason against its legality, when the order for such work is based upon, and made in an exercise of the police power, which is a part of the reserved power of the state.

9. The Fielder Act (Chap. 57, P. L. 1913, p. 91) authorizes the Public Utility Board, in a proper case, to order a railroad company to alter grade crossings according to plans to be approved by the
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board, by substituting therefor crossings not at grade, either by carrying the highway under or over the railroad, or by constructing the railroad under or over the highway, or by vacating, relocating or changing the lines, width, direction or location of the highway and the opening of a new highway in the place of the one vacated, and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings. 10

10. An order of the Public Utility Board made pursuant to the Fielder Act (Chap. 57, P. L. 1913, p. 91) which is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad, and by performing such work as is required thereby, does not require the company to make changes in private sidings, and the like, nor its property, and not within the limits of the right of way. 20

11. Where an order of the Public Utility Board for the elimination of grade crossings under the Fielder Act (Chap. 57, P. L. 1913, p. 91) is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by reconstructing the railroad and by performing such work as is required thereby, a change in the location of a station building not fairly incidental to, nor rendered necessary by, the changing of the highways or the reconstruction of the railroad, is not required by such order. 30

12. An order of the Public Utility Board for the elimination of grade crossings under the Fielder Act (Chap. 57, P. L. 1913, p. 91) which is confined in its direction to the railroad company to the alteration of the crossings by changing the highways and by 40

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reconstructing the railroad and by performing such work as is required thereby, does not require the construction by the railroad company of structures upon its lands for the use of private parties in substitution for structures now occupied by them as lessees, and which will be rendered useless by the elimination work.

10 13. Where the order of the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) for the elimination of grade crossings directs the street railway company to pay ten per centum of the expense of the changes required by the order directly chargeable to the crossings used by it, that being the maximum amount allowed by the statute, the steam railroad company cannot complain that the street railway company was not ordered to pay more.

20 14. An order made by the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) requiring the railroad company to make changes in the existing and remaining streets in respect to grade, width and structure, and to make other changes by the abolition of existing crossings and the substitution of other crossings therefor on new highways, is not invalid by reason of such requirements, it appearing that such changes are all fairly incidental to, and were rendered necessary by, the separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroad.

30 15. Section 13 of the General Railroad Act as amended by P. L. 1914, p. 490, confers upon a railroad company power to take by condemnation any land or property required for the purpose of complying with an order made by the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) and the owners of property to be taken have

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no right to be made parties to, or to demand a hearing in, the proceedings under the Fielder Act.

16. The provisions of the Fielder Act (Chap. 57, P. L. 1913, p. 91) are applicable alike to highways existing at the time of the construction of the railroad and to highways subsequently laid out.

17. An order made by the Public Utility Board under the Fielder Act (Chapter 57, P. L. 1913, p. 91) requiring the railroad company to make changes in the highways outside of its right of way at its own expense, is valid in respect to such requirement, it appearing that such changes are fairly incidental to the changes ordered in the crossings at the railroad. 10

18. The Supreme Court, upon review by *certiorari* of an order of the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) will not disturb the action of the board in adopting plans of its own, rather than those suggested by the railroad company unless such action was unreasonable, or based upon some illegal principle, or lacks evidential support. 20

19. The fact that an order made by the Public Utility Board under the Fielder Act (Chap. 57, P. L. 1913, p. 91) makes no provision for such modification of the details of the plans as may become necessary during the progress of the work, is no reason for setting aside the order. There is a reasonable presumption in favor of the plans adopted and the board may at any time, for good reason, properly modify its order. 30

20. Statutory requirements enacted by the legislature for public safety under the police power of the state are not a taking of private property for public use without just compensation, although conformity to such requirements involves expense.

21. Railroad corporations may in the exercise of the police power by the legislature be required at 40

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their own expense not only to abolish grade crossings that existed when the railroad was constructed, but also to carry their tracks over highways laid out since the construction of the railroad or to carry such highways over their tracks; and the expense of such permanent improvement of the railroad property may be imposed by the legislature upon the railroad corporation operating such railroad without violating any constitutional provision.

22. A statutory requirement for the abolition of grade crossings is neither unconstitutional or unreasonable because it does not affirmatively authorize the railroad company to lessen or eliminate the danger at such crossing by decreasing the number of its train movements.

23. The object of a law must, by force of the constitution, be single and be expressed in its title; but the methods of attaining such object and the matters relating thereto, which may be as various as such object requires, need be expressed in the terms of the enactment only.

24. Any contract that a railroad corporation is empowered by the state to enter into is made subject to the future exercise by the state of its police power, and hence, the obligations of such contracts are not in a constitutional sense impaired by such future legislation.

25. A state statute requiring the elimination of dangerous grade crossings is an exercise of the police power that is within the scope of the local law, and is not an interference with interstate commerce in the present state of federal legislation upon that subject.

26. The supplement to "An Act concerning public utilities," approved March 12, 1913 (Fielder Act) is not an invasion of the exclusive jurisdiction

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of the Court of Chancery to regulate conflicting public easements.

27. The Fielder Act does not impair the mandamus power of the Supreme Court.

ON CERTIORARI, &c.

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There are two writs of *certiorari* in this case. The first was allowed on June 16, 1915, for the purpose of reviewing an order of the Board of Public Utility Commissioners, dated April 20, 1915. The second writ was allowed on July 22, 1915, for the purpose of reviewing an order of the said Board dated July 9, 1915, denying the petition for a rehearing of the previous order. The order under review was made, by virtue of the alleged power and authority vested in the said Board by the statute P. L. 1913, p. 91, known as the Fielder Grade Crossing Act, which is a supplement to the act creating a Board of Public Utility Commissioners and prescribing its duties and powers. The record of both writs, with the writs allowed seven other prosecutors, for convenience, have been included in the record of the proceedings under the first writ allowed. The prosecutor, the Erie Railroad Company, is ordered to alter fifteen grade crossings in the City of Paterson, by changing the grade of the streets and reconstructing the steam railroad according to the plan and profile annexed thereto; by substituting therefor, crossings not at the grade of the public highways known as Madison avenue, Straight street, Clay street, Market street, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Franklin street, Keen street, Warren street, Putnam street and River street. The order further directs any telegraph, telephone company, etc., whose property or construction it may be

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- necessary to change or remove in order to carry said plan and order into effect, to change or remove the same according to said plan. The Erie Railroad Company, the City of Paterson and all other parties are ordered to proceed with due diligence, to the execution of the order and comply with all the requirements thereof. It was ordered that the work shall be begun on or before August 1st, 1916, and be completed within eight years from April 20th, 1915; that it be prosecuted in accordance with a single plan, but in four separate divisions, marked A, B, C, and D. Section A provides for the elimination of the crossings at Market street, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street and Franklin street. Section B provides for the elimination of the crossings at Keen street, Warren street and River street. Section C provides for the elimination of the crossings at Straight street and Clay street. Section D provides for the elimination of the crossings at Madison avenue, according to a plan submitted by the Erie Railroad Company, known as Exhibit R. 105, at an estimated cost of \$192,133.92 less than the plan prepared by the city and which carries Madison avenue over the tracks of the railroad. River street and Madison avenue are at the two extreme points. Measured along the railroad, the distance is about 10,800 feet or substantially two miles. Market street, in Section A, is practically in the center of the City of Paterson, and is the most traveled of all the streets mentioned in the order. From Market street to Madison avenue, at the southerly end of the work, is about six thousand feet, and to River street, at the other or northern end, it is about four thousand eight hundred feet. From Market to Clay and Straight streets in Section C, it is about three thousand feet. From
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Market street to Ellison street in the same section, it is six hundred feet, to Van Houten street, three hundred and fifty feet further on, to Broadway, three hundred feet more, Fair street, two hundred and fifty feet and Hamilton avenue, two hundred and fifty feet, all in the same section, and from Market street to Keen street in Section B about four thousand feet and to River street about four thousand eight hundred feet, the most northerly end of the work, thus considering all the crossings mentioned in the petition in one comprehensive plan or scheme.

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The order states the time in which each section is to be completed, commencing with Section A, in which Market street is included. The Public Service Railway Company, operating trolley lines over three of the crossings, viz: Park avenue and Market street, one crossing, Broadway, and River street, is charged with ten per centum of the cost of the alterations, including damages to adjacent property, directly chargeable to the alteration of those crossings used by the trolley company.

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The statute provides, the Board may order the company operating the railroad to alter the crossing, and the entire expenses of such alterations, including damages to adjacent property, shall be paid by such railroad, unless a street railway uses such crossing, in which event, an amount of such cost, not exceeding ten per centum of such expenses directly chargeable to the crossing used by the street railway company, is to be paid by such company. The estimated cost of the alteration of the crossings is \$2,948,218, for what is called Plan No. 2, the one adopted by the Board. This does not include damage to adjacent property. The amount of such damage due to changing grades of streets, estimated at \$168,500; the

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amount due to revision of buildings and sidings off the railroad right of way, estimated at \$131,922.

The jurisdiction of the Board is derived from the provisions of the statute, which provides that "whenever a public highway and a railroad cross
10 each other at the same level and it shall appear to the Board that such crossing is dangerous to public safety or that public travel on such highway is impeded thereby, the Board of Public Utility Commissioners may order the company operating such railroad" to alter such crossing according to plans to be approved by said Board. The order was based upon proceedings initiated by the Board of Finance of the City of Paterson, being the board directed in the statute, to file a petition in writing for that purpose, in
20 which the facts are stated, upon which the relief under the act is sought. In the petition, it is recited, that the Erie Railroad Company operates said railroad by virtue of a lease from two separate railroad companies, viz: The Paterson and Hudson River Railroad Company and The Paterson and Ramapo Railroad Company. Certain facts relating to each of the fifteen crossings are alleged, and prays, that the said railroad should be elevated to pass over said highways. A time and place were fixed for hearings,
30 notice of which was given to the corporations therein named. Answers were filed. Testimony was taken before the Board commencing on the seventeenth day of October, 1912, and lasting until February 5th, 1915, eighteen hearings in all.

From the testimony it appeared, that some of the streets mentioned in the petition were laid out after the railroad was built. The charters of the lessor companies, P. L. 1831, p. 24, sec. 9; P. L. 1841, p. 97, sec. 11, provide and impose a duty upon the said rail-
40 roads to construct and keep in repair good and suffi-

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cient bridges or passages over and under said railroads or roads, where every public or other road shall cross the same, so that the passage of carriages, horses and cattle on said road shall not be "prevented" thereby.

The findings of the Board were made in a report dated January 11, 1915, which recites the facts on which the order was made, dated April 20, 1915. The Board found and determined the crossing of each of the streets involved in the proceeding to be dangerous to public safety and that public travel on such highways is impeded thereby. The Board also found that the consideration of the entire subject is simplified by the acquiescence of all parties to the proceeding, and that all the crossings mentioned in the petition must be considered in any plan of elimination. It was not questioned but that a general plan for the separation of grades at the crossings was practicable. There was a difference of opinion between the engineers, as to details but the chief objection raised was to the expense. 10 20

Then on February 5, 1915, a petition for a further hearing was filed by the Erie Railroad Company, and on April 20, 1915, the same date as the order, a report by the Board was made denying a further hearing, in which it is stated, as to the reduction of train movements, that the company was afforded every opportunity to furnish such proof, if it had any, and did not avail itself of such opportunity; in addition, the offer on this score was so indefinite, that it did not appear reasonable to delay the proceedings for that purpose. Then writs of *certiorari* were obtained by the Erie Railroad Company, Public Service Railway Company, Passaic Water Company, Western Union Telegraph Company, D. Fullerton & 30 40

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Co., Meyer & De Vogel, Fuller's Express Company, and Morris & Company.

- On June 15, 1915, a petition for a rehearing was filed by the Erie Railroad Company, and testimony thereunder was taken June 28, 1915, by the Board.
- 10 On July 9, 1915, a report was made by the Board, denying the application for a rehearing. On July 22, 1915, a *certiorari* was obtained by the Erie Railroad Company to review this report, determination, or order, and on the 27th of September, 1915, an order was obtained from a Justice of the Supreme Court, granting leave to take affidavits on two days' notice. Such affidavits or depositions were taken on the part of the Erie Railroad Company, before a Supreme Court Examiner on September 30, 1915. Many reasons have been filed by each of the prosecutors, why
- 20 the order of April 20, 1915, should not be set aside. The reasons of all the prosecutors are substantially included within the seventy-eight reasons filed by the Erie Railroad Company and their amendments, except when the facts specially apply to a particular prosecutor. Under the *certiorari* obtained by the Erie Railroad Company to review the order denying a rehearing, the Erie Railroad Company has filed six separate reasons, why that order should be set aside.
- 30 Under Section 38 of the Public Utility Act of 1911, page 374, the Supreme Court is given jurisdiction by petition to review the order of the Board and to set aside such order when it clearly appears that there was no evidence before the Board to support reasonably such order, or that the same was without the jurisdiction of the Board, or the order of the Board may be reviewed by *certiorari* in appropriate cases.

All the points made by the counsel for the prosecutor are covered in the opinion of the Court. To facilitate reference thereto, the numbering employed

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by the counsel for the prosecutor, the Erie Railroad Company, will be adopted in the opinion and adhered to throughout.

The writs of *certiorari* other than those prosecuted by the Erie Railroad Company will be disposed of in separate memoranda or opinions.

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Before Justices Garrison, Trenchard and Black.

Gilbert Collins, Esq., George S. Hobart, Esq., Duane E. Minard, Esq., and Herbert A. Taylor, Esq. (of the New York Bar), for the Prosecutor.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward F. Merrey, Esq., for City of Paterson and Board of Finance of said city.

The opinion of the Court was delivered as follows:

I. The first ground of attack made by the prosecutor, the Erie Railroad Company, is on the construction of the statute. It is contended, that the words, "such crossing," "a crossing," "the crossing," in the statute, indicate, that it was the intention of the legislature to have only one crossing considered in any one proceeding. The petition of the City of Paterson prays for, and the order of the Board of Public Utility Commissioners provides for, the separation or alteration of fifteen separate crossings. The Board in its report determined, that, at each of the crossings involved, a condition exists, such as was designed to be remedied by the statute. The question then arises, as to whether it is practicable and feasible to alter such crossings.

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The Board further found, that the entire subject is simplified by the acquiescence of all parties, to the proceedings, that all of the crossings mentioned in the petition must be considered in any plan of elimination. There was no intimation from anyone, that a change of a particular crossing only, should be con-

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sidered. It was not questioned, but that, a general plan for the alteration of grades at the crossings was practicable. The question then is: what was the legislative intent? The Board having found the jurisdictional facts, which will be considered hereafter, does the statute limit the Board, to the alteration of a single crossing in a separate proceeding, or can two or more crossings, or a group of crossings, that are dangerous to public safety, or that impede public travel on such highways, and which are connected or related to one another, so that an alteration in the one necessarily makes an alteration in the other, be considered by the Board under the statute, in a single proceeding, and a single plan be made for their alteration? It may be observed, in the first place, the statute does not expressly or inferentially prohibit such a proceeding, and second, if a restricted construction be placed upon the statute, the effect will be, as shown by this record, to leave those crossings in the cities of the state where the greatest use is made of the highways, at the railroad crossings, and presumptively, where the greatest danger is, intact and not subject to alteration. No substantial reason is stated for limiting the construction of the statute, to a single crossing, in a separate proceeding, excluding a group of crossings, where the record shows, that much of the testimony applicable to one, is applicable to all. The plan of alteration applicable to one as a practical and engineering problem, is so intimately connected with all, that it involves all the crossings, except, perhaps, Madison avenue in Section D, which will be considered hereafter. The record discloses no valid reason for so construing and limiting the operation of the statute. True, we are not concerned with the reasonableness or unreasonableness of the statute. Our duty is to find the inten-

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tion expressed by the legislature and to give it effect. If a separate plan of alteration on each crossing and a separate proceeding is requisite, it would make it wholly impossible to alter any of the crossings, from a practical point of view, since, the alteration of the several crossings must, as is conceded, proceed under a general plan. Such a purpose should not be attributable to the legislature, when the statute will reasonably admit of a different construction. In determining the meaning of a statute, the courts will keep in mind the circumstances surrounding its enactment and the objects, sought to be obtained by the statute. *Alton &c. R. R. Co. vs. Vandalia & C. R. R. Co.*, 268 Ill., 75; *Warner vs. King*, 267 *ib.*, 85. This being a remedial statute, it should receive a liberal, rather than a narrow construction. As was said, by Mr. Justice Dixon, speaking for the Court of Errors and Appeals, in reference to the first grade crossing statute, passed by the legislature, P. L. 1874, p. 45; "The avowed object of these statutes is highly beneficent, and therefore, its provisions tending towards the accomplishment of that object should be liberally construed." *Read vs. City of Camden*, 54 N. J. L., 373. Subsequently this language was cited with approval, by that Court, in the case of *Morris Dredging Co. vs. Jersey City*, 64 N. J. L., 590.

The prosecutor does not point out, or even attempt to show, how or in what way, fifteen separate petitions, with fifteen separate hearings, would be more advantageous to it, but on the contrary, rather acquiesces in the idea, that all the crossings mentioned in the petition must be considered in one plan of alteration, if alteration is to be made at all, and that, a general plan of the alteration of the grade at the several crossings is practical, as an engineering proposition.

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Mr. Brameld, the engineer of the prosecutor, the Erie Railroad Company, at page 509 of the record, testified, "there are various changes which I think will have to be made." At page 526, "Of course, I haven't worked up the detailed solution of every one of them, but from my general knowledge of the situation, I think they could be taken care of"; *i. e.*, the details. The testimony further shows, that Section D provides for the elimination of the crossing at Madison avenue, according to a plan submitted by the prosecutor, the Erie Railroad Company, known as Exhibit R-105, which is an estimated cost of \$192,133.92 less than the plan prepared by the etiy, and which carries Madison avenue over the tracks of the railroad, instead of under the tracks. We think the construction of the statute cannot be limited to a single crossing in a separate proceeding, but in a proper case, where the jurisdictional facts appear, several crossings may be considered in one proceeding, when so related to one another, that the consideration of the one, necessarily involves the consideration of the other, as a practical engineering problem.

The next ground of attack is that the evidence taken before the Board of Public Utility Commissioners does not justify, nor reasonably support the Board's conclusions or findings. To that end, the insistence is, that this Court has power and should review the Board's findings of fact. We understand such to be the power of this Court. The rule on this point is stated thus, by Chief Justice Gummere, speaking for the Court of Errors and Appeals, in the case of *West Jersey &c. R. R. Co. vs. Board of Public Utility Commissioners*, 88 N. J. L., 94 Atl., 60, "That Court (*i. e.*, the Supreme Court) can, upon *certiorari*, or under the statutory procedure provided by section 38 of the act 1911, p. 374, review such ac-

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tion for the purpose of ascertaining whether or not it is purely arbitrary, whether or not it has a reasonable basis to rest upon, whether or not, it is supported to any extent by the facts submitted to the Board for its consideration; and, if it shall be made to appear to the Court that such action is purely arbitrary, or that it has no reasonable basis upon which to rest; or is unsupported by the facts laid before the Board, the Court may declare it null and void, and order it to be set aside. So, too, if the Board refuses to consider the matter at all, the Court by mandamus can compel it to do so." *Public Service Gas Co. vs. Board of Public Utility Commissioners*, 84 N. J. L., 463, N. J. L., 96 Atl., 127; *Erie R. R. Co vs. Board of Public Utility*, 83 N. J. L., 95 Atl., 177. 10

Our reading of the record shows that a mass of testimony was presented to the Board, particularly with reference to the various elements of danger and the impediments to travel, at all of the level crossings of the highways, such as a list of accidents, at some of the crossings; obstructions to the view of persons traveling along the highways in both directions; a series of photographs, made and produced by the railroad company, showing the obstructions to the view at each crossing; delays to travel in general; the fact that at the crossings where there are trolley tracks, every street car is stopped, near the railroad crossing, until the conductor goes over it on foot, and releases a derail switch; schedules made at different times, as to the number of persons, vehicles drawn by horses, automobiles, bicycles and trolley cars passing over such crossings, in a given period; testimony, that the crossings were protected by gates and automatic bells; the number of trains and drill locomotives passing over the crossings within a given time; operation of gates, etc., from which the Board 20 30 40

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found the facts in its report, that each of the crossings was dangerous to public safety, and we think after reading the evidence, the conclusion of the Board is supported by the facts that were before it. The question is one of fact, to be determined according to the circumstances of each case. *Mayor, &c. of Newark vs. Erie Railroad Co.*, 75 N. J. Eq., 29. This applies to both conditions called for in the statute, viz: that such crossings are dangerous to public safety, or the public travel on such highways is impeded. This, at the same time disposes of the prosecutor's contention that the evidence, as to one crossing cannot be extended to include other crossings, or that non-dangerous crossings cannot be ordered to be eliminated at the expense of the prosecutor, the Erie Railroad Company. This also was considered under Point I.

In this connection, may be considered point 22 of the brief of the prosecutor, the Erie Railroad Company. It is there urged, that the prosecutor had the right to take additional testimony under the provisions of the *certiorari* act. Such testimony was taken before a Supreme Court examiner and returned with the record, but as the prosecutor says, to use the words of the brief, the point is perhaps of comparatively small importance in the present case, for the reason, that the affidavits and exhibits served but to explain the evidence and exhibits that were already in evidence. This renders it unnecessary to further consider this point. See *Dubelheiss vs. Town of West Hoboken*, 82 N. J. L., 683.

But it is further urged that the word "impede" has a well recognized meaning, having been used in many of the earlier charters of the railroad companies. The argument is that the obvious purpose of those statutes was to make the surface of the railroad ties and

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rails conform to the surface of the highway, at a railroad crossing; that the rails and ties, as they passed the highway would impede travel, and if the railroad happened to be constructed in a cut or on an embankment, the impediment to travel would thereby be increased; that the word "impede" refers to permanent physical obstructions, due to the grade and construction of the railroad tracks, citing North Mannheim Twp., 14 Atl., 137, Sp. Court, Pa.; and that the highway crossings are to be so constructed and maintained, as not to unreasonably obstruct the use of the crossings by highway travelers. This is too narrow. The dictionary definition of the word "impede" is to place obstructions in the way of; obstruct, hinder, as to impede progress. It is synonymous with check, hinder, delay.

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The evidence in the record shows, the public travel is impeded, in this sense, at each of these crossings, and the Board so found. The word "prevent" is used in the early charters of the lessors of the prosecutor in place of the word "impede."

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It is quite evident, the rule, as to negligence and contributory negligence at grade crossings, as laid down by the courts, cannot be used as a guide in construing this statute, because in these cases, the statute requires the railroad company, only to ring a bell or blow a whistle, under normal conditions, on the approach of a train to a grade crossing, at a distance of nine hundred feet. Then, too, there is a well recognized distinction, between actions, where the interest of the general public at crossings is involved and those which assert the rights of individuals who are injured. *Palmgra vs. Pennsylvania Railroad Co.*, 62 N. J. Eq., 614.

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II. The next ground of attack is that the order, under the statute, should have been directed to the

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two original chartered railroad companies, construing the words of the statute, "the company operating such railroad" to mean, the company which is charged with the legal duty of operating, or at least, that the order should have been directed to the
 10 prosecutor and the said two companies jointly, so that, the expenses of altering the grades might be apportioned, among all the companies, in accordance with their several interests. The original companies are the Paterson and Hudson River R. R. Co., organized under P. L. 1831, p. 24, and the Paterson and Ramapo R. R. Co., organized under P. L. 1841, p. 97. They were leased, by two separate leases, each dated September 9th, 1852, to a company known as the
 20 "Union Railroad Company." These leases were declared legal and valid by the legislature, March 14, 1853; P. L. 1853, p. 480. This validating act speaks of the corporation or individuals *using* the aforesaid roads. By various assignments, fore-closure, proceedings and sales, the Erie Railroad Company, the present prosecutor, on November 14th, 1895, acquired title to all the property and rights of the two lessor companies. As stated above, the statute provides (section 1 of the act, P. L. 1913, p. 91), that,
 30 "the company operating such railroad" and the expense (section 2), "shall be paid by such railroad," "the balance to be paid by the company operating such railroad."

On behalf of the two original companies, it is insisted that they do not directly or indirectly institute, direct or control any of the operations upon these respective roads, nor is the duty of operating such roads charged upon them by law. The lease of the Paterson and Hudson River Railroad Company provides, "and that at the termination of the leases or
 40 either of them, any erections or improvements on the

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said above mentioned and demised property that may have been made by the parties of the second part, or their assigns, at their own expense, shall be paid for by the parties of the first part, at their appraised and just value." The lease of the Paterson and Ramapo Railroad Company has a like provision, but in different language. Both leases provide, that the erections and improvements shall be valued by arbitrators, and the party of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns. Both leases, however, provide that "the parties of the second part do hereby covenant and agree with the parties of the first part, that the said parties of the second part, and their assigns, will keep and maintain and run said railroad and other premises hereby demised, in such manner, order and condition, as the said parties of the first part are bound to keep, and maintain and run the same by the charter of the said parties of the first part, and the statutes supplementary thereto, and that they will indemnify and save harmless the said parties of the first part from all damages to which they may be subject by reason of said road and premises not being so kept, maintained and run." The prosecutor in paragraph three of its answer admits, that it operates a railroad running through the City of Paterson.

The legislature's intention on this point is not obscure. Apt and precise words are used to express that intention, and taken in connection with the provisions of the leases and the validating act of the legislature above referred to, the intention of the legislature cannot be misunderstood.

There is no reason, why the courts should not give to the words used by the legislature, their plain, natural meaning, viz., that power or instrument,

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which puts in action and supervises the workings of the plant, the Erie Railroad Company, as being "the company operating such railroad." The dangerous conditions, to the elimination of which the act is directed, are result of the operation of the railroad,
 10 by the Erie Railroad Company, against whom the order is directed in accordance with the plain terms of the statute.

III. The next ground of attack is based upon that clause of the statute, which provides that the Board *may* order the company operating such railroad to alter the crossing. The insistence is, if the statute is construed to confer on the Board, arbitrary power to order or refuse to order the alteration of the grade crossings, in its discretion, the statute is invalid. It
 20 is conceded that the Board could constitutionally be delegated power, to determine whether or not certain facts exist, but when such facts have been found, it is urged the statute then leaves it to the Board, to decide arbitrarily, whether it will or will not make an order for the alteration of the crossings.

The obvious answer to this point of the prosecutor is the fact, that the prosecutor was required by the order to make the alterations and changes in the grades, so as to it, the statute is mandatory, and if
 30 the facts before the Board justify the order, it is not arbitrary. The prosecutor is not concerned with what might be ordered to be done by some one else, by the Board of Public Utility Commissioners.

There is a line of authorities, however, which hold that "*may*" in a statute means must or shall. Thus, in England, in the case of *King vs. Harlow*, 2 Salk., 609, it was said that the word "*may*" in a statute shall be taken to be mandatory, where the thing to be done, is for the sake of justice, or the public good.
 40 So, Chancellor Kent, in the case of *Newburgh Turn-*

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pike Company vs. Miller, 5 Johns Ch., 113, said, in respect to statutes, the rule of construction seems to be, that the word "may" means must or shall, only in cases where the public interests and rights are concerned, and where the public or third persons have a claim, *de jure*, that the power shall be exercised. These cases were cited with approval by our courts, in the cases of *Davidson vs. Davidson*, 17 N. J. L., 171; *Seiple vs. Borough of Elizabeth*, 27 *ib.*, 410; *Atlantic City Water Works Co. vs. Road*, 50 *ib.*, 672. So, there is a line of authorities which hold, that the agencies of government do not act automatically. It is necessary, to vest in its officers certain general powers, with a discretion in the governmental agents, as to their exercises. It would be as impractical as it is undesirable, to attempt to formulate in advance, a set of hard and fast rules, by which every conceivable public act should be governed. In order to accomplish the ends of local government, it has been found expedient to create various boards and commissions, which are charged with the duty of supervising, directing, and controlling particular subjects. It has been held, that the granting of such power by the legislature was not a grant of either legislative or judicial power. *People vs. Roth*, 249 Ill., 532. For other illustrative cases see, *in re Connecticut Co.*, 94 Atl., 992 (Conn.). *In Matter of New York Elevated R. R. Co.*, 70 N. Y., 327; *Trustees of Saratoga Springs vs. Saratoga Gas &c. Co.*, 191 *ib.*, 123; *Alton & C. R. R. Co. vs. Vandalia &c. R. R. Co.*, 268 Ill., 68

It is further urged that if the Court should hold the statute valid, still the order in the present case should be set aside for the reason that it is insisted the evidence shows without dispute, that the prosecutor has not, and in all reasonable probability will not have sufficient funds for the purpose of meeting the

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cost of complying with the order. The determination of this question is one of fact, in the first instance, devolving upon the Board of Public Utility Commissioners. The Board had before it the financial history of the Erie Railroad Company, its indebtedness, its
 10 income and many other details bearing upon the finances of the company, and from this evidence, the Board found adversely to the prosecutor, the Erie Railroad Company. After a careful reading of the voluminous testimony on this point, we are unable to say that the Board's determination is without sufficient facts to support its conclusion. The prosecutor has eight years in which to comply with the order of the Board and do the work. Where the work is in
 20 itself a reasonable, proper and fair exaction when considered with reference to the object to be attained, the expense is not a reason against its legality. *Health Department of the City of New York vs. Rector, etc. of Trinity Church*, 145 N. Y., 32; 27 L. R. A., 710. *Woodruff vs. New York &c. R. R. Co.*, 59 Conn., 63, the order being based upon and made in an exercise of the police power, which is a part of the reserve power of the state.

Point VIII is that the order of the Board is invalid in so far as it requires the prosecutor to make
 30 changes in switches, side-tracks, leads, bridges, yards, structures and other facilities and property of the prosecutor and of other companies, co-partnerships or individuals.

We think in this respect the order properly interpreted is justified by the statute properly construed.

The statute authorizes the Board, in a proper case, to order the railroad to alter grade crossings according to plans to be approved by the Board, by substituting therefor crossings not at grade, either by carrying the highway under or over the railroad, or by
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reconstructing the railroad under or over the highway or by vacating, relocating or changing the lines, width, direction or location of the highway and the opening of a new highway in the place of the one vacated, and this includes the power to order such changes in the property and facilities of the railroad company as are fairly incidental to, or rendered necessary by, the alteration of the crossings. 10

Now the order of the Board directs the railroad company "to alter such crossings, and each of them, according to the plan therefor annexed to and made part hereof * * * and profile of same, also annexed to and made part hereof * * * and profile of same, also annexed to and made part hereof * * * which said plan and profile are hereby approved; by substituting therefor crossings not at the grade of the public highways known as Madison avenue, Straight street, Clay street, Market street and Park avenue, Ellison street, Van Houten street, Broadway, Fair street, Hamilton avenue, Lafayette street, Keen street, Warren street, Putnam and River streets; by changing the lines, width and direction thereof and carrying so much thereof as so changed under the said railroad, except in the case of Madison avenue which is carried over the railroad, according to and as shown on said plan and profile for said purpose, and by vacating the remaining parts of said highways within the lines of the right of way of said railroad company, and further by vacating that part of Madison avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the relocated Madison avenue; by substituting for, the existing crossings at Cedar street a crossing under the railroad at Taylor street and for the existing crossing at Franklin street a crossing under the railroad at Montgomery street and also by 40

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widening and altering the existing highways known as Essex street, Governor street and Fulton street, adjusting the structures spanning them to the proposed grade or grades (which said new highways shall be located, and of the width, length and direction and carried over or under the said railroad where so indicated); by reconstructing said railroad and highways and by performing all other work required according to and as shown on the said plan and profile."

It therefore appears, we think, that the order is confined in its direction to the company to the alteration of the crossings in question by changing the highways and by reconstructing the railroad and by performing such work as is required thereby. It does not require the railroad company to make changes in private sidings, and the like, not its property, and not within the limits of its right of way. The closing words of the order "and by performing all other work required according to and as shown on said plan and profile" do not affect this conclusion as to the scope of the order. These general words follow specific provisions of the order and under an elementary rule of construction are limited thereby. Further they refer back to the introductory general mandate of the order requiring the company to "alter said crossings and each of them" and are limited thereby.

Neither does the order require the owners of such private sidings to reconstruct them. The plan which accompanies the order simply suggests to such owners a method by which their property may be conformed to the new conditions so as to admit of a continuance of the siding facilities theretofore enjoyed. The order only requires others than the railroad company to make such changes in, and removals of,

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their property and constructions as are necessary to carry the order and plan into effect. In this it accords with Section 4 of the statute. Since the mandate of the order to the railroad company is limited to requiring the changing of highways and the reconstruction of the railroad, the changes in, or removal of, such private sidings cannot be said to be necessary to carry the order to the railroad into effect. Of course the plan does indicate a way in which, in part, existing siding facilities may be continued after the ordered changes in the highways, and the ordered reconstruction of the railroad are made. It is appropriate that it should do so, for in the adoption of a plan, the effect thereof on existing industrial facilities should be taken into account, and this factor should also be taken into consideration in determining whether the plan adopted is reasonable or unreasonable. 10 20

As we have pointed out, in so far as the order directs the prosecutor to make changes in its own side-tracks, and the like, it was within the power conferred by the statute if such changes were fairly incidental to the changes of grade of the main line tracks. We think that such ordered changes were of that character.

Point IX is that the order is invalid in so far as it requires changes in the construction and location of the station building at Market street, and the station building at River street. 30

We think this point is not well founded in fact.

The order (leaving out of account the plan and profile) does not require any change in the construction or location of these station buildings. It does not deal with them. The plan and profile do display reconstructed stations at new nearby locations. If these changes are fairly incidental to the changing of 40

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the highways or the reconstruction of the railroad, they are deemed to be a part of the order and must be made. That some reconstruction of both stations is rendered necessary by the reconstruction of the railroad, and will have to be made some time, either
10 according to the judgment of the railroad managers or as may be lawfully directed by the Public Utility Board, is not questioned. But it is contended that the change in the location of the stations was not fairly incidental to the changing of the highways or the reconstruction of the railroad. If so, the reconstruction of the stations at new locations is not required by the present order. Upon full consideration we think that is so. We do not find that the change in the location of the stations was incidental to, or
20 rendered necessary by, the elimination of the grade crossings. Accordingly we hold that the order under review does not require the railroad company to reconstruct these station buildings at the new locations as indicated and suggested upon the plan. No doubt Section 17 (b) of the Public Utility Act (P. L. 1911, p. 379) conferring upon the Board power "after hearing upon notice" to require a public utility "to furnish safe, adequate and proper service and to keep
30 and maintain its property and equipments in such condition as to enable it to do so," is ample to authorize the Board, in a proper case, to order the relocation of a railroad station. But this was not a proceeding under that section. Aside from the fact that such relocation was not ordered, it will be noticed that such changes were not asked for in the petition. There was no hearing and no evidence upon the question whether the existing stations at these points were safe, adequate and proper, nor was any notice given to the prosecutor that such question was to
40 be passed upon by the Board in this proceeding,

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other than such as might be inferred from the "suggestion" of the city engineer that such changes might be desirable if the tracks were elevated.

Point X is that the order is invalid in so far as it requires the prosecutor to construct structures upon its lands for the use of Fuller's Express Company and Morris & Co., in substitution for the structures now occupied by them as lessees and which will be rendered useless by the elimination work. 10

It is true that the plan adopted by the Board has indicated upon it suggested possible locations upon the lands of the railroad company of substituted structures for these private companies, but it does not require the railroad company to provide such locations or to erect such structures since neither the existing structures nor the suggested structures constitute any part of the railroad. This matter is sufficiently discussed under Point VIII. 20

Point XI is that the statute and order, in so far as they permit or require the prosecutor to make certain changes in the properties of the Public Service Railway Company, and in so far as they limit the proportion of the expense of the alterations in certain of the grade crossings to be paid by the street railway using the same, are unconstitutional and invalid. 30

The alleged unconstitutionality of the imposition by Section 2 of the statute of not exceeding ten per centum of the cost directly chargeable to the elimination of the grade crossings used by the street railway upon that company, is dealt with elsewhere in this opinion.

The contention that the order is invalid in that it requires the prosecutor to do the physical work of removing and changing the property of the Public Service Railway Company is not well founded in 40

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fact. The order does not require the prosecutor to do that. It requires the Public Service Railway Company to change and remove such of its property and construction as is necessary to carry into effect the order, and further directs that both the prosecutor and the Public Service Railway Company keep specific and complete records of the expenses directly chargeable to the crossings and each of them, so used by such street railway company.

The order directs the Public Service Railway Company to pay ten per centum of the expenses of the changes required by the order directly chargeable to the crossings used by it. This was the maximum amount allowed by the statute and, of course, the prosecutor cannot complain that it was so limited.

Point XII is that the statute and order are unconstitutional and invalid in so far as they permit or require the prosecutor to make changes in the existing streets with respect to grade, width and structure, and to make other changes by the abolition of existing crossings and the substitution of other crossings therefor on new highways.

We have elsewhere herein indicated that the statute in this respect violates no constitutional provision. We also think that the order in this respect is within the powers conferred by the statute. The changes required in respect to the grade and width and structures in existing highways which remain, and those requiring the abolition of existing crossings and the substitution of other crossings therefor on new highways, are all fairly incidental to, and were rendered necessary by the separation of grades, having reference to the interests of the railroad company as well as those of all the people who have occasion to cross the railroads. Being so regarded it is valid. *In re Selectmen of Norwood*, 161 Mass., 259;

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37 N. E., 199; *Davis vs. County Commissioners of Hampshire Co.*, 153 Mass., 218; 26 N. E., 848.

In so far as the execution of such order may require the exercise of the power of eminent domain, it will be seen that Section 13 of the general railroad act as now amended (P. L. 1914, p. 490) confers upon the railroad company power to take by condemnation any land and property required for the purpose of complying with any order made by the Board of Public Utility Commissioners. It will also be noticed that the owners of property to be taken have no right to be made parties to, or to demand a hearing in this proceeding. *In re Directors of Old Colony Railroad Co.*, 163 Mass., 356; 40 N. E., 198. It is also to be noticed in this connection that, under the charter of the City of Paterson, the city has ample power to lay out, open, change, alter or vacate the streets involved, and to take such lands and real estate as may be necessary therefor. P. L. 1871, p. 846, Sec. 92; P. L. 1907, p. 114; P. L. 1910, p. 524; P. L. 1911, p. 179. Under this latter act the Board of Public Works of Paterson has power to vacate streets. *Sherwood vs. City of Paterson*, 94 Atl., 311. The order directs the railroad company, the City of Paterson and all other parties to proceed with due diligence to the execution of the order and to comply with all the requirements thereof. Of course, in carrying out its part of the order, the City of Paterson must act in conformity with its charter and the laws amending the same. *Clark vs. City of Elizabeth*, 61 N. J., 565.

Point XIII is that the order in so far as it requires the prosecutor to reconstruct the railroad is invalid because not made in accordance with the statute; and that the statute is unconstitutional because it does not permit the Public Utility Board to order the

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elimination of the grade crossings by depressing the highway in part or by elevating the railroad in part.

We think there is no merit in this contention for reasons elsewhere stated in this opinion.

- 10 Point XIV is that the order is invalid and the statute is unconstitutional in so far as they require the elimination of grade crossings of highways laid out after the railroad tracks were constructed.

- There is no merit in this point. We have elsewhere sufficiently indicated that we think that such a requirement in a statute would not render it unconstitutional. Undoubtedly the statute in question applies alike to highways existing at the time of the construction of the railroad and to highways subsequently laid out. The order in the respect mentioned
20 is therefore within the powers conferred by the statute.

Worcester, N. & R. R. Co. vs. City of Nashua,
63 N. H. 593; 4 Atl., 298.

New York & N. E. R. Co. vs. City of Waterbury, 60 Conn., 1; 22 Atl., 439.

Northern Pacific Railway Co. vs. State of Minnesota, Ex. Rel. Duluth, 208 U. S., 583.

- Point XV is that the statute and order are unconstitutional and illegal in so far as they require the
30 prosecutor to reconstruct highways outside of the right of way of the prosecutor at the crossings.

With respect to the suggestion that the statute is unconstitutional for such reason we have nothing to add to what we have elsewhere said.

- With respect to the contention that the order is illegal in that it requires the railroad company to make changes in the highways outside of its right of way at its own expense, we say that it appears that
40 such changes are fairly incidental to the changes in

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the crossings of the railroad and are therefore proper.

In re Selec'men of Norwood, 161 Mass., 259;
37 N. E. 199.

Davis vs. County Commissioners of Hampshire Co., 153 Mass., 218; 26 N. E., 848.

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Point XVII is that the order is unreasonable in that it requires the prosecutor to alter the crossings according to a plan which is more expensive to the prosecutor than is necessary for the purpose of removing the danger to public safety or the impediment to public travel.

The real complaint under this point is that the Board refused to adopt certain modifications suggested by the prosecutor respecting the plans for the elimination of crossings at Keen, Warren and River streets, and for the consolidation of the crossings at Straight and Clay streets.

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But we think that the propriety of the plan adopted by the Board is amply supported by evidence. This Court will not disturb such a finding unless it be unreasonable, or based upon some illegal principle, or lacks evidential support. *Public Service Ry. Co. vs. Public Utility Board*, 87 N. J. L., 250.

Point XVIII is that the order is unreasonable in that (a) it arbitrarily limits the dates of the beginning and completion of the work, (b) it arbitrarily requires the work to be done in designated divisions and in the sequence of such divisions, and (c) it makes no provision for such changes or modification of details of the plan as may become necessary during the progress of the work.

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With respect to the first two propositions we are clearly of the opinion that the times fixed, and the division of the work, are entirely reasonable and proper.

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Passing now to the other complaint. The fact that the order makes no provision for such modifications of the details of the plans as may become necessary during the progress of the work is no reason for setting it aside. There is a reasonable presumption in
 10 favor of the plan adopted by the Board. *In re Selections of Westborough*, 162 Mass., 495; 48 N. E., 763. If in the course of executing the order unforeseen contingencies arise, or details are found to require change or things required become unnecessary by reason of changed conditions or for any other cause, the order made and plan adopted by the Board may be modified on application. Section 31 of the Public Utility Act provides that the Board may at any time modify an order made by it. P. L. 1911, p. 386.

20 The constitutional objections argued by counsel for the prosecutor will be considered in the order in which the points are presented in his brief.

Point IV. That the statute is unconstitutional because it takes the property of the prosecutor as the lessee and operator of the railroads owned by the Paterson & Hudson Railroad Company and the Paterson & Ramapo Railroad Company for the private use and benefit of the said two companies, the res-
 30 pective owners of said railroads.

The argument is that in as much as the order for grade crossing elimination calls for the permanent improvement at the expense of the operating lessee of the property owned by the lessors, the money of the lessee so expended is taken for the private use of the owners of the property so improved. Is this so in point of fact? The lease of the Paterson and Hudson River Railroad Company to the Union Railroad Company made on September 9, 1852, and assigned to the New York and Erie Railroad Company
 40 contains the following provision: "And it is in like

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manner further agreed by and between the parties to these presents that if any erections or improvements shall, during the said term hereby demised, or any future term or terms hereafter demised, be made on said demised premises or appurtenant thereto, the same shall, at the termination of said term or terms, and the cessation of the interest of the parties of the second part of, in and to the same, by the expiration thereof, or other termination thereof, be valued by arbitrators to be appointed in like manner as last above provided, and the award of a majority of such arbitrators shall be conclusive as to the value of the said erection and improvements; and the parties of the first part shall pay and discharge the amount so valued to the parties of the second part or their assigns."

The lease from the Paterson and Ramapo Railroad Company to the Union Railroad Company and assigned to the New York and Erie Railroad Company contains a precisely similar covenant.

Such permanent erections or improvements and the monies thereon expended are not therefore taken for the private use of the lessors in the sense contemplated by the constitution; upon the contrary, such improvements are to be used and enjoyed by the lessee during its term, and if taken at all by the lessor are to be paid for at their value, which may be greatly in excess of their cost. Such a prearranged purchase is not the taking of property *in incitum* that is reprobated by the constitutional provision on which the argument is based.

These same considerations apply also to the second contention made under this point in the brief, viz: that compliance with the order constitutes a confiscation of the property of the prosecutor, because of the cost of such compliance.

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The broader ground, however, by which both of these contentions are met is that the provisions in question of the Fielder Act constitute a regulation adopted by the legislature for public safety under the police power of the state and hence are not a taking
 10 of private property without just compensation, although conformity to such regulation involves expense. This is the language of our court of last resort delivered by Mr. Justice Depue in the case of *Morris and Essex Railroad Company vs. The City of Orange* (63 N. J. L., p. 252). This definitive statement and concrete application of the police power is sufficient authority for this Court in the present case, unless it be necessary that whenever the police power is mentioned an essay on the subject shall be delivered, on the contrary, it would seem that the
 20 proper way for a lower court to deal with an established rule of law was to treat it as established.

In as much, however, as a federal question is involved it may be well to quote from one of the most recent decisions of the Supreme Federal Court. In the case of *Chicago, Milwaukee & St. Paul R. Co. vs. Minneapolis* (232 U. S., p. 430) Mr. Justice Hughes delivering the opinion of the court, said:

“It is well settled that railroad corporations may
 30 be required, at their own expense, not only to abolish existing grade crossings, but also to build and maintain suitable bridges or viaducts to carry highways newly laid out over their tracks, or to carry their tracks, over such highways,” citing a large number of cases in the State and Federal Courts.

Other specific illustrations of the application of this established rule to the elimination of grade crossings are *Davis vs. County Commissioners*, 153 Mass., p. 218; *N. Y. & N. E. R. R. Co. vs. Bristol*, 151
 40 U. S., p. 556, *In re Selectmen of Norwood*, 161 Mass.,

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p. 259. *Illinois Central R. R. Co. vs. Copiah County*, 81 Miss., p. 685; *City of Harriman vs. Southern Ry. Co.*, 111 Tenn., p. 538; *St. Louis & S. F. R. Co. vs. Fayetteville*, 75 Ark., p. 534; *C. B. & A. Rv. Co. vs. Drainage Commrs.*, 200 U. S., p. 561; *Cincinnati, I. & W. R. R. Co. vs. Connersville*, 218 U. S., p. 336; *Chicago, M. & St. Paul R. R. Co. vs. Minneapolis*, 232 U. S., p. 430; *Mo. & Pac. Ry. Co. vs. Omaha*, 235 U. S., p. 121. 10

Upon the point that these Federal decisions, especially the two last cited, extend the rule of some of our earlier State decisions, it is to be remarked, first, that there is no conflict as to the fundamental doctrine of the police power but only as to its application, and, secondly, that as to due process of law and other matters involving ultimately a federal question the decisions of the State courts yielded those pronounced upon such questions by the Supreme Federal tribunal. 20

Point V. Which is that the statute under review is unconstitutional because it deprives the prosecutor of its property without due process of law or just compensation, in that it requires the entire expense of abolishing the grade crossings to be paid by the prosecutor is fully answered by what has just been said under the previous point. We have nothing to add excepting that the case of *New York & New England R. R. Co. vs. Bristol* (151 U. S., p. 556), on which counsel relies for his main argument has been stripped of the force accorded to it by counsel by the more recent case of *Chicago, Milwaukee & St. Paul vs. Minneapolis* in 232 U. S. 30

The contention that the legislature could not lawfully limit the proportion of expense to be borne by the street railway company to ten per cent. of the total expense of the alteration of a crossing is, of 40

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course, unsound if the entire expense might at the legislative will have been placed upon the prosecutor. The opposite contention, viz., that the imposition of any part of the expense upon the trolley company was unlawful is, of course, not now under consideration.

The same remark applies to the limitation of the expense imposed upon the municipality affected.

Under this point there is also a running attack made upon the principle of Utility Boards in general, involving their powers as well as their procedure, but as far as discoverable no constitutional limitation is pointed out or discussed. Under this subhead similar boards in other jurisdictions are described and the differences noted, but no constitutional question raised that is not covered, as far as we are able to do so, by the principles decided in the cases already cited.

Point VI is that, "Said statute is unconstitutional and said order is unreasonable, for the reason that the prosecutor is not given the alternative of decreasing or eliminating the alleged danger to public safety and the alleged impediment to public travel by decreasing the number of train movements or by abandoning the railroad." In so far as this reason challenges the discretion exercised by the Board in making its order we are not concerned with it in this part of our opinion, in so far as it constitutes an attack upon the statute the contention must be that the legislative act was unconstitutional because it did not affirmatively authorize the railroad company to decrease the number of its trains or to abandon its railroad.

The abandonment of the railroad was not germane to the object of the statute, and the power to deal

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with that question could not be delegated to the agency created by the act.

The decrease in the number of train movements was a matter primarily under the control of the prosecutor, and hence required no statutory permission; if by such decrease the danger and congestion at the crossings were in fact eliminated or reduced to a negligible point that fact would doubtlessly be recognized by the Board and dealt with accordingly. It was for the prosecutor to make that fact appear and its failure to do so involved no constitutional infirmity in the statute. 10

Point VII is an attack upon the title of the original Public Utility Act of 1911, and upon the duality of the objects alleged to be embraced in that act as supplemental by the Fielder Act of 1912. 20

The title of the original act expressed broadly and inclusively the object of the statute; it does not express the means and methods of attaining that object; but this is not required.

Bumstead vs. Govern, 47 N. J. L., p. 368.

Affirmed, 48 N. J. L., p. 612.

Hickman vs. State, 62 N. J. L., p. 499.

Affirmed, 63 N. J. L., p. 666.

As was said by this Court in *Moore vs. Burdett* (62 N. J. L., p. 164), "The object of a law must not be confused with its product. * * * The object of every law, by force of the constitution must be single and be expressed in the title of the law; the product may be as diverse as the object requires and finds its expression in the terms of the enactment only. In fine, the title of an act is a label not an index." The statute has, in a constitutional sense, a single object. To attain this object it enacts various methods and matters so related to such object and to each other as 30 40

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to effectuate a single purpose. The inclusion of such inter-related matters is not the intermixing of things that have no proper relation to each other, hence the statute as a whole has a single object.

Payne vs. Mahon, 44 N. J. L., p. 213.

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Newark vs. Mt. Pleasant Cemetery Company,
58 N. J. L., p. 168.

Point XVI is that, "The statute and order violate the Constitution of the United States in that they impair the obligation of the prosecutor's contracts as follows:

(a) Contracts with the holders of the prosecutor's stocks, bonds, notes and other obligations.

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(b) Contracts between the State of New Jersey and the prosecutor or its predecessors in interest.

(c) Contracts between the prosecutor or its predecessors, and the Public Service Railway Company or its predecessors.

(d) Contracts between the prosecutor and the various switch owners.

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(e) Contracts between the Paterson and Hudson River Railroad Company and Ramapo Railroad Company; and the prosecutor or its predecessors."

These objections may be considered together, since, despite their apparent diversity, they rest upon a common principle and present but a single legal question, to wit, whether these contracts whenever made or upon whatever consideration based were subject to the future exercise by the state of its police power. The specific application of the general doctrine treated under Point IV to the obligation of contracts is well stated by Mr. Justice Depue in *M. & E. R. R.*

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*Opinion of Supreme Court, Erie R. R. Co.,
on Certiorari, &c.*

Co. vs. Orange, where, after pointing out that certain New York and Connecticut decisions were placed upon the ground that the charters of the respective companies were subject to alteration or repeal, but that the opinion of the Connecticut Court and of the Supreme Court of the United States in *New York and New England Railroad vs. Bristol*, 62 Conn., 252; 26 Atl., 122; 151 U. S., 556, lays stress upon the fact that the regulations were a proper exercise of the police power of the state, he said: "In *Boston and Maine Railroad Co. vs. County Commissioners*, 79 Me., 3861, S. C., 10, Atl. Rep., 113, an act requiring the expense of building and maintaining so much of the townway or highway as was within the limits of the highway where such way crossed the track at grade, should be borne by the railroad company, was held to be constitutional. This decision was made against a company whose charter provided that it should not be altered, amended or repealed. The power of the legislature to impose such burdens for general safety under the police power was declared to be fundamental and that the act did not impair any contract in the company's charter. Whether the corporation has an irrepealable contract in its charter or not is immaterial. Police powers are inherent in the government, and the legitimate exercise of legislative power in securing public safety does not impair the obligation of contracts nor deprive anyone of property without due process of law."

A later expression of the same thought by the Supreme Court of the United States speaking through Mr. Justice Day is as follows: "The exercise of the police power cannot be limited by contract for reasons of public policy, and it is immaterial upon what consideration the contract rests, as it is beyond the

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*Opinion of Supreme Court, Erie R. R. Co.,
on Certiorari, &c.*

authority of the state or the municipality to abrogate this power so necessary to public safety."

Chicago, Burl. & Q. R. R. Co. vs. Nebraska, 170 U. S., p. 57.

10 *Northern Pacific R. Co. vs. Minnesota*, 208 U. S., p. 583.

Many of the cases cited under Point IV are to the same effect and sustain the same doctrine, the acceptance of which renders it unnecessary and indeed futile to follow the brief in its recapitulation of the hardships that result from the observance of such legal rule.

20 That the contracts of the railroad with others for switch connections and service were subject to the police power was held by the Court of Errors and Appeals in *Swift vs. Delaware, Lackawanna & Western R. R. Co.* (66 N. J. Eq., p. 34).

Cases in other jurisdictions are:

Branson vs. Philadelphia, 47 Pa. St., p. 329.

Kinealy vs. St. Louis, K. & North R. R. Co., 69 Mo., p. 658.

Otis Elevator Co. vs. Chicago, 263 Ill., p. 419.

As to the Public Utilities, the doctrine of their subservience to the police power is the same.

30 *Jersey City vs. City of Hudson*, 13 N. J. Eq., p. 420.

Stillwater Water Co. vs. Stillwater, 50 Mo., p. 498.

Detroit vs. Fort Wayne & E. Ry. Co., 90 Mich., p. 646.

Columbus Gas & Coke Co. vs. Columbus, 50 Ohio St., p. 65.

Natick Gas Co. vs. Natick, 175 Mass., p. 246.

40 *New England Tel. & Tel. Co. vs. Boston T. Co.*, 182 Mass., p. 397.

*Opinion of Supreme Court, Erie R. R. Co.,
on Certiorari, &c.*

*New Orleans Gas L. Co. vs. Drainage
Comm'rs*, 191 U. S., p. 453.

Point XIX is that, "Said order imposes a burden upon the interstate traffic of the prosecutor and interferes with and impairs its operation to perform its duty as an interstate carrier of freight and passengers because: 10

(a) It requires changes in the location or grade of switches, side tracks, leads, bridges, yards, structures and other facilities and properties of the prosecutor which are used by the prosecutor in the furtherance of its interstate business.

(b) It compels the prosecutor to raise and expend moneys for the purpose of complying with said order, which said moneys would otherwise be available for and would be used by the prosecutor in the making of changes and improvements which are essential for the purpose of enabling the prosecutor to carry on its interstate business." 20

Whether or not the police regulations of a state constitute an unlawful interference with interstate commerce is distinctly a question for the ultimate decision of the highest Federal Court. The attitude of that Court upon this question is well expressed by Mr. Justice Gray delivering the opinion of the Court in the case of *Chicago M. & C. E. R. R. Co. vs. Solan*, 169 U. S., p. 133: 30

"The rules prescribed for the construction of railroads and for their management and operation, designed to protect persons and property, otherwise endangered by their use, are strictly within the scope of the local law. They are not, in themselves, regulations of interstate com- 40

*Opinion of Supreme Court, Erie R. R. Co.,
on Certiorari, &c.*

merce, although they control, in some degree, the conduct and liability of those engaged in such commerce. So long as Congress has not legislated upon the particular subject, they are rather to be regarded as legislation in aid of such commerce, and as a rightful exercise of the police power of the state to regulate the relative rights and duties of all persons and corporations within its limits."

So long as this attitude is maintained by the Federal Court the doctrine enunciated by it would gain nothing by our concurrence and suffer nothing by our dissent. We, however, not only recognize the authority but also concur in the soundness of the rule laid down.

Point XX is that, "Said order is in violation of the Constitution of the State of New Jersey and of the United States, in so far as it deprives the prosecutor of the rights, benefits, advantages, privileges and contracts now possessed by it with reference to the several leads, switches and side tracks which under said order are required to be destroyed or relocated and reconstructed, for the following reasons." Upon this point we can add nothing to what has already been said in discussing the scope and dominance of the police power.

Point XXI is that, "Said order and the statute upon which same is based are in violation of the Constitution of the State of New Jersey because:

(a) They impair the jurisdiction of the courts of equity of the State of New Jersey by depriving them of their jurisdiction over the regulation of the use of easements.

(b) They impair the jurisdiction of the courts of law of the State of New Jersey by de-

*Opinion of Supreme Court, Erie R. R. Co.,
on Certiorari, &c.*

priving them of their jurisdiction to compel the performance of the duties imposed by law upon the prosecutor or its predecessors in interest."

As to the alleged invasion of the exclusive jurisdiction of the Court of Chancery to regulate conflicting public easements our decision might well rest upon the reasoning of the opinion of Mr. Justice Kalisch in this court in the case of *Erie R. R. Co. vs. Board of Public Utility Commissioners* (87 N. J. L., p. 438). In view, however, of the argument of counsel and the attempt to distinguish that case from the present one, it will be well to point out that there is an essential difference between the jurisdiction exercised by Chancery over conflicting public easements and the exertion by the legislature of its police power to avert danger at railway crossings. Under the inherent power of the Court of Equity all questions as to the existence, character, duration and priority of such conflicting easements, together with their respective paramountcy or subservience as well as questions of acquiescence, estoppel, contribution and expense are considered by the Court of Chancery and are either adjudicated by it or are relegated to a court of law for decision, as the case may be; whereas, in the legislative exercise of its police power all of these matters are determined by the statute, leaving nothing of a judicial nature to be adjudicated by the statutory tribunal excepting the applicability of such legislative scheme to a given state of facts, if it be found to exist, and the determination thereupon of the practical methods of accomplishing the legislative object. This exercise by the legislature of its police power which in its simplest expression is illustrated in statutes requiring the erection of safety gates, the posting of flagmen and the giving of audi-

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*Opinion of Supreme Court, Erie R. R. Co.,
on Certiorari, &c.*

ble signals long antedated the adoption of the Constitution of 1844, so that the jurisdiction of the Court of Chancery that was confirmed by that instrument was not exclusive in respect to the exercise of such powers by the legislature, even if the jurisdiction of equity at any time was or could be exclusive as to such exercises of this sovereign power, which is not for a moment admitted even for the purposes of argument.

In the case of *Palmyra vs. Pennsylvania R. R. Co.* (62 N. J. Eq., p. 601), the contention of the railroad was that powers of this nature were so essentially legislative that they could not constitutionally be exercised by the Court of Chancery under legislative authority, which is the precise opposite of the contention of the prosecutor in the present case. The truth is that neither extreme view is the proper one; the correct view being that the mixed administrative and quasi-judicial functions to be performed by the Board of Public Utilities Commissioners under the statute, which do not in a constitutional sense properly belong to either of the three great departments of government may, because of that circumstance, be lawfully exercised under express legislative authority by a statutory tribunal without infringing upon the constitution itself or upon the prerogatives of the Court of Chancery. This principle, although not this precise application of it, is illustrated in:

Paul vs. Gloucester Co., 50 N. J. L., p. 584.

Moreau vs. Freeholders of Monmouth, 68 N. J. L., p. 480.

Ross vs. Freeholders of Essex, 68 N. J. L., p. 291.

Iowa Life Ins. Co. vs. Eastern Mutual Life Ins. Co., 64 N. J. L., p. 340.

*Opinion of Supreme Court, Erie R. R. Co.,
on Certiorari, &c.*

In the matter of Drainage of Lands, 35 N. J. L., p. 497.

Palmyra vs. Penn. R. R. Co., 62 N. J. Eq., p. 601.

Eckert vs. Perth Amboy & W. R. R. Co., 66 N. J. Eq., p. 437.

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As to the alleged impairment of the mandamus power of this Court, what has just been said as to the Court of Chancery measurably covers this matter also, at least in principle.

There is, however, another doctrine peculiar to the prerogative writs of this Court, viz.: that stated by Mr. Justice Trenchard in *Newark vs. Kasinski* (86 N. J. L., p. 59), to the effect that where this Court may by its writ of *certiorari* supervise the action of a statutory tribunal the fact that such tribunal is exercising under legislative authority powers similar to or identical with those exercised by this Court under its prerogative writs is a negligible circumstance. The question is, however, almost if not entirely academic, since the functions exercised by the Statutory Board in this case do not bear the slightest resemblance to the mandamus function of this Court.

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We have now reviewed *seriatim* the points of constitutional law as presented in the elaborate brief of counsel for the prosecutor without finding that any of them requires us to declare invalid the Statute of 1913 as a whole or as to any of its essential features. If any other constitutional question has been argued by counsel, incidentally and outside of his stated points, it may upon that account have escaped our attention, but it will, nevertheless, we confidently believe, be found to be covered by the principles we have discussed and by the cases cited to illustrate them.

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Opinion of Supreme Court, Public Service Ry. Co.

The conclusion that we have reached from the foregoing consideration of all of the reasons filed and argued by the prosecutor is that each of the orders of the Board of Public Utility Commissioners brought up by the two writs of *certiorari* in this case should be affirmed, with costs.

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Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

20 PUBLIC SERVICE RAILWAY COM-
PANY,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND CITY OF PATER-
SON.

Argued December 22, 1915.

30 Decided June 23, 1916.

1. The provision of Section 2 of the Supplement to an Act concerning Public Utilities, approved March 12, 1913 (Fielder Act) (P. L. 1913, p. 91), by which ten per centum of the expense of eliminating a grade crossing of a steam railroad used by a street railway may be ordered to be paid by the company operating such street railway is within the legitimate sphere of legislation under the police power of the State.

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Opinion of Supreme Court, Public Service Ry. Co.

ON CERTIORARI.

The order of the Board of Public Utility Commissioners drawn under review as to one of its terms by this *certiorari* is fully set out in the statement of facts prefaced to the opinion delivered at this term in the case of *Erie Railroad Company vs. Board of Public Utility Commissioners*.

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Before Justice Garrison, Trenchard and Black.

For the prosecutor, Frank Bergen, Esq.

For the defendants, Edward F. Merrey, Esq.,
Frank H. Sommer, Esq.

The opinion of the Court was delivered by:

GARRISON, J.

The prosecutor of this writ, the Public Service Railway Company, objects to the order of the Board of Public Utility Commissioners imposing upon the prosecutor ten per centum of the cost incurred in abolishing grade crossings on three highways over which the prosecutor operates its cars. The reasons relied on by counsel "briefly stated are, that the burden which the order attempts to impose on the prosecutor is neither a tax nor an assessment nor a legitimate exercise of the police power." In as much as the order merely follows the statute the attack is really upon the latter. The language of the statute is that "the Board may order not exceeding ten per centum of such expense directly chargeable to the crossing used by the street railway company to be paid by the company operating such street railway."

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We agree that this imposition of a part of the expense of abolishing dangerous grade crossings is neither a tax nor an assessment for a public improvement, but, we think, that it is a legitimate exercise of the police power. The contention of counsel for the prosecutor is placed squarely upon the proposition

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Opinion of Supreme Court, Public Service Ry. Co.

that the police power is not legitimately exercised in the present case "unless the property (of the prosecutor) has become a public nuisance and so lost its right to protection"; and he then proceeds to demonstrate that a street railway is not a public nuisance. We of course, agree to this, but we entirely dissent

10 from the narrow definition of the police power which would restrain its exercise to the case of property that had become in a legal sense a nuisance.

If such a narrow definition has any place in the doctrine of the police power, it is confined to the appropriatory aspect of that power, *i. e.*, to such appropriation as is incidental to the destruction of property as a nuisance and has no place in the vastly wider scope of such power that is regulative of energies that are curbed, not that they may be impaired

20 or destroyed, but, on the contrary, that they may be of greater service and beneficence to the public.

Instances of such regulative exercises of the police power are met at every turn and constitute in fact the chief characteristics of modern social life. There are, to use a rough analogy, two aspects of the exercise of the police power, one so to speak *in rem* and the other *in personam*; and it is to the former alone that the proposition of counsel has any possible pertinence, and even in that connection it is of doubtful value as a definition, and of no apparent service

30 as a criterion.

The distinction between these two aspects of the police power is perfectly patent. The destruction of a pest house would be an illustration of appropriation of property because it was *per se* a nuisance, *i. e.*, a menace to the public health, while the compulsory vaccination of school children would be in order to prevent them from becoming such. The securing of public safety from anticipated dangers rather

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Opinion of Supreme Court, Public Service Ry. Co.

essence of the police power in its broader scope. That there are such dangers to be anticipated from the operation at a grade crossing of a steam railroad and a trolley line is not more obvious than that each of these public agencies contributes its element to such danger. The steam road may indeed furnish in greater degree the active element of danger to human life, but the surface road in its operation brings to such place of danger its human freight in extraordinary numbers and under special conditions, which, or so the legislature might determine, greatly increase and accentuate the normal danger and hence justify its elimination by the joint act or at the joint expense of both of the public agencies that contribute in its production. It is matter of common knowledge that during what are termed the rush hours of the day a single surface car of modern construction carries a hundred or more passengers and that the cars thus crowded follow each other in an almost unbroken procession. The stalling of one of these cars upon a grade crossing by the sudden giving out of the electric current, or its propulsion on to the railroad track by the failure of a brake to work properly, or as in the Newark case (*State vs. Young*, 56 Atl. Rep., p. 471) by the failure to sand the track would imperil the lives of scores, who were brought into such position of peculiar peril by reason of being passengers on a street railway. It is not at all a question of the creating of a common nuisance, but solely of the participation in and contribution to a common source of danger arising from the transportation problem in its relation to grade crossings of common carriers of passengers.

The State grants this use of its highways for the convenience of its citizens, and the incorporators of such companies eagerly seek the privileges thus granted because of the profits to be derived there-

Opinion of Supreme Court, Public Service Ry. Co.

from; hence, if dangers arise from the very success of such enterprises it is eminently within the exercise of the police power of the State in the elimination of such dangers to place a portion of the expense of so doing upon those who profit by the very success which has contributed to such dangers.

- 10 The fact that by such a collision as we have suggested the lives of the passengers on the steam railroad are also imperilled, so far from demonstrating that the entire expense of eliminating the dangerous condition should be borne by such railroad, merely emphasizes the participation of each carrier in the production of a common source of danger, and hence points to their joint contribution to the expenses of its elimination.

- 20 In support of this obvious conclusion counsel for the defendant cites a number of pertinent authorities, but the question would seem to be at bottom one of fact, from which, when the fact is once established, the legal result follows as a necessary consequence. The establishment of such fact is, moreover, a part of the legislative function and as such is not subject to review by the Judicial Department.

- 30 In *Hopper vs. Stack* (69 N. J. L., p.562) we said, "Every exercise of the police power involves, of necessity, the determination by the lawmaker of some fact quite apart from the exercise of any legislative discretion concerning it," and illustrations of such determinations of fact were given and the matter discussed at some length.

- 40 The proposition thus advanced has been not only adopted by the Court of Errors and Appeals, but has been elevated into a presumption. "Police regulations of this character," said Chancellor Pitney in *Meehan vs. Excise Commissioners* (75 N. J. L., p. 557) "must, in the absence of clear evidence to the contrary, be deemed to be based upon facts within

Opinion of Supreme Court, Public Service Ry. Co.

the possession of the legislature rendering such legislation proper, if not necessary, see *Hopper vs. Stack* (40 Vroom, 562).” And in *State vs. Sutton* (87 N. J. L., p. 192) also a Court of Errors decision, a condition that would justify the exercise of the police power, was spoken of as “one of those determinations of fact that the legislature has the right to make for itself when prescribing a police regulation,” citing *Hopper vs. Stack* and *Lyons vs. Morris Co.* (86 N. J. L., p. 206). It is this prerogative of the Legislative Department of the Government thus to predicate its exercise of the police power of the State upon facts within its own possession and keeping that renders such power so unamenable to precise judicial definition rather than any inherent difficulty in defining the limits of such power when applied to a given state of facts. 10

The foregoing remarks, coupled with our discussion of the topic and citation of authorities in the case of *Erie R. R. Co. vs. Board of Public Utility Commissioners* decided at this term, lead to the conclusion that the provision of the Fielder Act drawn under review was within the proper sphere of legislation and that the order of the Utility Board brought up by this *certiorari* merely carried out the clearly expressed intent of the legislature. That the State through its chosen agencies is not required in such a situation to ascertain the exact quota of contribution to a common danger and by that standard assign the expense of its elimination is borne out by the cases cited by counsel for the defendant. Under such circumstances the province of the judicial office is thus stated by Chief Justice Beasley in *Douglass vs. Essex Co.* (38 N. J. L., p. 214): “Where that which is directed to be done is within the sphere of legislation and the terms used clearly express the intent, all reasoning derived from the supposed in- 20 30 40

Opinion of Supreme Court, Public Service Ry. Co.

convenience or even absurdity of the result is out of place. It is no province of the courts to supervise legislation and keep it within the bounds of propriety and common sense, so that even if in this case it could be demonstrated that the regulation in question was incommodious or even hurtful, an appeal for relief to the judicial power would be utterly in vain." This is stronger language than is called for by the circumstances of the present case, but the rule of law to which it leads up cannot be too strongly stated, or too rigidly observed if the relative spheres of the Legislative and Judicial Departments of the Government are to be kept separate in obedience to the constitutional mandate.

The order of the Utility Board brought up by this writ is affirmed with costs.

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Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

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PASSAIC WATER COMPANY,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF THE
CITY OF PATERSON,
Defendants.

Argued December 24, 1915. Decided June 23, 1916.

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On *certiorari* to review an order of the Board of Public Utility Commissioners, under the act of 1913, page 91.

Before Justices Garrison, Trenchard and Black.

John B. Humphreys, Esq., for Passaic Water Company.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward M. Merrey, Esq., for City of Paterson.

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Per curiam:

In this case, there are twelve reasons presented to the Court, for setting aside the order made by the Board of Public Utility Commissioners. They are, however, argued under four points, in prosecutor's brief. The first and fourth points argued are, the statute upon which the order under review is based is invalid and unconstitutional; because, it takes the private property of the prosecutor for public use

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Opinion of Supreme Court, Passaic Water Co.

without any compensation, denies the prosecutor the equal protection of the law; impairs the obligation of contracts, etc. All these points are disposed of in the opinion of the Court, in the case of the *Erie Railroad Company vs. Board of Public Utility Commissioners*.

13 The second point argued is, the statute is unconstitutional, in so far as it deprives the Court of Chancery of its exclusive jurisdiction over the regulation of the use of easements. This point is disposed of in the opinion of the Court, in the case of the *Erie Railroad Company vs. Board of Public Utility Commissioners*.

20 The third point argued is, the order is invalid and beyond the jurisdiction of the Board, in so far as it requires the prosecutor to change the location of its water pipes, water mains, etc., arguing, that the title of the statute does not truly express the object of the legislation which it embodies, this and the other points under this head are disposed of also in the opinion of the Court, in the case of the *Erie Railroad Company vs. Board of Public Utility Commissioners*.

The order under review will be affirmed with costs.

Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

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WESTERN UNION TELEGRAPH Co.,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF THE
CITY OF PATERSON,
Defendants.

Argued December 24, 1915.

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Decided June 23, 1916.

On *certiorari* to review an order of the Board of Public Utility Commissioners, under the Act of P. L. 1913, page 91.

Before Justices Garrison, Trenchard and Black.

Messrs. Collins & Corbin, Gilbert Collins, Esq., George S. Hobart, Esq., Albert T. Benedict, and the brief of the New York Bar, for prosecutor.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

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Edward H. Merrey, Esq., for City of Paterson.

Per curiam:

In this case, there are eleven reasons presented to the Court, for setting aside the order made by the Board of Public Utility Commissioners. They are in the main, identical with the reasons presented by the prosecutor, the Passaic Water Company, except an additional reason, viz: the order is invalid, because it imposes a burden upon the interstate traffic of the

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Opinion of Supreme Court, Western Union Tel. Co.

prosecutor, interferes with and impairs, its ability to perform its duty, as a common carrier of such traffic.

They are, however, argued under five points, in prosecutor's brief. The first four points are constitutional questions, all of which are disposed of in the opinion of the Court, in the case of the *Eric Railroad*

10 *Company vs. Board of Public Utility Commissioners.*

The fifth point is, the order is invalid stating six reasons, these, also, have been disposed of in the opinion of the Court, in the case of the *Eric Railroad Company vs. Board of Public Utility Commissioners.* They need no further discussion.

The order under review will be affirmed with costs.

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Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

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D. FULLERTON & Co.,

Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF THE
CITY OF PATERSON,*Defendants.*

Argued December 24, 1915. Decided June 23, 1916. 20

On *certiorari* to review an order of the Board of Public Utility Commissioners, under the Act of P. L. 1913, page 91.

Before Justices Garrison, Trenchard and Black.

Messrs. Hudson & Joelson, for D. Fullerton & Co.

Frank H. Sommer, Esq., for Board of Public Utility Commissioners.

Edward H. Merrey, Esq., for City of Paterson.

Per curiam:

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In this case, there are eight reasons presented to the Court for setting aside the order made by the Board of Public Utility Commissioners. They are, however, argued under four points in prosecutor's brief.

The first point argued is that the order, if construed to require prosecutor to make changes in its building necessary to have the same conform to the side track of the Erie Railroad, when reconstructed

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Opinion of Supreme Court, D. Fullerton & Co.

is invalid, because the prosecutor is not a public utility and the Board has no power to order it to make such changes.

10 The second point argued is that the order, if construed to require the prosecutor at its own expense to reconstruct the existing side track, it is without the jurisdiction of the Board. The work commanded to be done by the order in altering the crossing is specifically (a) the changing of the highways and (b) the reconstruction of the railroad.

The third point argued is, the order under review, takes the private property of the prosecutor for public use, without just or any compensation, and takes the property of the prosecutor for private use of other companies.

20 The fourth point argued is, the order under review, takes the property of the prosecutor without due process of law and deprives the prosecutor of the equal protection of the law. All these points are disposed of in the opinion of the Court, in the case of *Erie Railroad Co. vs. Board of Public Utility Commissioners*.

The order under review will be affirmed with costs.

Opinion of Supreme Court.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

November Term, 1915.

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MEYER & DeVOGEL,
FULLER'S EXPRESS COMPANY,
MORRIS & COMPANY,
Prosecutors,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF THE
CITY OF PATERSON,
Defendants.

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Argued December 24, 1915. Decided June 23, 1916.

On *certiorari* to review an order of the Board of
Public Utility Commissioners, under the Act of P. L.
1913, page 91.

Before Justices Garrison, Trenchard and Black.

William B. Gourley, Esq., for prosecutors.

Frank H. Sommer, Esq., for Board of Public Util-
ity Commissioners.

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Edward H. Merrey, Esq., for City of Paterson.

Per curiam:

In each of these cases, there are eight reasons pre-
sented to the Court, for setting aside the order made
by the Board of Public Utility Commissioners. They
are identical with the reasons, presented in the case
of D. Fullerton & Co., prosecutor, except in the case
of Fuller's Express Co., prosecutor, presents an ad-
ditional reason, viz: the order directing changes, re-

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Rule for Judgment, Erie R. R. Co., Case, No. 1.

location, etc., is invalid because it imposes a burden upon the interstate traffic of the prosecutor, interferes with and impairs, its ability to perform its duty, as a common carrier of such interstate traffic. These cases were argued orally, before the Court, by Mr. Gourley. All the points in these cases, are disposed of in the opinion of the Court, in the case of the *Erie Railroad Company vs. Board of Public Utility Commissioners*. The order under review will be affirmed with costs.

Rule for Judgment.

Filed June 23, 1916.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY,

*Prosecutor,**vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF SAID
CITY,*Defendants.**On Certiorari.**Rule for
Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson, for alteration of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and certain others were respondents, by

Rule for Judgment, Erie R. R. Co., Case, No. 1.

which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; together with the petition of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,

Attorney of Defendants.

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Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

10 ERIE RAILROAD COMPANY, <div style="text-align: right; padding-right: 20px;"><i>Prosecutor,</i></div> <div style="text-align: center; padding: 10px 0;"><i>vs.</i></div> BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, <div style="text-align: right; padding-right: 20px;"><i>Defendants,</i></div>	}	<i>On Certiorari.</i> <i>Rule for</i> <i>Judgment.</i> <i>(Writ of</i> <i>July 22,</i> <i>1915.)</i>
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- 20 The Court having inspected the report, determination or order of the Board of Public Utility Commissioners dated July 9, 1915, denying an application by Erie Railroad Company for a rehearing of the proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," which resulted in an order of said Board dated April 20, 1915, whereby said Erie Railroad Company was ordered to alter certain crossings and each of them named in
- 30 said order according to the plan therefor, thereto annexed and made part thereof substituting therefor crossings not at the grade of said streets, which application for rehearing was for the purpose of considering a plan suggested in said application in lieu of the plans approved by said Board, together with the said application for rehearing, the testimony and exhibits offered before said Board, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside

Rule for Judgment, Public Service Ry. Co.

said report, determination of order, and having heard the argument of counsel, and having duly considered the same, do order that the said *certiorari* be dismissed, that the said report, determination or order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 18, 1916.

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On motion of

EDWARD F. MERREY,
Attorney of defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

20

PUBLIC SERVICE RAILWAY COMPANY,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS and CITY OF PATER-
SON,

Defendants.

On Certiorari.

*Rule for
Judgment.*

30

The Court having inspected the order of the Board of Public Utility Commissioners made on the twentieth day of April in the year of our Lord one thousand nine hundred and fifteen, requiring Public Service Railway Company to pay ten per centum of the cost of abolishing certain grade crossings of the Erie Railroad Company in the City of Paterson, to wit, at Park avenue and Market street, Broadway and River street, together with all proceedings had and taken

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Rule for Judgment, Passaic Water Co.

by the Board of Public Utility Commissioners upon which the same is founded, and all the testimony of witnesses and other evidence taken thereon and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,

Attorney of Defendants.

20

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

PASSAIC WATER COMPANY,

Prosecutor,

vs.

30

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF SAID
CITY,

Defendants.

On Certiorari.

*Rule for
Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson for altera-

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Rule for Judgment, Passaic Water Co.

tion of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and Passaic Water Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets, and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order into effect, should change or remove the same, according to said plan; together with the petition of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of
 EDWARD F. MERREY,
Attorney of defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

10	WESTERN UNION TELEGRAPH COM- PANY,	<i>Prosecutor,</i>	}	<i>On Certiorari.</i>
	<i>vs.</i>			
20	BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY,	<i>Defendants.</i>		

*Rule for
Judgment.*

The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and Western Union Telegraph Company and certain others were respondents, by which order said Erie Railroad Company was ordered to alter certain crossings and each of them, named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets; and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company or corporation, co-partnership or individual whose property or construction it might

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40 be necessary to change or remove to carry said plan

Rule for Judgment, Western Union Tel. Co.

and said order into effect, should change or remove the same, according to said plan; together with the petition of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs. 10 20

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,

Attorney of defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

10	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>D. FULLERTON & Co.,</p> <p style="text-align: center;"><i>Prosecutor,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY,</p> <p style="text-align: right;"><i>Defendants.</i></p> </div> <div style="width: 35%; font-size: 4em; line-height: 1; padding-left: 10px;"> { </div> </div>	<p><i>On Certiorari.</i></p> <p><i>Rule for Judgment.</i></p>
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20 The Court having inspected the order of the Board of Public Utility Commissioners dated April 20th, 1915, in a certain proceeding entitled "In the Matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad" wherein the Board of Finance of the City of Paterson was the petitioner and the Erie Railroad Company and D. Fullerton & Co. and certain others were respondents, by which order said Erie Railroad

30 Company was ordered to alter certain crossings and each of them named in said order, according to the plan therefor, thereto annexed and made part thereof, by substituting therefor crossings not at the grade of said streets, and by which said order it was provided that any telegraph, telephone, gas, electric, lighting, water, oil, pipe line or other company, or corporation, co-partnership or individual, whose property or construction it might be necessary to change or remove to carry said plan and said order

40 into effect, should change or remove the same, ac-

Rule for Judgment, D. Fullerton & Co.

According to said plan together with the petition of the Board of Finance of the City of Paterson, the answers of Erie Railroad Company and of the other respondents in said proceeding, the petition of Erie Railroad Company for further hearing thereon (filed February 5, 1915) and the report and order of the Board thereto, the testimony and exhibits offered before said Board, the petition of Erie Railroad Company for rehearing (filed June 16, 1915) and all other proceedings concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,
Attorney of defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

10

JACOB MEYER AND KOMMER DE
VOGEL, partners, as MEYER & DE
VOGEL,

Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF NEW
JERSEY, AND CITY OF PATERSON,

Defendants.

On Certiorari.

*Rule for
Judgment.*

20

The Court having inspected the order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company, and Jacob Meyer and Kommer De Vogel, partners, trading and doing business as Meyer and De Vogel, *et al.*, were respondents, directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," together with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for set-

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Rule for Judgment, Fuller's Express Company.

ting aside said order, and having heard the argument of counsel, and have duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

19

On motion of
EDWARD F. MERREY,
Attorney of defendant, City of Paterson.

Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

20

FULLERS EXPRESS COMPANY,
Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF NEW
JERSEY, AND CITY OF PATERSON,
Defendants.

On
Certiorari.

*Rule for
Judgment.*

30

The Court having inspected the order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company and Fullers Express Company, *et al.*, were respondents, directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Pater-

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Rule for Judgment, Fuller's Express Company.

son and which matter is entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," together with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and efficacious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

20 EDWARD F. MERREY,
Attorney of defendant, City of Paterson.

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Rule for Judgment.

Filed June 28, 1916.

NEW JERSEY SUPREME COURT.

MORRIS AND COMPANY,

Prosecutor,

vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND CITY OF PATERSON,
*Defendants.**On
Certiorari.**Rule for
Judgment.*

10

The Court having inspected the order made by the Board of Public Utility Commissioners of the State of New Jersey on the twentieth day of April, nineteen hundred and fifteen, in a certain proceeding before said Board wherein City of Paterson was petitioner and Erie Railroad Company and Morris and Company, *et al.*, were respondents, directing the said Erie Railroad Company to elevate its railroad tracks through a portion of the City of Paterson and which matter is entitled "In the matter of the application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," together with the testimony of the witnesses and the report of said Board in said matter and all records affecting the said cause, and all matters concerned therewith returned with the *certiorari* in this cause, the reasons for setting aside said order, and having heard the argument of counsel, and having duly considered the same, do order that said *certiorari* be dismissed, that the said order remain valid and effica-

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Notice of Appeal, Erie R. R. Co.

cious, and that said proceedings be in all things affirmed with costs.

Dated June 28, 1916.

On motion of

EDWARD F. MERREY,

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Attorney of defendant, City of Paterson.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY,

Prosecutor,

20

vs.

THE BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATER-
SON, AND BOARD OF FINANCE OF
SAID CITY,

Defendants.

On Certiorari.

*Tested
June 16,
1915.*

*Notice of
Appeal.*

30 To L. Edward Herrmann, Esq., Attorney of
Board of Public Utility Commissioners.

Edward F. Merrey, Esq., Attorney of City of
Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from
the whole of the judgment entered in this cause to
the Court of Errors and Appeals.

COLLINS & CORBIN,

Attorneys of Prosecutor.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

ERIE RAILROAD COMPANY,

*Prosecutor,**vs.*THE BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATER-
SON, AND BOARD OF FINANCE OF
SAID CITY,*Defendants.**On Certiorari.**Tested
July 22,
1915.**Notice of
Appeal.*

10

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners. 20

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

COLLINS & CORBIN,
Attorneys of Prosecutor.

30

Notice of Appeal.

Filed June 29, 1916.

NEW JERSEY SUPREME COURT.

10	PUBLIC SERVICE RAILWAY COM- PANY,	<i>Prosecutor,</i>	} <i>On Certiorari.</i>
	<i>vs.</i>		
	BOARD OF PUBLIC UTILITY COMMIS- SIONERS AND CITY OF PATERSON,	<i>Defendants.</i>		} Notice of Appeal.

20 PLEASE TAKE NOTICE, that Public Service Railway Company, the prosecutor in the above stated cause, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause affirming the order of the Board of Public Utility Commissioners brought up for review by writ of *certiorari* herein.

Dated June 29, 1916.

FRANK BERGEN,
Attorney of Prosecutor-Appellant.

30

To L. Edward Herrmann, Attorney of the Board of Public Utility Commissioners.

Edward F. Merrey, Attorney for the City of Paterson.

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

PASSAIC WATER COMPANY,

*Prosecutor,**vs.*THE BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATER-
SON, AND BOARD OF FINANCE OF
SAID CITY,*Defendants.*

10

*On Certiorari.**Notice of
Appeal.*

To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners. 20

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

HUMPHREYS & SUMNER,

Attorneys of Prosecutor.

30

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.

- | | | | |
|----|---|---|--|
| 10 | WESTERN UNION TELEGRAPH COM-
PANY,
<div style="text-align: right; margin-right: 20px;"><i>Prosecutor,</i></div> <div style="text-align: center; margin: 5px 0;"><i>vs.</i></div> THE BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATER-
SON, AND BOARD OF FINANCE OF
SAID CITY,
<div style="text-align: right; margin-right: 20px;"><i>Defendants.</i></div> | } | <i>On
 Certiorari.
 Notice of
 Appeal.</i> |
|----|---|---|--|

- 20 To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners.

Edward F. Merrey, Esq., Attorney of City of Paterson and Board of Finance of said City.

TAKE NOTICE, that the prosecutor appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

COLLINS & CORBIN,
Attorneys of Prosecutor.

30

Notice of Appeal.

Filed July 12, 1916.

NEW JERSEY SUPREME COURT.**D. FULLERTON & COMPANY,***Prosecutor,**vs.***THE BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATER-
SON, and BOARD OF FINANCE OF
SAID CITY,***Defendants.*

10

*On Certiorari.**Notice of
Appeal.*To L. Edward Herrmann, Esq., Attorney of 20
Board of Public Utility Commissioners.Edward F. Merrey, Esq., Attorney of City of Pat-
erson and Board of Finance of said City.TAKE NOTICE, that the prosecutor appeals from the
whole of the judgment entered in this cause to the
Court of Errors and Appeals.**HUDSON & JOELSON,**
Attorneys of Prosecutor.

30

Notice of Appeal.

Filed July 13, 1916.

NEW JERSEY SUPREME COURT.

- | | | |
|----|--|--|
| 10 | JACOB MEYER AND KOMMER DE
VOGEL, partners, etc.,
<i>Prosecutors,</i> | }
<i>On Certiorari.</i>
<i>Notice of</i>
<i>Appeal.</i> |
| | <i>vs.</i> | |
| | BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF NEW
JERSEY AND CITY OF PATERSON,
<i>Defendants.</i> | |

- 20 To L. Edward Herrmann, Esq., Attorney of Board of Public Utility Commissioners and Edward F. Merrey, Esq., Attorney of City of Paterson.

TAKE NOTICE, that the prosecutors appeal to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated June 29th, 1916.

- 30 WILLIAM B. GOURLEY,
Attorney of Prosecutors.

Notice of Appeal.

Filed July 13. 1916.

NEW JERSEY SUPREME COURT.**MORRIS AND COMPANY,***Prosecutor,**vs.***BOARD OF PUBLIC UTILITY COM-
MISSIONERS OF THE STATE OF NEW
JERSEY AND CITY OF PATERSON,
*Defendants.***

10

*On Certiorari.**Notice of
Appeal.*

To L. Edward Herrmann, Esq., Attorney of
Board of Public Utility Commissioners and Ed-
ward F. Merrey, Esq., Attorney of City of Pater-
son.

20

TAKE NOTICE, that the prosecutors appeal to the
Court of Errors and Appeals from the whole of the
judgment entered in this cause.

Dated June 29th, 1916.

WILLIAM B. GOURLEY,*Attorney of Prosecutor.*

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*Grounds of Appeal—Erie R. R. Co.***Grounds of Appeal.**

Filed July 24, 1916.

New Jersey Court of Errors and Appeals

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ERIE RAILROAD COMPANY,
Prosecutor-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
 MISSIONERS, CITY OF PATERSON.
 AND BOARD OF FINANCE OF SAID
 CITY,

Defendants-Respondents.

*On Appeal
 from
 Supreme
 Court.*

*(Re certio-
 rari tested
 June 16, 1915.)*

*Grounds of
 Appeal.*

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The appellant states the following grounds of ap-
 peal—that the Supreme Court affirmed the order of
 the Board of Public Utility Commissioners brought
 up for review in said cause, whereas for one or
 more of the reasons for reversal filed in said court
 under the writ of *certiorari*, which are hereby stated
 as grounds of appeal in this court, the said Su-
 preme Court should have reversed said order.

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COLLINS & CORBIN,
Attorneys of Appellant.

Grounds of Appeal—Erie R. R. Co.

Grounds of Appeal.

Filed July 24, 1916.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

ERIE RAILROAD COMPANY, <i>Prosecutor-Appellant,</i> <i>vs.</i> BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON, AND BOARD OF FINANCE OF SAID CITY, <i>Defendants-Respondents.</i>	<i>On Appeal from Supreme Court.</i> <i>(Re certio- rari tested July 22, 1915.)</i> <i>Grounds of Appeal.</i>	10
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*(Re certio-
rari tested
July 22, 1915.)*

*Grounds of
Appeal.*

The appellant states the following grounds of appeal—that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari*, which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

COLLINS & CORBIN, 30
Attorneys of Appellant.

Grounds of Appeal—Public Service Railway Co.

Grounds of Appeal.

Filed July 12, 1916.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

PUBLIC SERVICE RAILWAY COM-
PANY,

Prosecutor-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND CITY OF PATER-
SON,

Defendants-Respondents.

On Certiorari.

*Grounds of
Appeal.*

20

The appellant states the following grounds of ap-
peal:

The Supreme Court upon the writ of *certiorari* in
said cause which removed the order of the Board of
Public Utility Commissioners bearing date the
twentieth day of April, 1915, in said court for re-
view, affirmed the same; whereas for one or more
of the reasons filed by the appellant-prosecutor in
said court for the reversal of said order, the Su-
preme Court ought to have reversed, vacated and
set aside said order; and the appellant here states
and alleges each of said reasons for reversal, so as
aforesaid filed in the Supreme Court, appearing in
this cause, as grounds for appeal in this court.

30

FRANK BERGEN,

Attorney of Prosecutor-Appellant.

Grounds of Appeal—Passaic Water Co.

Grounds of Appeal.

Filed July 14, 1916.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

PASSAIC WATER COMPANY,
Prosecutor-Appellant,
vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON,
AND BOARD OF FINANCE OF SAID
CITY,
Defendants-Respondents.

*On Appeal
from
Supreme
Court.*

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*(Re certio-
rari tested
June 16, 1915.)*

*Grounds of
Appeal.*

20

The appellant states the following grounds of appeal—that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari*, which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

HUMPHREYS & SUMNER,
Attorneys of Appellant.

20

Grounds of Appeal—Western Union Telegraph Co.

Grounds of Appeal.

Filed July 24, 1916.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

WESTERN UNION TELEGRAPH COM-
PANY,

Prosecutor-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON,
AND BOARD OF FINANCE OF SAID
CITY,

20

Defendants-Respondents.

*On Appeal
from
Supreme
Court.*

*Grounds of
Appeal.*

The appellant states the following grounds of ap-
peal—that the Supreme Court affirmed the order of
the Board of Public Utility Commissioners brought
up for review in said cause, whereas for one or
more of the reasons for reversal filed in said court
under the writ of *certiorari*, which are hereby stated
as grounds of appeal in this court, the said Su-
preme Court should have reversed said order.

30

COLLINS & CORBIN,

Attorneys of Appellant.

Grounds of Appeal—D. Fullerton & Co

Grounds of Appeal.

Filed July 24, 1916.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

D. FULLERTON & COMPANY,
Prosecutor-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON,
AND BOARD OF FINANCE OF SAID
CITY,

Defendants-Respondents.

*On Appeal
from
Supreme
Court.*

*Grounds of
Appeal.*

20

The appellant states the following grounds of appeal—that the Supreme Court affirmed the order of the Board of Public Utility Commissioners brought up for review in said cause, whereas for one or more of the reasons for reversal filed in said court under the writ of *certiorari*, which are hereby stated as grounds of appeal in this court, the said Supreme Court should have reversed said order.

HUDSON & JOELSON,
Attorneys of Appellant.

30

Grounds of Appeal—Meyer & De Vogel.

Grounds of Appeal.

Filed August 16, 1916.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

JACOB MEYER AND KOMMER DE
VÖGEL, partners, etc.,
Prosecutors-Appellants,
vs.

BOARD OF PUBLIC UTILITY COMMIS-
SIONERS AND CITY OF PATERSON,
Defendants-Respondents.

*On Appeal
from
Supreme
Court.*

*Grounds of
Appeal.*

20

The appellant states the following grounds of appeal, that the Supreme Court affirmed the order of the Board of Public Utility Commissioners, whereas for each of the reasons for reversal filed by said appellants as prosecutors in *certiorari* in said court, which reasons are hereby stated as grounds of appeal, the order of said Board should have been reversed.

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WILLIAM B. GOURLEY,
Attorney of Prosecutors-Appellants.

Grounds of Appeal—Morris & Company.

Grounds of Appeal.

Filed August 16, 1916.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

MORRIS AND COMPANY,
Prosecutor-Appellant,
vs.

BOARD OF PUBLIC UTILITY COMMISSIONERS
AND CITY OF PATERSON,
Defendants-Respondents.

*On Appeal
from
Supreme
Court.*

*Grounds of
Appeal.*

10

The appellant states the following grounds of appeal, that the Supreme Court affirmed the order of the Board of Public Utility Commissioners, where-
as for each of the reasons for reversal filed by said
appellant as prosecutor in *certiorari* in said court,
which reasons are hereby stated as grounds of ap-
peal, the order of said Board should have been
reversed.

20

WILLIAM B. GOURLEY,
Attorney of Prosecutor-Appellant.

30

*Erie Railroad Company, Case No. 1.***Check List.**

Filed October 11, 1917.

State of New Jersey.

COURT OF ERRORS AND APPEALS.

November Term, 1916.

10

ERIE RAILROAD COMPANY,

Appellant,

and

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**(Case No. 1.)**Appeal from
Supreme
Court.*

No. 53 of Nov. Term, 1916.

20

Date

1917.

Chancellor presiding.

Opinion by the court below.

Check List.

Affirm Reverse Modify

The Chancellor,

1

" Chief Justice,

1

Mr. Justice Swayze,

1

" " Parker,

1

" " Bergen,

1

" " Minturn,

1

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" " Kalisch,

1

Judge White,

1

" Heppenheimer,

1

" Williams,

1

" Taylor,

1

" Gardner,

1

Totals,

7

5

"Filed Oct. 11, 1917.

40

THOMAS F. MARTIN,

Clerk."

*Opinion of N. J. Court of Errors and Appeals.***Opinion.**

Filed October 11, 1917.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

No. 53—November Term, 1916.

10

ERIE RAILROAD COMPANY,	}
<i>Appellant,</i>	

vs.

BOARD OF PUBLIC UTILITY COM- MISSIONERS, <i>et al.</i> ,	}
<i>Respondents.</i>	

Appeal from Supreme Court.

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Per Curiam:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Garrison in the Supreme Court.

Endorsed:

"Filed Oct. 11, 1917.

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THOMAS F. MARTIN,
Clerk."

Erie Railroad Company, Case No. 1.

Order of Affirmance of Judgment.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

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Between

ERIE RAILROAD COMPANY,
Plaintiff-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF
SAID CITY,

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Defendants-Respondents.

*On Appeal
from
Supreme
Court.*

*Order of
Affirmance of
Judgment.*

(Case No. 1.)

This cause having been duly argued at the November Term, 1916, of this court by Messrs. Collins & Corbin, of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court;

30 It is thereupon, on this 11th day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of this court.

On motion of

L. EDWARD HERRMANN,
FRANCIS SCOTT,

40

Attorneys for Respondents.

Petition for Writ of Error.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS L. MARTIN,
*Clerk."***Petition for Writ of Error.**

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Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**ERIE RAILROAD COMPANY,
*Appellant,**vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Petition for
Writ of
Error.**(Case No. 1.)*

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*To the Honorable Edwin Robert Walker, Chan-
cellor and Presiding Judge of the Court of Er-
rors and Appeals of the State of New Jersey:*

ERIE RAILROAD COMPANY, a corporation, the ap-
pellant in the above-entitled cause, feeling ag-
grieved by the judgment of this court, entered on
the fifth day of March, 1918, affirming the final
judgment of the Supreme Court of the State of
New Jersey herein, dated June 28, 1916, which
judgment affirmed an order of the Board of Public
Utility Commissioners, dated April 20, 1915, in a
certain proceeding entitled "In the Matter of the
Application of the City of Paterson for alteration
of grade crossings on the line of the Erie Rail-
road," whereby the said Erie Railroad Company

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Erie Railroad Company, Case No. 1.

was ordered to alter certain grade crossings, according to the plan therefor annexed to said order and made part thereof, comes now, by Collins & Corbin, its attorneys, and respectfully represents as follows:

- 10 1. The said cause was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, to review the legality of the said order of said Board dated April 20, 1915, requiring your petitioner to alter certain grade crossings in the City of Paterson, and each of them, according to the plan therefor annexed and made a part of said order, and the profile of same, also annexed to and made part of said order; and further requiring
- 20 your petitioner to proceed with due diligence to the execution of said order and to comply with all the requirements thereof and the duties imposed upon it thereby and by the statute under which said order was made and the laws of the State of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the laws of said State; and further requiring your petitioner to begin the actual work of construction in the performance and execution of said order on or before
- 30 certain dates, and to do certain other matters and things, as more particularly set forth therein.

2. Upon the hearing of said writ of certiorari the Supreme Court of the State of New Jersey affirmed the said order of said Board and thereupon your petitioner appealed from said judgment to the Court of Errors and Appeals of the State of New Jersey, and the matter having been heard by said court the judgment of the said Supreme Court was in all things affirmed.
- 40

Petition for Writ of Error.

3. Your petitioner shows that the said order of said Board of Public Utility Commissioners and the statute of the State of New Jersey (being Chapter 57 of the Laws of 1913), upon which such order purported to be based, insofar as the same or either of them affect the rights and property of your petitioner, are invalid, and in violation of the Constitution of the United States in that: 10

(a) Said order and statute take the private property of your petitioner for public use without just or any compensation;

(b) Said order and statute deny to your petitioner the equal protection of the law and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States;

(c) Said order and statute are contrary to Article I, Section 10, paragraph 1, of said Constitution, in that they impair the obligation of contracts; 20

(d) Said order and statute require the property of your petitioner to be taken for the private use of other persons or corporations;

(e) Said order and statute create a burden upon and operate as a regulation of and an interference with the interstate traffic of your petitioner, contrary to Article I, Section 8, paragraph 3, of the Constitution of the United States, and impair the ability of your petitioner to perform its duty as a common carrier of such interstate traffic. 30

4. Your petitioner urged in said Supreme Court and said Court of Errors and Appeals of the State of New Jersey that all of the said matters and things were secured to your petitioner by virtue of the provisions of the Constitution of the United States and the amendments thereto, and that the judgments of the said Supreme Court and of the 40

Erie Railroad Company, Case No. 1.

Court of Errors and Appeals were and are in violation of the Constitution of the United States and the amendments thereto.

10 5. The said Court of Errors and Appeals of the State of New Jersey is the highest court of said State in which judgment could be rendered in said proceedings; and said court having affirmed the judgment of the Supreme Court of the State of New Jersey, whereby it was decided that said order of said Board of Public Utility Commissioners was valid, and having decided that your petitioner was and is not entitled to the rights claimed by virtue of the provisions of the Constitution of the United States and the amendments thereto, as above set forth, your petitioner alleges that it is aggrieved in that, by the proceedings and judgments aforesaid, it has been denied the rights to which it is entitled by virtue of the said provisions of the Constitution of the United States and the amendments thereto.

20 6. Your petitioner, therefore, prays that an order may be made allowing your petitioner to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided, directed to the said New Jersey Court of Errors and Appeals, removing the judgments and proceedings aforesaid, and that your petitioner may have such other relief as may be proper.

And your petitioner will ever pray, etc.

COLLINS & CORBIN,

Attorneys of Petitioner.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,

Clerk."

*Order Allowing Writ of Error.***Order Allowing Writ of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

ERIE RAILROAD COMPANY,
Appellant.

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

Respondents.

*Order
Allowing
Writ of
Error.*

(Case No. 1.)

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Upon reading and filing the petition for writ of error and the assignments of error to review the judgment entered in the above entitled cause affirming the final judgment of the Supreme Court of the State of New Jersey, dated June 28, 1916:

It is ORDERED that a writ of error be and it hereby is allowed to have reviewed in the United States Supreme Court the said judgment heretofore entered herein, and that the amount of bond on said writ of error be and it hereby is fixed at One thousand dollars.

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Dated March 5, 1918.

E. R. WALKER,

*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

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Erie Railroad Company, Case No. 1.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That we,
ERIE RAILROAD COMPANY, a corporation of the State
of New York, as principal, and NATIONAL SURETY
COMPANY, a corporation of the State of New York,
10 as surety, are held and firmly bound unto BOARD
OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATER-
SON and BOARD OF FINANCE OF SAID CITY, in the just
and full sum of One thousand dollars (\$1,000), to
be paid to them and each of them, their and each
of their successors or assigns, to which payment
well and truly to be made, we bind ourselves, our
successors and assigns, jointly and severally, firmly
by these presents.

20 Sealed with our respective corporate seals and
dated the 13th day of December, in the year of our
Lord, one thousand nine hundred and seventeen.

WHEREAS, lately at the session of the Court of
Errors and Appeals of the State of New Jersey, in
an action pending in said court between Erie Rail-
road Company, appellant, and Board of Public
Utility Commissioners, City of Paterson and Board
of Finance of said City, respondents, a final judg-
ment was rendered affirming the judgment of the
Supreme Court of the State of New Jersey in
30 favor of the said respondents, and the said appel-
lant having obtained from said court a writ of
error to reverse the judgment in the aforesaid
action and a citation directed to said respondents
is about to be issued, citing and admonishing them
to be and appear at a Supreme Court of the United
States at Washington;

Now, the condition of the above obligation is
such that if the Erie Railroad Company shall
prosecute its writ of error to effect and shall
40 answer all damages and costs that may be awarded

Bond.

against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

ERIE RAILROAD COMPANY,

(SEAL)

By David Bosman,
Vice-President.

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Attest:

J. E. Packer,
Asst. Secretary.

NATIONAL SURETY COMPANY,

By H. E. Emmett,
Resident Vice-President.

Attest:

E. M. McCarthy,
Resident Assistant Secretary.
(SEAL)

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Authority of officers to execute the above bond is attached.

Approved March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge, Court of Errors
and Appeals of New Jersey.*

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Erie Railroad Company, Case No. 1.

STATE OF NEW JERSEY,

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do HEREBY CERTIFY that the original
 10 Bond, in the case of **ERIE RAILROAD COMPANY, Appellant, vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF said CITY, Respondents**, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen.

IN TESTIMONY WHEREOF, I have here-
 unto set my hand and affixed the
 Official Seal of said Court at
 20 Trenton, this eighteenth day of
 March, A. D. 1918.

(SEAL)

THOMAS F. MARTIN,
 Clerk.

Writ of Error.

Filed March 5, 1918.

30 UNITED STATES OF AMERICA, vs.:

THE PRESIDENT OF THE UNITED
 STATES TO THE HONORABLE JUDGES
 (SEAL) OF THE COURT OF ERRORS AND AP-
 PEALS OF THE STATE OF NEW JERSEY,
 GREETING:

Because in the record and proceedings, as also
 in the rendition of the judgment of a plea which is
 in the said Court of Errors and Appeals of the
 State of New Jersey before you, or some of you,
 40 being the highest court of law or equity of the said

Writ of Error.

State in which a decision could be had, in an action between the Erie Railroad Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents—manifest error hath happened to the great damage of Erie Railroad Company, appellant, as by its complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and complete justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth day of April, next, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and Constitution of the United States should be done.

WITNESS, the Honorable Edward Douglas White, Chief Justice of the United States, the fifth day of March, Nineteen hundred and eighteen.

GEORGE T. CRANMER,

*Clerk of the United States District Court
for the District of New Jersey.*

By ROBERT S. CHEVRIER,
Deputy.

Allowed by

E. R. WALKER,
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

Erie Railroad Company, Case No. 1.

STATE OF NEW JERSEY,

Department of State.

10 I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original Writ of Error in the case of ERIE RAILROAD COMPANY, Appellant, *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen, together with a copy thereof for the said Respondent.

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(SEAL)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918.

THOMAS F. MARTIN,

Clerk.

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*Assignments of Error.***Assignments of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

ERIE RAILROAD COMPANY,

*Appellant,**vs.*BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and
BOARD OF FINANCE OF SAID CITY,
*Respondents.**Assignments
of Error.**(Case No. 1.)*

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ERIE RAILROAD COMPANY, by Collins & Corbin, its attorneys, comes and files the following assignments of error upon which it will rely:

1. The said Court of Errors and Appeals of the State of New Jersey erred in affirming the judgment of the Supreme Court of the State of New Jersey, which had affirmed a certain order made by the Board of Public Utility Commissioners of the State of New Jersey dated April 20, 1915, and brought up to the said Supreme Court by the writ of certiorari issued out of that court.

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2. The said Court of Errors and Appeals of the State of New Jersey erred in not reversing the said judgment of the said Supreme Court of the State of New Jersey, for the several grounds of appeal, or for one or more thereof, filed by the appellant, and in not sustaining the said grounds of appeal, or some one or more of them.

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3. The said Court of Errors and Appeals erred in holding that the said order made by said Board of Public Utility Commissioners dated April 20, 1915, and the statute of the State of New Jersey

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Erie Railroad Company, Case No. 1.

whereon the same was based, did not violate the rights of the appellant secured to it by the Constitution of the United States and the several amendments thereto, and in not holding that said order and statute did violate said rights, or some one or more of them.

- 10 4. The said Court of Errors and Appeals erred in holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deprive the appellant of its liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States, reading as follows:

“ARTICLE V.

- 20 “No person shall be * * * deprived of life, liberty or property, without due process of law.”

“ARTICLE XIV.

“Nor shall any State deprive any person of life, liberty or property without due process of law.”

- 30 Said court also erred in not holding that the said order and the said statute, or one or both of them, did deprive the appellant of its liberty and property without due process of law, contrary to said amendments, or one of them.

5. The said Court of Errors and Appeals erred in holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deny to appellant the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

- 40 “Nor shall any State deny to any person within its jurisdiction the equal protection of the laws.”

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Said court also erred in not holding that the said order and the said statute, or one or both of them, did deny to the appellant the equal protection of the laws, contrary to the said amendment.

6. The said Court of Errors and Appeals erred in holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not abridge the privileges or immunities of the appellant, contrary to the Fourteenth Amendment of the Constitution, reading as follows: 10

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

Said court also erred in not holding that the said order and the said statute, or one or both of them, did abridge the privileges or immunities of the appellant, contrary to the said amendment. 20

7. The said Court of Errors and Appeals erred in holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not take the private property of the appellant for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

“Nor shall private property be taken for public use without just compensation.” 30

Said court also erred in not holding that the said order and the said statute, or one or both of them, did take the private property of the appellant for public use without just compensation, contrary to the said amendment.

8. The said Court of Errors and Appeals erred in holding that the said order of said Board of Public Utility Commissioners and the statute 40

Erie Railroad Company, Case No. 1.

whereon the same was based did not create a burden upon and operate as a regulation of, and an interference with interstate commerce, contrary to Article I, Section VIII, paragraph 3, reading as follows:

- 10 "The Congress shall have power * * *
 3. To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes."

Said court also erred in not holding that the said order and the said statute, or one or both of them, did create a burden upon and operate as a regulation of and an interference with interstate commerce, contrary to said article.

- 20 9. The said Court of Errors and Appeals erred in holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not impair the obligation of contracts between the State of New Jersey and the appellant, contrary to Article I, Section X, paragraph 1, reading as follows:

 "No State shall pass any * * * law impairing the obligation of contracts."

- 30 Said court also erred in not holding that the said order and the said statute, or one or both of them, did impair the obligation of contracts between the State of New Jersey and the appellant, contrary to said article.

- 40 10. The said Court of Errors and Appeals erred in not holding that the statute upon which the order under review is based (being Chapter 57, Laws of 1913), is unreasonable, unconstitutional and invalid for the reason that it establishes no reasonable, or any, standard whereby the Board of Public Utility Commissioners may determine when or under what circumstances a highway grade crossing is dangerous to public

Assignments of Error.

safety, or that the public travel on said highway is impeded thereby, within the meaning of said statute, and delegates legislative power to said Board with respect to such crossings and the orders that may be made concerning the same.

11. The said Court of Errors and Appeals erred in not holding that the statute upon which the order under review is based (being Chapter 57, Laws of 1913), is unreasonable, unconstitutional and invalid for the reason that, when and if the Board finds that a highway grade crossing is dangerous to public safety, or that public travel on the highway is impeded by such crossing, the said statute confers upon said Board arbitrary power to order or to refuse to order that such crossing be altered. 10

12. The said Court of Errors and Appeals erred in not holding that said order is unreasonable and unconstitutional for the reason that it appears that the cost to Erie Railroad Company of complying with said order will greatly exceed the value of the leasehold interest of said company in the property of the President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company, or both of them combined, without any compensating advantage to said Erie Railroad Company, and therefore is, in effect, a confiscation of the property of said Erie Railroad Company, and takes the property of said Erie Railroad Company for the benefit of said the President and Board of Directors of Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, contrary to the provisions of the Constitutions of the State of New Jersey and of the United States as hereinbefore set forth. 20 30 40

Erie Railroad Company, Case No. 1.

13. The said Court of Errors and Appeals erred in not holding that the said order is unreasonable and unconstitutional for the reason that the cost of complying therewith will exceed the total combined value of all the property, real and personal, of the corporations known as the
10 President and Board of Directors of the Paterson and Hudson River Railroad Company and the Paterson and Ramapo Railroad Company and the value of the appellant's interest therein, and will make the interest and investment of the appellant in said properties, or either of them, incapable of earning, when used for railroad purposes, a fair and reasonable return upon the amount invested therein, and will confiscate appellant's property and interest therein.

20 14. The said Court of Errors and Appeals erred in not holding that said order, with the plan thereto annexed, in so far as they require changes in the location or grades or other property of the corporations known respectively as "The President and Board of Directors of Paterson and Hudson River Railroad Company" and "Paterson and Ramapo Railroad Company" and the construction, relocation or rebuilding thereof
30 in whole or in part, as indicated on said plan, is invalid and beyond the jurisdiction of said Board, for the reason that the said changes, relocations, constructions, reconstructions and rebuildings confiscate the property of the appellant for the benefit of the said the President and Board of Directors of the Paterson and Hudson River Railroad Company and Paterson and Ramapo Railroad Company, and take the property of the appellant for public use without just compensation, contrary to the provisions of the Constitu-

Assignments of Error.

tions of the State of New Jersey and of the United States, as hereinbefore set forth.

15. The said Court of Errors and Appeals erred in not holding that the statute upon which said order is based (being Chapter 57, Laws of 1913), if construed to permit or require the Board of Public Utility Commissioners to order the company operating the railroad at the highway crossings known respectively as (A) Madison avenue, (B) Clay and Straight streets (two crossings), (C) Cedar street, (D) Market street and Park avenue (one crossing), (E) Ellison street, (F) Van Houten street, (G) Broadway, (H) Fair street, (I) Hamilton avenue, (J) Lafayette street, (K) Franklin street, (L) Keen street, (M) Warren street, (N) River and Putnam streets (one crossing), to alter said crossings, or any or either of them, at the expense of said company so operating such railroad (less such amount as may be ordered to be paid by the street railway company using such crossing or crossings), is unconstitutional and void because it takes the property of the appellant for private use, and also takes its property for public use without just compensation and otherwise violates the provisions of the Constitution of the United States, as hereinbefore set forth.

16. The said Court of Errors and Appeals erred in not holding that said order is unreasonable and invalid and impossible of performance, for the reason that the cost to the appellant of complying therewith will be approximately the sum of three million dollars (exclusive of property damage), whereas the testimony taken before said Board shows that appellant did not have, and in all probability will not have, sufficient funds available for such purpose; and has not

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and in all reasonable probability will not have, any means of securing funds whereby it might be enabled to comply with said order within the time limited therein.

10 17. The said Court of Errors and Appeals erred in not holding that said order is unreasonable, and the statute upon which the same is based is unconstitutional and invalid, for the reason that each of them fails to give to the railroad the alternative of decreasing or eliminating the danger to public safety and the impediment to public travel by decreasing the number of train movements over said crossings, or some of them, or by abandoning the railroad at said crossings, or some of them.

20 18. The said Court of Errors and Appeals erred in not holding that said order with the plan thereto annexed, so far as they require changes in the location or grade of various switches, sidetracks, leads, bridges, yards, structures and other facilities and property of the appellant, and other companies, corporations, co-partnerships, or individuals, and the construction, relocation or rebuilding thereof, in whole or in part, as indicated on said plan, in invalid and beyond the jurisdiction of said Board for the following reasons:

30 (a) The petition of the Board of Finance of the City of Paterson, upon which said order is based, was limited to a prayer for the elimination of certain highway crossings, and did not include therein any prayer for the relocation or reconstruction or rebuilding of said property of appellant, and said other companies, corporations, copartnerships or individuals.

40 (b) Said Board has no power to order said changes, relocations, constructions, re-

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constructions and rebuildings, or any or either of them, upon the petition filed by said Board of Finance of the City of Paterson.

(c) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any of either of them, included within the powers conferred by law upon said Board. 10

(d) Said order was not made after hearing, upon notice, as required by law.

(e) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, any part of the duties or obligations imposed by law upon the appellant, or upon said other companies, corporations, copartnerships or individuals.

(f) Said changes, relocations, constructions, reconstructions and rebuildings are not, nor is any or either of them, reasonably necessary, or required, or appropriate for the elimination of said crossings named in Assignment No. 15, or any or either of them. 20

(g) Said changes, relocations, constructions, reconstructions and rebuildings impose a burden upon the interstate traffic of the appellant and interfere with and impair its ability to perform its duty as an interstate carrier of freight and passengers.

19. The said Court of Errors and Appeals erred in not holding that said order is invalid in so far as it requires the construction or reconstruction and the relocation of the station buildings and facilities at or near Market street and the station buildings and facilities at or near River street, or either of them, in the City of Paterson, other than the station buildings and 30

Erie Railroad Company, Case No. 1.

facilities respectively now occupied and maintained by the appellant, for the following reasons:

10 (a) The petition of the Board of Finance of the City of Paterson, upon which said order was based, was limited to a prayer for the elimination of certain highway crossings, and did not include therein any prayer for the construction or reconstruction or relocation of said station buildings and facilities, or either of them.

(b) There is no evidence to show that said existing station buildings and facilities, or either of them, are not safe, adequate or proper.

(c) It was not made, after hearing, upon notice, as required by law.

20 (d) It does not appear that said constructions, or reconstructions, or relocations, or any or either of them, are reasonably necessary, required or appropriate for the elimination of the highway crossings named in Assignment No. 15, or any or either of them.

30 (e) It deprives the appellant of its property without due process of law, as no hearing has been given to the appellant on the question as to whether said present station buildings and facilities, or either of them, are safe, adequate and proper, or on the question whether, in order to have the same safe, adequate and proper, it is necessary or reasonable to construct or reconstruct or relocate said station buildings and facilities, or either of them, in the manner required by said order.

40 20. The said Court of Errors and Appeals erred in not holding that said order is invalid in so far as it requires the appellant to remove from its present location the buildings and facilities, and each of them, now used respectively by Fullers Express Company and Morris & Com-

Assignments of Error.

pany, and to relocate, rebuild, reconstruct and maintain the same upon the respective sites indicated on the plan and profile attached to said order, for the following reasons:

(a) Said Board is without authority or jurisdiction to make an order requiring the appellant to take any action whatever involving or affecting said buildings and facilities, or either of them.

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(b) Said Board is without authority or jurisdiction to require the appellant to remove, rebuild, relocate and maintain said buildings and facilities or either of them at the respective sites indicated on the said plan and profile.

(c) Said Board is without authority or jurisdiction to require the appellant to devote said sites, or either of them, to private purposes for the benefit of said Fullers Express Company and Morris & Company, or either of them.

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(d) Said Board is without authority or jurisdiction to require the appellant to devote said sites, or either of them, to public or any purposes other than the public purposes to which the same, or either of them, are now devoted.

(e) The evidence does not show that the removal of said buildings and facilities, or the relocation, rebuilding, reconstruction and maintenance of the same or either of them, are reasonably necessary, or required, or appropriate for the elimination of the highway crossings named in Assignment No. 15, or any or either of them.

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21. The said Court of Errors and Appeals erred in not holding that said order is invalid in so far as it requires the appellant to relay, relocate, rebuild, reconstruct and maintain the tracks, poles and wires of Public Service Railway Company on the several sites indicated on the

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Erie Railroad Company, Case No. 1.

plan and profile attached to said order, for the following reasons:

10 (a) Said Board is without authority or jurisdiction to make an order requiring the appellant to take any action whatever involving or affecting said tracks, poles, wires, or any or either of them.

(b) Said Board is without authority or jurisdiction to require the appellant to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires at the respective sites indicated on said plan and profile.

20 (c) Said Board is without authority or jurisdiction to require the appellant to devote said sites, or any or either of them, so far as the same or some of them are on the right of way or other property of the appellant, to private purposes for the benefit of said Public Service Railway Company.

(d) Said Board is without authority or jurisdiction to require the appellant to devote said sites, or any or either of them, so far as the same or some of them are on the right of way or other property of the appellant, to public or any purposes other than the public purposes to which the same or some of them are now devoted.

30 (e) The evidence does not show that the relaying, relocation, rebuilding, reconstruction, or maintenance of said tracks, poles and wires, or any or either of them, are reasonably necessary or appropriate for the elimination of the highway crossings named in Assignment No. 15, or any or either of them.

(f) The appellant has no legal duty or right to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires, or any or either of them.

40 (g) The legal duty and right to relay, relocate, rebuild, reconstruct and maintain said tracks, poles and wires rests on persons or corporations other than the appellant.

Assignments of Error.

(h) The existing contracts between the appellant or its predecessors, and other persons or corporations, or their predecessors, respectively, with respect to the relaying, relocating, rebuilding, reconstruction and maintenance of said tracks, poles and wires, and each of them, are impaired and destroyed.

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(i) There is no right in the appellant to relay, relocate, rebuild, reconstruct, or maintain said tracks, poles and wires in, along or through public streets, except under the limitations imposed by law.

22. The said Court of Errors and Appeals erred in not holding that said order is invalid in so far as it requires the appellant to change the lines, width and direction of the highways named in Assignment No. 15, or any or either of them, and to carry so much thereof as so changed under said railroad (except in the case of Madison avenue), and to carry Madison avenue over said railroad, according to and as shown on said plan and profile for said purpose, and to vacate the remaining parts of said highways within the lines of the right of way of the appellant, and to vacate that part of Madison avenue lying west of the railroad which is included between the right of way line of the railroad and the line of the re-located Madison avenue, for the following reasons:

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(a) The appellant is under no legal duty or obligation to change the lines, width or direction of the said highways, or any or either of them, nor to carry any part thereof as so changed under the said railroad, nor to vacate the remaining parts of said highways, or any or either of them, within the lines of said right of way, nor to vacate said part of said Madison Avenue.

(b) The appellant has no power, or authority to change the lines, width or direc-

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Erie Railroad Company, Case No. 1.

tion of the said highways, or any or either of them, nor to carry any part thereof as as so changed under the said railroad nor to vacate the remaining parts of said highways, or any or either of them, within the lines of said right of way, nor to vacate said part of said Madison Avenue.

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(c) Said order imposes upon the appellant the entire expense of such changes, relocations and vacations, including damages to adjacent property (except such expenses as by statute are expressly imposed upon municipalities, or other persons or corporations), without affording to the appellant any hearing as to the propriety or necessity of such changes, relocations and vacations, and without affording to the appellant any hearing as to the cause of such changes, relocations or vacations and the method or the amount of the assessment, or assessments, therefor.

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(d) The power or authority to order the appellant to change the lines, width or direction of said highways, or any or either of them, and to carry any part thereof as so changed under the said railroad and to vacate the remaining parts of said highways, or any or either of them, within the lines of the said right of way, and to vacate said part of said Madison Avenue, has not been conferred by law upon said Board of Public Utility Commissioners, and can only be exercised by the proper municipal, or other authorities, in the manner provided by law.

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(e) No appropriate proceedings have been taken and the necessary consents have not been given by or in behalf of the appellant, or other interested property owners, for the said changes, relocations and vacations of said highways, or any or either of them, as required by the Charter of the City of Paterson and by the laws of the State of New Jersey.

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Assignments of Error.

23. The said Court of Errors and Appeals erred in not holding that the statute upon which said order is based is unreasonable, invalid and unconstitutional, in so far as it permits or requires said Board of Public Utility Commissioners to order the appellant to vacate, relocate or change the lines, width, direction or location of the highways named in Assignment No. 15, or any or either of them; and in so far as it permits or requires the opening of new highways in the place of those ordered vacated, for the following reasons:

(a) The appellant is under no legal duty or obligation to vacate, relocate or change the lines, width, direction or location of said highways, or any or either of them, or to open new highways in the place of those ordered vacated.

(b) The appellant has no power or authority to vacate, relocate or change the lines, width, direction or location of said highways, or any or either of them, or to open new highways in the place of those ordered vacated.

(c) Said statute attempts to impose upon the appellant the entire expense of such changes, relocations, or openings, including damages to adjacent property (except such expenses as by statute are expressly imposed upon municipalities or other persons or corporations), without affording to the appellant any hearing as to the propriety or necessity of such changes, relocations, or openings; and without affording to the appellant any hearing as to the costs of such changes, relocations or openings and the method or the amount of the assessment or assessments therefor.

(d) The power or authority to vacate, relocate or change the lines, width, direction or location of such highways and to open

Erie Railroad Company, Case No. 1.

new highways in the place of those ordered vacated, has not been conferred by law upon said Board of Public Utility Commissioners and can only be exercised by the proper municipal or other authorities in the manner provided by law.

- 10 (e) No appropriate proceedings have been taken, and the necessary consents have not been given, by or in behalf of the appellant or other interested property owners for the vacation, relocation or change of the lines, width, direction or location of such highways, or any or either of them, or for the opening of new highways in the place of those ordered vacated, as required by the Charter of the City of Paterson and by the laws of the State of New Jersey.

- 20 24. The said Court of Errors and Appeals erred in not holding that said order is invalid in so far as it requires the appellant to reconstruct the railroad over the public highways named in Assignment No. 15 (except Madison avenue), by elevating the railroad at such public highways, and each of them, and by depressing the grade of said highways, and each of them, in order to pass under the railroad when thus elevated.

- 30 25. The said Court of Errors and Appeals erred in not holding that the statute upon which the order under review is based is unreasonable and invalid and deprives the appellant of its property without due process of law, because it requires grade crossings to be altered and eliminated by substituting therefor a crossing not at the grade of the public highway, either by carrying the public highway over or under such railroad, or by reconstructing such railroad over or under such public highway, without permitting the Board of Public Utility Commissioners in its discretion
40 to alter and eliminate such crossings by depressing

Assignments of Error.

or elevating the public highway in part and depressing or elevating the railroad in part.

26. The said Court of Errors and Appeals erred in not holding that said order and the statute upon which the same is based are illegal, unconstitutional and void in so far as they permit or require the appellant to construct or maintain bridges or passages over or under the railroad at the said crossing, or some one or more of them, named in Assignment No. 15, for the reason that the highways at said crossings, or some one or more of them, were opened and laid out subsequent to the construction of the railroad at said crossings. 10

27. The said Court of Errors and Appeals erred in not holding that the statute upon which the order under review is based (being Chapter 57, Laws of 1913) is unreasonable, unconstitutional and invalid because it deprives the appellant of its property without due process of law, and impairs the obligation of appellant's contracts by permitting the Board of Public Utility Commissioners to alter and amend the charters of the several predecessors in interest of the appellant, to whose rights the appellant has succeeded. 20

28. The said Court of Errors and Appeals erred in not holding that the statute upon which the order under review is based (being Chapter 57, Laws of 1913) is unreasonable, unconstitutional and invalid because it purports, or attempts to delegate, to the Board of Public Utility Commissioners, the power in its discretion to alter and amend the charters of the predecessors in interest of the appellant, to whose rights the appellant has succeeded. 30

Erie Railroad Company, Case No. 1.

29. The said Court of Errors and Appeals erred in not holding that the said order and the statute upon which the same is based are illegal, unconstitutional and void in so far as they permit or require the appellant to relocate and reconstruct the highways mentioned in Assignment No. 10 15, and to change the grade thereof, or parts thereof, outside of the right of way of the appellant at said crossings.

30. The said Court of Errors and Appeals erred in not holding that the statute upon which said order is based is unreasonable and in violation of the Constitution of the United States, because it takes the property of the appellant without just compensation and without due process of law, and denies to it the equal protection of the laws and impairs the obligation of the appellant's contracts as, follows:

(a) The contracts made by the appellant with the holders of its stocks, bonds, notes and other obligations.

(b) The contracts made between the State of New Jersey and the appellant or its predecessors in interest, to whose rights appellant has succeeded.

30 (c) The contracts made between the appellant or its predecessors in interest, to whose rights the appellant has succeeded, and the Public Service Railway Company, or its predecessors in interest.

(d) The contracts made between the appellant, or its predecessors in interest, to whose rights appellant has succeeded, and the various corporations, copartnerships and individuals in possession or enjoyment of various sidings, switches and other facilities, as described in the evidence and in the plan attached to said order.

40 (e) The contracts made between the corporations known respectively as "The Pres-

Assignments of Error.

ident and Board of Directors of Paterson and Hudson River Railroad Company" and "Paterson and Ramapo Railroad Company" and the appellant, or its predecessors in interest, to whose rights the appellant has succeeded.

in that the said statute imposes upon the appellant the entire expense of the alterations, changes, relocations or openings, including damages to adjacent property, caused by the alteration of crossings in the manner described in said statute—except such part of such expense not exceeding ten per cent., which may be imposed upon the street railway using such crossings, and except such part of such expense as the statute requires to be borne by the municipality, and except such part of such expense as the statute requires to be borne by any telegraph, telephone, gas, electric, lighting, power, water, oil, pipe lines or other companies, or corporations, co-partnerships or individuals.

31. The said Court of Errors and Appeals erred in not holding that said order and statute upon which the same are based are unconstitutional, unreasonable and invalid in so far as they limit the proportion of expense of the alterations, changes, relocations or openings (as specified in said statute) to be paid by the street railway using such crossing or crossings, for the following reasons:

(a) Said proportion is not commensurate with, or in proportion to, the danger to public safety or the impediment to public travel created by and chargeable to said street railway at such crossings, and each of them; nor is it commensurate with, or in proportion to, the protection made necessary by such danger or impediment.

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Erie Railroad Company, Case No. 1.

(b) Said proportion is not a fair or reasonable amount of the expense of such alterations, changes, relocations or openings.

10 (c) Said proportion is less than that imposed upon, and assumed by, the street railway under the terms and conditions of existing agreements between said street railway company, or its predecessors, and the appellant or its predecessors, respecting the use, maintenance and protection of said crossings, and each of them.

32. The said Court of Errors and Appeals erred in not holding that said order is unreasonable and invalid, and the statute upon which same is based is unconstitutional and invalid, for the reason that the testimony shows that it is impossible for the appellant to obey said order; but
20 on failure to obey, the appellant becomes subject to a penalty of one hundred dollars per day for every day during which default continues; and the appellant and its officers, agents and employees, on such neglect or default, become liable to indictment for misdemeanor.

33. The said Court of Errors and Appeals erred in not holding that said order is unreasonable and invalid and in violation of the Constitution of the United States in that the cost to the
30 appellant of compliance therewith is so great that it imposes a burden upon the interstate traffic of the appellant and interferes with and impairs its ability to perform its duty as an interstate carrier of freight and passengers, for the reason that said order compels the appellant to raise and expend moneys which (if available for any purpose), would otherwise be available for, and in the ordinary course of events, would be used by the appellant in the making of changes and
40 improvements which are essential for the purpose

Assignments of Error.

of enabling the appellant to carry on its interstate traffic.

34. The said Court of Errors and Appeals erred in not holding that said order is in violation of the Constitution of the United States, in that it deprives the appellant of its liberty and property without due process of law, denies to the appellant the equal protection of the laws, abridges the privileges and immunities of the appellant, takes the private property of the appellant for public use without just compensation, creates a burden upon and operates as a regulation of and an interference with interstate commerce, and impairs the obligations of contracts, for the reason that the effect of said order will be to deprive the appellant of the rights, benefits, advantages, privileges and contracts now possessed by it with reference to certain sidings in the following respects (numbers correspond to numbers of sidings on maps marked "Exhibit 23" and "Exhibit 23-A"):

(a)	Passaic Steel Co.	No. 3
	R. H. McDonald	No. 4
	Paterson Vehicle Co.	No. 19
	Paterson Beef Co.	No. 20
	David C. Rodgers Co.	No. 24

Said order requires the destruction of each of said sidings.

(b)	G. A. Zabriskie	No. 5
	Commercial Lumber and Mill Work Co.	No. 6
	Christopher Kelly	No. 7
	M. Gobel	No. 8
	National Wood Co.	No. 9
	Standard Oil Co.	No. 10

Said order requires the destruction of the existing siding and the construction of three other sid-

Erie Railroad Company, Case No. 1.

ings in lieu thereof at different locations; and said new sidings, if constructed as required by said plan, will be unavailable for use.

10 Said order further requires the construction of a bridge across Taylor street for the purpose of carrying two of said new sidings to G. A. Zabriskie, Commercial Lumber and Mill Work Co., Christopher Kelly, M. Gobel and National Wood Co.; and requires the construction of another bridge across Taylor street for the purpose of carrying said third new siding to Standard Oil Company.

(c) John Agnew Co. No. 11

20 Said order requires the destruction of the two sidings located between Hamilton avenue and Governor street; and the construction of two new sidings, each at an elevation of about sixteen feet above the present grade upon the land of John Agnew Co., and also requires the construction of a bridge over Hamilton avenue for the purpose of carrying one of said new sidings.

30 (d) McNabb & Harlin No. 15
Graham Brewing Co. No. 16
National Biscuit Co. No. 17
Hygeia Ice Co. No. 47
Paterson Consolidated Ice Co. No. 50
Bon Arbor Chemical Co. No. 55

Said order requires the destruction of the lead by which each of said sidings is reached, and requires the construction of a new and longer lead through a public street in order to reach said sidings and each of them, which said new lead is partially on and partially off the right of way and property of the appellant.

Assignments of Error.

Said order further requires the maintenance of each of said sidings along, in and through a public street.

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| (e) | Morris & Co. | No. 18 |
| | Fullers Express Co. | No. 50 |

Said order requires the destruction of each of said sidings and the construction of two other sidings at the locations indicated on said plan. 10

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| (f) | Herman Co. | No. 22 |
| | Sulzberger & Sons Co. | No. 23 |

Said order requires the destruction of the siding and the construction of a new siding at an elevation of fifteen feet above the grade of the present siding and the construction of a bridge over Ellison street for the purpose of carrying said new siding—said new siding being partially on and partially off the right of way and property of the appellant. 20

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| (g) | Armour & Co. | No. 25 |
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Said order requires the destruction of the lead by which said siding is connected with the main line, and the construction of a new lead and of bridges at Lafayette, Montgomery, Fulton and Governor streets on which to carry said new lead.

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| (h) | Hinchliffe Brewery | No. 26 | 30 |
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Said order requires the destruction of said siding and the construction of a new siding at an elevation of sixteen and one-half feet above the present grade.

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| (i) | Katz Brewery | No. 27 |
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Said order requires the destruction of said siding and the construction of a new siding at a different place and grade.

Erie Railroad Company, Case No. 1.

Said order also requires the construction of a new lead, and of new bridges at Lafayette, Montgomery, Fulton and Governor streets, on which to carry said new lead.

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| 10 | (j) | P. S. Van Kirk Co. | No. 28 |
| | | Diamond Coal Co. | No. 33 |
| | | Olive Oil Soap Co. | No. 61 |

Said order requires the destruction of each of said sidings and the construction of new sidings at a different grade and off of the right of way and property of appellant.

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| 20 | (k) | A. H. Smith | No. 29 |
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Said order requires the destruction of said siding and the construction of a new siding on a different elevation and place, partly on and partly off the right of way and property of the appellant.

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| 20 | (l) | Meyer and DeVogel | No. 30 |
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Said order requires the destruction of said siding and the construction of a new siding at an elevation of about fifteen feet above the present grade.

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| 30 | (m) | Armstrong Sons Co. | No. 31 |
|----|-----|--------------------|--------|

Said order requires the destruction of said siding and the construction of a new siding at an elevation about seventeen feet above the present grade.

Said order further requires the construction of a bridge across Montgomery street on which to carry said new siding.

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| 40 | (n) | A. H. Smith | No. 32 |
| | | D. Fullerton & Co. | No. 33 |

Said order requires the destruction of said sidings and the construction of other sidings at

Assignments of Error.

an elevation about sixteen feet above the present grade.

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| (o) | Atherton Grain Co. | No. 34 |
| | J. A. Lydecker | No. 35 |

Said order requires the destruction of the siding and the construction of a new siding at an elevation of about sixteen feet above the present grade. 10

Said order further requires the construction of a bridge over Keen street on which to carry said new siding.

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| (p) | Public Service Gas Co. | No. 36 |
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Said order requires the partial destruction of the two existing sidings and the construction of a new siding in a different location through a public street and off the right of way and property of the appellant. 20

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| (q) | J. Van Den Hendell | No. 37 |
| | Swift & Co. | No. 38 |
| | H. M. Post | No. 39 |
| | Ashley & Bailey | No. 40 |
| | National Silk Dyeing Co. | No. 41 |
| | Grasselli Chemical Co. | No. 42 |
| | Auger & Simon Co. | No. 49 |
| | Center Paper Box Co. | No. 56 |
| | Waldo Silk Ribbon Co. | No. 57 |

Said order requires the destruction of the leads and connections by which each of said sidings is now reached, and requires the construction of new leads and connections. 30

35. The said Court of Errors and Appeals erred in not holding that said order is illegal and unconstitutional in so far as it requires the construction and maintenance of sidings—

(A) on the right of way and other property of the appellant;

Erie Railroad Company, Case No. 1.

Citation.

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

10 (SEAL) THE PRESIDENT OF THE UNITED
STATES TO BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID CITY,
GREETING:

20 You are hereby cited and admonished to be and
appear at a Supreme Court of the United States,
at Washington, on the day of ,
A. D., Nineteen hundred and , pursuant
to a writ of error filed in the Clerk's office of the
Court of Errors and Appeals of the State of New
Jersey, wherein Erie Railroad Company, a cor-
poration, is plaintiff in error, and you are de-
fendants in error, to show cause, if any there be,
why the judgment in said writ of error mentioned
should not be corrected and speedy justice should
not be done to the parties in that behalf.

WITNESS, THE HONORABLE EDWARD DOUGLAS
WHITE, Chief Justice of the United States of Amer-
ica, this fifth day of March, A. D., Nineteen hun-
dred and eighteen.

30 E. R. WALKER,
Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.

THOMAS F. MARTIN,
Clerk.

Service of this citation and receipt of a copy
thereof for defendants in error acknowledged this
Seventh day of March, 1918.

40 J. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys of Defendant in Error.

Return of Clerk.

STATE OF NEW JERSEY,

Department of State.

In obedience to the commands of the within Writ,
I herewith transmit to the Supreme Court of the
United States, a duly certified transcript of the
complete record and proceedings in the within 10
entitled cause, with all things concerning the same.

(SEAL) WITNESS my hand and the seal of
the Court of Errors and Appeals,
this eighteenth day of March, A.
D. 1918.

THOMAS F. MARTIN,
Clerk.

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*Erie Railroad Company, Case No. 2.***Stipulation.**

Filed March 5, 1918.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

ERIE RAILROAD COMPANY,

*Appellant,**vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Stipulation**as to**Certification*
*of Record.**(Case No. 2.)*

20

IT IS STIPULATED by and between the parties that the state of case certified to the United States Supreme Court on Writ of Error in the cause entitled Erie Railroad Company vs. Board of Public Utility Commissioners and others (Case No. 1) shall be used on the argument of this cause as if certified herein.

Dated March 7, 1918.

30

COLLINS & CORBIN,

*Attorneys for Appellant.*L. EDWARD HERRMANN,
FRANCIS SCOTT,*Attorneys for Respondents.*

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,

Clerk."

40

*Check List.***Check List.**

Filed October 11, 1917.

State of New Jersey.

COURT OF ERRORS AND APPEALS.

November Term, 1916.

10

ERIE RAILROAD COMPANY,

*Appellant,**and*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Appeal from
Supreme
Court.**(Case No. 2.)*

No. 54 of Nov. Term, 1916.

Date

1917.

20

Chancellor presiding.

Opinion by Court below.

Check List.

Affirm Reverse Modify

The Chancellor,	1		
“ Chief Justice,		1	
Mr. Justice Swayze,		1	
“ “ Parker,		1	
“ “ Bergen,		1	
“ “ Minturn,	1		
“ “ Kalisch,	1		30
Judge White,	1		
“ Heppenheimer,		1	
“ Williams,	1		
“ Taylor,	1		
“ Gardner,	1		
Totals,	7	5	

“Filed, Oct. 11, 1917.

THOMAS F. MARTIN,

Clerk.”

40

Erie Railroad Company, Case No. 2.

Opinion.

Filed October 11, 1917.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

No. 54—November Term, 1916.

10

ERIE RAILROAD COMPANY,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, *et al.*,

Respondents.

*Appeal from
Supreme
Court.*

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Per Curiam:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Garrison in the Supreme Court.

Endorsed:

“Filed Oct. 11, 1917.

30

THOMAS F. MARTIN,

Clerk.”

Order on Affirmance of Judgment.

Order of Affirmance of Judgment.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

Between

ERIE RAILROAD COMPANY,
Plaintiff-Appellant,
vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,
Defendants-Respondents.

*On Appeal
from Supreme
Court.*

*Order on
Affirmance
of Judgment.
(Case No. 2.)*

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This cause having been duly argued at the November Term, 1916, of this court by Gilbert Collins and George S. Hobart, of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel for the respondents, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court;

It is thereupon, on this 11th day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

30

On motion of

L. EDWARD HERRMANN,
FRANCIS SCOTT,

Attorneys for Respondents.

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Erie Railroad Company, Case No. 2.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

10

Petition for Writ of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**ERIE RAILROAD COMPANY,
*Appellant,**vs.*20 BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,
*Respondents.**Petition for
Writ of Error.
(Case No. 2.)**To The Honorable Edwin Robert Walker, Chan-
cellor and Presiding Judge of the Court of Er-
rors and Appeals of the State of New Jersey:*

30 ERIE RAILROAD COMPANY, a corporation, the ap-
pellant in the above entitled cause, feeling ag-
grieved by the judgment of this court, entered on
the fifth day of March, 1918, affirming the final
judgment of the Supreme Court of the State of
New Jersey herein, dated June 28, 1916, which
judgment affirmed the report, determination or
order of the Board of Public Utility Commission-
ers dated July 9, 1915, denying an application of
said Erie Railroad Company for a re-hearing of
a certain proceeding entitled "In the Matter of
40 the Application of the City of Paterson for altera-

Petition for Writ of Error.

tion of grade crossings on the line of the Erie Railroad," which resulted in an order of said Board, dated April 20, 1915, whereby the said Erie Railroad Company was ordered to alter certain grade crossings, according to the plan therefor annexed to said order and made part thereof, comes now by Collins & Corbin, its attorneys, and respectfully represents as follows: 10

1. The said cause was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, to review the legality of the said report, determination or order of said Board dated July 9, 1915, denying the application of your petitioner for a re-hearing of a certain proceeding entitled "In the Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," which resulted in an order of said Board dated April 20, 1915, whereby your petitioner was ordered to alter certain grade crossings in the City of Paterson, and each of them, according to the plan therefor annexed to and made a part of said order, and the profile of same, also annexed to and made part of said order. 20

2. Upon the hearing of said writ of certiorari the Supreme Court of the State of New Jersey affirmed the said order of said Board and thereupon your petitioner appealed from said judgment to the Court of Errors and Appeals of the State of New Jersey, and the matter having been heard by said court, the judgment of the said Supreme Court was in all things affirmed. 30

3. Your petitioner shows that the said report, determination or order of said Board dated July 9, 1915, denying the application of your petitioner 40

Erie Railroad Company, Case No. 2.

for a rehearing of the proceedings entitled "In the Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," which resulted in said order, dated April 20, 1915, and the statute of the State of New Jersey (being Chapter 57 of the Laws of 1913), upon which said last mentioned order pur-
10 ported to be based, insofar as the same or either of them affect the rights and property of your petitioner, are invalid and in violation of the Constitution of the United States, in that:

(a) Said report, determination or order dated July 9, 1915, and said statute take the private property of your petitioner for public use without just or any compensation;

(b) Said report, determination or order dated
20 July 9, 1915, and said statute deny to your petitioner the equal protection of law and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States;

(c) Said report, determination or order dated July 9, 1915, and said statute are contrary to Article I, Section 10, paragraph 1 of said Constitution, in that they impair the obligation of con-
30 tracts;

(d) Said report, determination or order dated July 9, 1915, and said statute require the property of your petitioner to be taken for the private use of other persons or corporations;

(e) Said report, determination or order dated July 9, 1915, and said statute create a burden upon and operate as a regulation of and an interference with the interstate traffic of your petitioner, contrary to Article I, Section 8, paragraph 3 of the Constitution of the United States, and impair
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Petition for Writ of Error.

the ability of your petitioner to perform its duty as a common carrier of such interstate traffic.

4. Your petitioner urged in said Supreme Court and said Court of Errors and Appeals of the State of New Jersey that all of the said matters and things were secured to your petitioner by virtue of the provisions of the Constitution of the United States and the amendments thereto, and that the judgments of the said Supreme Court and of the Court of Errors and Appeals were and are in violation of the Constitution of the United States and the amendments thereto. 10

5. The said Court of Errors and Appeals of the State of New Jersey is the highest court of said State in which judgment could be rendered in said proceedings; and said court having affirmed the judgment of the Supreme Court of the State of New Jersey, whereby it was decided that said report, determination or order dated July 9, 1915, of said Board of Public Utility Commissioners was invalid, and having decided that your petitioner was and is not entitled to the rights claimed by virtue of the provisions of the Constitution of the United States and the amendments thereto, as above set forth, your petitioner alleges that it is aggrieved in that, by the proceedings and judgments aforesaid, it has been denied the rights to which it is entitled by virtue of the said provisions of the Constitution of the United States and the amendments thereto. 20 30

6. Your petitioner therefore prays that an order may be made allowing your petitioner to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided, directed to the said New Jersey Court of Errors and Ap- 40

Erie Railroad Company, Case No. 2.

peals, removing the judgments and proceedings aforesaid, and that your petitioner may have such other relief as may be proper.

And your petitioner will ever pray, etc.

COLLINS & CORBIN,

Attorneys of Petitioner.

10 Endorsed:

"Filed Mar. 3, 1918.

THOMAS F. MARTIN,
Clerk."

Order Allowing Writ of Error.

Filed March 3, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

20

ERIE RAILROAD COMPANY,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

Respondents.

*Order
Allowing
Writ of Error.
(Case No. 2.)*

30

Upon reading and filing the petition for writ of error and the assignments of error to review the judgment entered in the above entitled cause affirming the final judgment of the Supreme Court of the State of New Jersey, dated June 28, 1916:

It is ORDERED that a writ of error be and it hereby is allowed to have reviewed in the United States Supreme Court the said judgment heretofore entered herein, and that the amount of bond

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Bond.

on said writ of error be and it hereby is fixed at One thousand dollars.

Dated March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

10

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

BOND.

KNOW ALL MEN BY THESE PRESENTS, That we, ERIE RAILROAD COMPANY, a corporation of the State of New York, as principal, and NATIONAL SURETY COMPANY, a corporation of the State of New York, as surety, are held and firmly bound unto the BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, in the just and full sum of One thousand dollars (\$1,000) to be paid to them and each of them, their and each of their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns jointly and severally firmly by these presents.

20

30

Sealed with our respective corporate seals and dated the 13th day of December, in the year of our Lord, One thousand nine hundred and seventeen.

WHEREAS, lately at the session of the Court of Errors and Appeals of the State of New Jersey in an action pending in said court between Erie Railroad Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, a

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Erie Railroad Company, Case No. 2.

final judgment was rendered affirming the judgment of the Supreme Court of the State of New Jersey in favor of the said respondents, and the said appellants having obtained from said court a writ of error to reverse the judgment in the aforesaid action and a citation directed to said respondents is about to be issued, citing and admonishing them to be and appear at the Supreme Court of the United States at Washington—

Now the condition of the above obligation is such that if the Erie Railroad Company shall prosecute its writ of error to effect and shall answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

20

ERIE RAILROAD COMPANY,

By David Bosman,
Vice-President.

Attest:

J. E. Packer,
Asst. Secretary.

(SEAL)

30

NATIONAL SURETY COMPANY,

By H. E. Emmett,
Resident Vice-President.

Attest:

E. M. McCarthy,
Resident Assistant Secretary.

(SEAL)

Bond.

Authority of officers to execute the above bond is attached.

Approved March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge Court of
 Errors and Appeals of New Jersey.* 10

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original bond, in the case of ERIE RAILROAD COMPANY, appellant, vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen. 20

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918. 30

THOMAS F. MARTIN,
Clerk.

*Erie Railroad Company, Case No. 2.***Writ of Error.**

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss.

10 THE PRESIDENT OF THE UNITED
STATES TO THE HONORABLE JUDGES
(SEAL) OF THE COURT OF ERRORS AND AP-
PEALS OF THE STATE OF NEW JERSEY,
GREETING:

20 Because in the record and proceedings as also
in the rendition of the judgment of a plea which
is in the said Court of Errors and Appeals of
the State of New Jersey before you, or some of
you, being the highest court of law or equity of
the said state in which a decision could be had,
in an action between Erie Railroad Company, ap-
pellant, and Board of Public Utility Commis-
sioners, City of Paterson and Board of Finance of
said City, respondents, manifest error hath hap-
pened to the great damage of Erie Railroad Com-
pany, appellant, as by its complaint appears; we,
being willing that error, if any hath been, should be
duly corrected and full and complete justice done
to the parties aforesaid in this behalf, do command
you, if judgment be therein given, that then under
30 your seal, distinctly and openly you send the
records and proceedings aforesaid, with all things
concerning the same, to the Supreme Court of
the United States, together with this writ, so
that you may have the same at Washington on
the fourth day of April, next, in the said Supreme
Court to be then and there held that the record
and proceedings aforesaid being inspected, the
said Supreme Court may cause further to be done
therein to correct that error what of right and
40 according to the laws and Constitution of the
United States should be done.

Writ of Error.

WITNESS, the Honorable Edward Douglas White,
Chief Justice of the United States, the fifth day
of March, Nineteen hundred and eighteen.

GEORGE T. CRANMER,
*Clerk of the United States District Court
for the District of New Jersey.* 10
By ROBERT S. CHEVRIER,
Deputy.

Allowed by

E. R. WALKER,
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

STATE OF NEW JERSEY.

Department of State. 20

I, THOMAS F. MARTIN, Secretary of State of the
State of New Jersey, and ex-officio Clerk of the
Court of Errors and Appeals in the last resort
in all causes, DO HEREBY CERTIFY that the original
writ of error in the case of ERIE RAILROAD COM-
PANY, Appellant, vs. BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATERSON and BOARD OF
FINANCE OF SAID CITY, Respondents, was lodged 30
in this office on the Fifth day of March, Nineteen
hundred and eighteen, together with a copy there-
of for the said respondent.

(SEAL) IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
Official Seal of said Court at
Trenton, this eighteenth day of
March, A. D. 1918.

THOMAS F. MARTIN,
Clerk. 40

Erie Railroad Company, Case No. 2.

Assignments of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10	ERIE RAILROAD COMPANY, <div style="text-align: right;"><i>Appellant,</i></div> <div style="text-align: center;"><i>vs.</i></div> BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, <div style="text-align: right;"><i>Respondents.</i></div>	}	<i>Assignments of Error.</i> <i>(Case No. 2.)</i>
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20 ERIE RAILROAD COMPANY, by Collins & Corbin,
its attorneys, comes and files the following assign-
ments of error upon which it will rely:

1. The said Court of Errors and Appeals of
the State of New Jersey erred in affirming the
judgment of the Supreme Court of the State of
New Jersey, which had affirmed a certain report,
determination or order made by the Board of
Public Utility Commissioners of the State of New
Jersey dated July 9, 1915, and brought up to
the said Supreme Court by the writ of certiorari
30 issued out of that court.

2. The said Court of Errors and Appeals of
the State of New Jersey erred in not reversing
the said judgment of the said Supreme Court of
the State of New Jersey, for the several grounds
of appeal, or for one or more thereof, filed by
the appellant, and in not sustaining the said
grounds of appeal, or some one or more of them.

3. The said Court of Errors and Appeals
40 erred in holding that the said report, determina-
tion or order made by said Board of Public

Assignments of Error.

Utility Commissioners dated July 9, 1915, denying an application by Erie Railroad Company for a rehearing of the proceeding entitled "In the Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," which resulted in an order of said Board dated April 20, 1915, and the statute of the State of New Jersey whereon the last mentioned order was based, did not violate the rights of the appellant secured to it by the Constitution of the United States and the several amendments thereto. 10

4. Said Court of Errors and Appeals erred in holding that the said report, determination or order dated July 9, 1915, and the said order, did not take the private property of the appellant for public use without just or any compensation. 20

5. Said Court of Errors and Appeals erred in holding that the said report, determination or order dated July 9, 1915, and the said statute did not deny to the appellant the equal protection of the law and deprive it of its property without due process of law, and did not abridge its privileges and immunities as a citizen of the United States.

6. Said Court of Errors and Appeals erred in holding that the said report, determination or order dated July 9, 1915, and the said statute were not contrary to Article I, Section 10, paragraph 1 of said Constitution in that they impaired the obligation of contracts. 30

7. Said Court of Errors and Appeals erred in holding that the said report, determination or order dated July 9, 1915, and the said statute did not require the property of the appellant to be taken for the private use of other persons or corporations. 40

Erie Railroad Company, Case No. 2.

8. Said Court of Errors and Appeals erred in holding that said report, determination or order dated July 9, 1915, and the said statute did not create a burden upon and operate as a regulation of and an interference with the interstate traffic of your petitioner, contrary to Article I, Section VIII, paragraph 3 of the Constitution of the United States, and impair the ability of your petitioner to perform its duty as a common carrier of such interstate traffic.

9. The action of the Board of Public Utility Commissioners in denying the application of the appellant for a rehearing of the order of said Board dated April 20, 1915, was arbitrary and unjustified, and was not supported by the evidence taken before said Board.

10. Said application for a rehearing of said order of April 20, 1915, should have been granted for the purpose of considering the plan proposed by the appellant in said application for a rehearing, in lieu of the plan described in said order, and for the purpose of taking testimony thereon so far as might be necessary.

11. The application of the appellant that the effective date of said order of April 20, 1915, be extended for such reasonable time as would permit a full consideration of said petition for a rehearing, should have been granted.

12. The evidence shows that the action of said Board in denying said application for a hearing was:

- (a) Purely arbitrary.
- (b) Without any reasonable basis upon which to rest.
- (c) Unsupported by the facts laid before said Board.

Assignments of Error.

13. The action of said Board in denying said application for a rehearing was contrary to the undisputed testimony taken before said Board upon said application.

14. Said application of the appellant for a rehearing should have been granted for the reason that the undisputed testimony before said Board taken on such application showed that it was feasible and practicable to remove the danger to public safety and the impediment to public travel at the highway crossings, and each of them, involved in this proceeding, by adopting the plan proposed by the appellant in said application, in lieu of the plan described in said order, dated April 20, 1915. 10

The appellant, ERIE RAILROAD COMPANY, therefore prays that the judgment aforesaid may be reversed, annulled and for nothing holden, and that it may be restored to all things which it may have lost by occasion of said judgment. 20

COLLINS & CORBIN,

Attorneys of Appellant.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,

Clerk."

30

*Erie Railroad Company, Case No. 2.***Citation.**

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

10 (SEAL) THE PRESIDENT OF THE UNITED
 STATES TO BOARD OF PUBLIC UTILITY
 COMMISSIONERS, CITY OF PATERSON
 and BOARD OF FINANCE OF SAID CITY:
 GREETING:

20 You are hereby cited and admonished to be and
 appear at a Supreme Court of the United States,
 at Washington, on the Fourth day of April, A. D.
 Nineteen hundred and eighteen, pursuant to a
 writ of error filed in the Clerk's office of the
 Court of Errors and Appeals of the State of New
 Jersey, wherein Erie Railroad Company, a cor-
 poration, is plaintiff in error, and you are de-
 fendants in error, to show cause, if any there be,
 why the judgment in the said writ of error men-
 tioned should not be corrected and speedy justice
 should not be done to the parties in that behalf.

 WITNESS, THE HONORABLE EDWARD DOUGLAS
 WHITE, Chief Justice of the United States of
 America, this Fifth day of March, A. D. Nineteen
 hundred and eighteen.

30 E. R. WALKER,
 Chancellor, Presiding Judge of the New
 Jersey Court of Errors and Appeals.
 THOMAS F. MARTIN,
 Clerk.

 Service of this citation and receipt of a copy
 thereof for defendants-in-error acknowledged this
 seventh day of March, 1918.

40 L. EDWARD HERRMANN,
 FRANCIS SCOTT,
 Attorneys of Defendants-in-Error.

Return of Clerk.

STATE OF NEW JERSEY.

Department of State.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same. 10

(SEAL) WITNESS my hand and the seal of
the Court of Errors and Appeals,
this eighteenth day of March,
A. D. 1918.

THOMAS F. MARTIN,
Clerk.

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*Public Service Railway Company Case.***Stipulation.**

Filed March 5, 1918.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

PUBLIC SERVICE RAILWAY COM-
PANY,*Appellant,**vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

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*Respondents.**Stipulation
as to
Certification
of Record.*

IT IS STIPULATED by and between the parties that the state of case certified to the United States Supreme Court on writ of error in the cause entitled Erie Railroad Company *vs.* Board of Public Utility Commissioners and others (Case No. 1), shall be used on the argument of this cause as if certified herein.

30

Dated March 7, 1918.

FRANK BERGEN,

Attorney for Appellant.

I. EDWARD HERRMANN,

FRANCIS SCOTT,

Attorneys for Respondents.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,

40

Clerk."

*Check List.***Check List.**

Filed October 11, 1917.

State of New Jersey.

COURT OF ERRORS AND APPEALS.

November Term, 1916.

10

PUBLIC SERVICE RAILWAY COM- PANY,	<i>Appellant,</i>	} <i>Appeal from Supreme Court.</i>
<i>and</i>		
BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON		
and BOARD OF FINANCE OF SAID CITY,	<i>Respondents.</i>	

No. 56 of Nov. Term, 1916.

Date 1917.

20

Chancellor presiding

Opinion by the Court below.

Check List.	Affirm	Reverse	Modify
The Chancellor	1		
" Chief Justice,		1	
Mr. Justice Swayze,		1	
" " Parker,		1	
" " Bergen,		1	
" " Minturn,	1		
" " Kalisch,	1		
Judge White,	1		
" Heppenheimer,		1	
" Williams,	1		
" Taylor,	1		
" Gardner,	1		
Totals,	7	5	

30

"Filed, Oct. 11, 1917.

THOMAS F. MARTIN,
Clerk."

40

*Public Service Railway Company Case.***Opinion.**

Filed October 11, 1917. .

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

No. 56—November Term, 1916.

PUBLIC SERVICE RAILWAY COM-
PANY,*Appellant,*

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, *et al.*,

20

*Respondents.**Appeal from
Supreme
Court.**Per Curiam:*

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Garrison in the Supreme Court.

Endorsed:

30

"Filed Oct. 11, 1917.

THOMAS F. MARTIN,
Clerk."

Order on Affirmance of Judgment.

Order of Affirmance of Judgment.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

19

Between

PUBLIC SERVICE RAILWAY COM-
PANY,

Plaintiff-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF
SAID CITY,

Defendants-Respondents.

*On Appeal
from
Supreme
Court.*

*Order on
Affirmance of
Judgment.*

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This cause having been duly argued at the November Term, 1916, of this court by Frank Bergen, Esq., of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court;

It is therefore, on this eleventh day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

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On motion of

L. EDWARD HERRMANN,
FRANCIS SCOTT,

Attorneys for Respondents.

411

Public Service Railway Company Case.

Endorsed:

"Filed Mar. 3, 1918.

THOMAS F. MARTIN,
Clerk."

10

Petition for Writ of Error.

Filed March 3, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**PUBLIC SERVICE RAILWAY COM-
PANY,*Prosecutor-Appellant.*

vs.

20

BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND THE CITY OF
PATERSON,*Defendants-Respondents.**On Certiorari.**Petition for a
Writ of Error
to United
States
Supreme
Court.**To the Honorable Edwin Robert Walker, Chan-
cellor and Presiding Judge of the Court of Er-
rors and Appeals of the State of New Jersey:*

The petition of Public Service Railway Company,
 30 prosecutor-appellant in the above entitled cause,
 respectfully represents that it is a citizen of the
 United States and of the State of New Jersey, and
 is the owner of and engaged in the operation and
 management of a street railway in the streets of
 the City of Paterson, in the State of New Jersey,
 and said railway is laid and operated across the
 railroad tracks of the Erie Railroad Company in
 said city; that at the present June term of this
 court final judgment was rendered in the above
 40 stated cause wherein your petitioner, Public Ser-

Petition for Writ of Error.

vice Railway Company, was prosecutor-appellant, and the Board of Public Utility Commissioners and the City of Paterson were defendants-respondents in the New Jersey Court of Errors and Appeals, which court is the court of last resort in all causes and the highest court of law and equity in the State of New Jersey in which a decision could be had.

10

That said action was upon a writ of certiorari issued by the Supreme Court of New Jersey to the Board of Public Utility Commissioners to review the legality of a certain order made by the said Board dated the twentieth day of April, nineteen hundred and fifteen, requiring Public Service Railway Company to pay ten per centum of the cost of abolishing certain grade crossings of the Erie Railroad in the City of Paterson, to wit, at Park avenue and Market street, Broadway and River street, to which action the Board of Public Utility Commissioners and the City of Paterson were defendants; and that upon the hearing of said suit the Supreme Court of New Jersey affirmed the said order of said Board by its judgment; whereupon your petitioner appealed from said judgment to the Court of Errors and Appeals, and the matter coming on to be heard before that court, the judgment of the said Supreme Court was in all things affirmed.

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And your petitioner further shows that the said action by the said Board of Public Utility Commissioners which ordered your petitioner to pay ten per centum of the cost of abolishing said grade crossings deprived it of its property in violation of the Constitution of the United States, deprived it of its property without due process of law, denied it the equal protection of the laws, took its property for public use without just compensation,

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Public Service Railway Company Case.

confiscated property of your petitioner employed in serving the public, and impaired the obligation of lawful contracts made and held by your petitioner.

That your petitioner urged in said Supreme Court and said Court of Errors and Appeals that all of the said matters and things were secured to
10 your petitioner under and by virtue of Section 1 of the Fourteenth Amendment of the Constitution of the United States; and that the judgment of the said Supreme Court and the said judgment of the Court of Errors and Appeals, was and is in violation of the Constitution of the United States, and particularly of the aforesaid provisions thereof.

The said New Jersey Court of Errors and Appeals, being the highest court in which such judgment could be rendered in the State of New Jersey, and having decided that the order of said
20 Board of Public Utility Commissioners dated the twentieth day of April, nineteen hundred and fifteen, was valid and effectual in law, and having decided that your petitioner was not entitled to the right claimed in and by virtue of the provisions of the Constitution of the United States hereinbefore referred to, your petitioner alleges that it is aggrieved in that in the proceedings aforesaid said courts have denied to it the right to which it
30 is entitled as a citizen of the United States, all of which will more fully and particularly appear in detail in the record presented herein.

Your petitioner therefore prays that a writ of error may issue from the Supreme Court of the United States, directed to the New Jersey Court of Errors and Appeals, removing the judgments and proceedings aforesaid that there may be done thereof what according to the Constitution of the United States and the laws of the land ought to be

Bond.

done, and that your petitioner may have such other relief as may be proper.

And your petitioner will ever pray, &c.

PUBLIC SERVICE RAILWAY COMPANY,

By FRANK BERGEN,

Attorney for and of Counsel with Prosecutor- 10
Appellant.

Endorsed:

“Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk.”

BOND.

KNOW ALL MEN BY THESE PRESENTS, that we PUBLIC SERVICE RAILWAY COMPANY, a corporation of the State of New Jersey, as principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, as surety, obligors, are held and firmly bound unto Board of Public Utility Commissioners of the State of New Jersey, and City of Paterson, as obligees, in the full and just sum of five hundred dollars, lawful money of the United States of America, to be paid to the said obligees or their certain attorney or assigns, to which payment, well and truly to be made, the said obligors bind themselves and their successors jointly and severally, firmly by these presents. 20 30

Sealed with their corporate seals and dated this twenty-sixth day of February in the year of our Lord one thousand nine hundred and eighteen.

WHEREAS, lately at a session of the New Jersey Court of Errors and Appeals in a suit depending in said court between Public Service Railway Company, prosecutor-appellant, and Board of Public Utility Commissioners and the City of Paterson, 40

Public Service Railway Company Case.

defendants-respondents, final judgment was rendered against the said Public Service Railway Company, and it having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of
 10 Public Utility Commissioners and the City of Paterson, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington within thirty days from the date thereof;

Now, THEREFORE, the condition of the above obligation is such that if the said Public Service Railway Company shall prosecute said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force
 20 and effect.

PUBLIC SERVICE RAILWAY COMPANY,

By Edmund W. Wakelee,
Vice-President.

(CORPORATE SEAL)

Attest:

30 Percy Ingalls,
Secretary.

FIDELITY & DEPOSIT COMPANY
 OF MARYLAND,

By Aquila N. Venino,
Attorney-in-Fact.

Attest:

Blanche Shedden,
Agent.

40 (CORPORATE SEAL)

Bond.

Approved by

E. R. WALKER,
*Chancellor, Presiding Judge of the Court
 of Errors and Appeals of the State of
 New Jersey.*

10

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

On this twenty-sixth day of February, nineteen hundred and eighteen, before me, the subscriber, a Notary Public of New Jersey, duly commissioned and sworn, personally came Blanche Shedden, by me duly sworn on her oath, says, that she is the agent of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, and that she resides in the City of Newark, N. J., that she knows Aquila N. Venino, attorney-in-fact of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and she knows, too, the corporate seal of the said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was affixed by the said attorney-in-fact, and the said instrument signed by the said attorney-in-fact as attorney-in-fact of the said company attested by deponent as agent by order of said company in deponent's presence as the voluntary act and deed of said company; that the said company has duly complied with all the requirements of Chapter 124 of the Laws of the State of New Jersey of the year nineteen hundred and two (1902); that the good, available assets of said company exceed its liabilities, as such liabilities are ascertained in the matter provided in said chapter; that the FIDELITY AND DEPOSIT COMPANY OF MARYLAND is duly incorporated under the laws of the State of Mary-

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Public Service Railway Company Case.

land, and is authorized by the laws of that State and under its charter to become surety on bonds and obligations such as are mentioned in said charter; and also has on deposit with the Superintendent of Insurance of the State of Maryland good securities worth at least Two Hundred Thou-
 10 sand (\$200,000) Dollars, held for security of its obligations and has fully paid up, safely invested and unimpaired capital of Three Million (\$3,000,000) Dollars; and said company, by a duly executed instrument, filed in the Department of Banking and Insurance of the State of New Jersey, has constituted the Commissioner of Banking and Insurance of the State of New Jersey, and his suc-
 20 cessor in office, its true and lawful attorney, upon whom all original process in any action or legal proceeding against it may be served, and that the following is a true copy of the portion of the by-law of said company authorizing the execution of bonds on behalf of said company:

“Article VI, Section 3—The president or any of the vice-presidents elected by ballot from the members of the Board of Directors shall have power by and with the concurrence of the secre-
 30 tary or any one of the assistant secretaries or additional assistant secretaries, to appoint any attorney-in-fact or to authorize any person or persons to execute on behalf of the company any bonds, recognizances, stipulations, undertakings, deeds, releases of mortgages, contracts, agreements and policies, and to affix the seal of the company thereto.”

BLANCHE SHEDDEN.

Bond.

Sworn and subscribed before me
this 26th day of February, nine-
teen hundred and eighteen.

GEORGE W. LAMOREUX,
Notary Public, New Jersey.
(SEAL)

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STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the
State of New Jersey, and ex-officio Clerk of the
Court of Errors and Appeals in the last resort in
all causes, DO HEREBY CERTIFY that the original
bond, in the case of PUBLIC SERVICE RAILWAY COM-
PANY, Appellant, vs. BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON AND BOARD OF FI-
NANCE OF SAID CITY, Respondents, was lodged in
this office on the Fifth day of March, Nineteen hun-
dred and eighteen.

20

(SEAL) IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
Official Seal of said Court at
Trenton, this eighteenth day of
March, A. D. 1918.

30

THOMAS F. MARTIN,
Clerk.

*Public Service Railway Company Case.***Writ of Error.**

Filed March 5, 1918.

UNITED STATES OF AMERICA, SS:

10 THE PRESIDENT OF THE UNITED
STATES to the Honorable the
(SEAL) Judges of the Court of Errors
and Appeals of the State of New
Jersey, GREETING:

20 Because in the record and proceedings, and
also in the rendition of the judgment of a plea
which is in the said Court of Errors and Appeals
of the State of New Jersey before you, or some
of you, being the highest court of law or equity of
the said state in which a decision could be had
in the said suit between Public Service Railway
Company, prosecutor-appellant, and the Board of
Public Utility Commissioners and the City of
Paterson, defendants-respondents, wherein was
drawn in question the validity of a treaty or
statute of, or an authority exercised under, the
United States, and the decision was against their
validity; or wherein was drawn in question the
validity of a statute of, or an authority exercised
30 under, said state, on the ground of their being
repugnant to the constitution, treaties, or laws of
the United States, and the decision was in favor
of such their validity; or wherein was drawn in
question the construction of a clause of the con-
stitution, or of a treaty, or statute of, or commis-
sion held under the United States, and the de-
cision was against the title, right, privilege, or
exemption especially set up or claimed under such
clause of the said constitution, treaty, statute or
40 commission; a manifest error hath happened to

Writ of Error.

the great damage of the said Public Service Railway Company, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done. 10 20

WITNESS the Honorable Edward D. White, Chief Justice of the United States, the Fifth day of March, in the year of our Lord One thousand nine hundred and eighteen.

GEORGE T. CRANMER,

*Clerk U. S. District Court,
District of New Jersey.*

By ROBERT S. CHEVRIER,
Deputy. 30

Allowed by

E. R. WALKER,
*Chancellor, Presiding Judge of the Court
of Errors and Appeals of New Jersey.*

Public Service Railway Company Case.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort
10 in all causes, DO HEREBY CERTIFY that the original writ of error in the case of PUBLIC SERVICE RAILWAY COMPANY, Appellant, *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen, together with a copy thereof for the said respondents.

20 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918.

(SEAL)

THOMAS F. MARTIN,
Clerk.

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*Assignments of Error.***Assignments of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**PUBLIC SERVICE RAILWAY COM-
PANY,*Prosecutor-Appellant,**vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS AND THE CITY OF
PATERSON,*Defendants-Respondents.**On Certiorari.**Assignments
of Error.*

10

Now comes the said Public Service Railway
Company, prosecutor-appellant herein, and re-
spectfully submits and shows to the court that
in the record, proceedings, decision and final judg-
ment of the Court of Errors and Appeals of the
State of New Jersey in the above entitled cause
in favor of Board of Public Utility Commissioners
and the City of Paterson and against Public
Service Railway Company, manifest error has
intervened to the great injury and damage of the
prosecutor-appellant, the plaintiff in error here-
after, as follows, to wit:

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30

First: The said Court of Errors and Appeals
of the State of New Jersey erred in affirming the
judgment of the Supreme Court of the State of
New Jersey, which had affirmed a certain order
made by the Board of Public Utility Commissioners
of the State of New Jersey dated the twentieth
day of April, nineteen hundred and fifteen, and

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Public Service Railway Company Case.

brought up to the said Supreme Court by the writ of certiorari issued out of that court in this cause.

Second: The said Court of Errors and Appeals of the State of New Jersey erred in not reversing the said judgment of the said Supreme Court of the State of New Jersey in this cause, for the
10 several causes and reasons, or for one or more of the causes and reasons and assignments of error filed by the prosecutor-appellant, and in not sustaining the allegations of error so filed.

Third: The said Court of Errors and Appeals erred in holding that the said order made by the said Board of Public Utility Commissioners, dated the twentieth day of April, nineteen hundred and fifteen, was a lawful exercise of the power and
20 authority of said Board of Public Utility Commissioners, and did not violate rights of the prosecutor-appellant and deprive it of property in violation of the Constitution of the United States.

Fourth: The said Court of Errors and Appeals of New Jersey erred in not holding that the action of the said Board of Public Utility Commissioners in making said order did unlawfully deprive the prosecutor-appellant of its property without due process of law.

Fifth: The said Court of Errors and Appeals
30 of New Jersey erred in not holding that the action of the said Board of Public Utility Commissioners in making said order did deny to the prosecutor-appellant the equal protection of the laws.

Sixth: The said Court of Errors and Appeals of New Jersey erred in not holding that the action of the said Board of Public Utility Commissioners in making said order did have the effect of taking the property of the prosecutor-appellant for public use without just compensation.

Assignments of Error.

Seventh: The said order of the said Board of Public Utility Commissioners, the judgment of the said Supreme Court of New Jersey, and the judgment of the said Court of Errors and Appeals of New Jersey enabled the State of New Jersey to deprive, and do deprive, the prosecutor-appellant of its property without due process of law, and in violation of Section I of the Fourteenth Amendment of the Constitution of the United States. 10

Eighth: The said order of the said Board of Public Utility Commissioners, the said judgment of the said Supreme Court of New Jersey, and the said judgment of the said Court of Errors and Appeals of New Jersey, have the effect of taking, and do in fact take, the property of the prosecutor-appellant for public use without just compensation, in violation of Section I of the Fourteenth Amendment of the Constitution of the United States. 20

Ninth: The said order of the said Board of Public Utility Commissioners, the said judgment of the said Supreme Court of New Jersey, and the said judgment of the said Court of Errors and Appeals of New Jersey, deny to the prosecutor-appellant, which is a corporation of the State of New Jersey and within its jurisdiction, the equal protection of the Constitution and laws of the State of New Jersey, in violation of Section I of the Fourteenth Amendment of the Constitution of the United States. 30

Tenth: The enforcement of the said order of the said Board of Public Utility Commissioners, the said judgment of the said Supreme Court of New Jersey, and the said judgment of the said Court of Errors and Appeals of New Jersey, con-

Public Service Railway Company Case.

10 confiscate valuable property of the prosecutor-appellant, employed in serving the public.

10 Eleventh: The enforcement of the said order of the said Board of Public Utility Commissioners, the said judgment of the said Supreme Court of New Jersey, and the said judgment of the said Court of Errors and Appeals of New Jersey, con-
 20 fiscate, violate, impair and destroy valuable property and property rights of the prosecutor-appellant, acquired, recognized and vested under and by virtue of the Constitution and laws of the State of New Jersey and the Constitution of the United States, prior to the date of the said order.

20 And the said prosecutor-appellant prays that the judgments aforesaid, and each of them, may be reversed, annulled and for nothing holden, and
 20 that the said order made by the said Board of Public Utility Commissioners of the State of New Jersey dated the twentieth day of April, nineteen hundred and fifteen, set forth in the record and proceedings in this cause, may be adjudged to be illegal and void, and that the same be set aside and for nothing holden.

FRANK BERGEN,

*Attorney for and of Counsel
 with Prosecutor-Appellant.*

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Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

Citation.

Citation.

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

*To the Board of Public Utility Commissioners of
the State of New Jersey, and the City of Paterson,
Greeting:*

10

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Errors and Appeals of the State of New Jersey, wherein Public Service Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

20

Witness, the Honorable Edwin Robert Walker, our Chancellor and Presiding Judge of the Court of Errors and Appeals of the State of New Jersey, this fifth day of March, in the year of our Lord one thousand nine hundred and eighteen.

E. R. WALKER,

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*Chancellor, Presiding Judge of the Court of Errors
and Appeals of the State of New Jersey.*

THOMAS F. MARTIN,

Clerk.

Service of this citation and receipt of a copy thereof for defendants in error acknowledged this seventh day of March, 1918.

L. EDWARD HERRMANN,
FRANCIS SCOTT,

Attorneys of Defendants in Error.

40

Public Service Railway Company Case.

STATE OF NEW JERSEY.

Department of State.

10 In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the completed record and proceedings in the within entitled cause, with all things concerning the same.

(SEAL) WITNESS my hand and the seal of the Court of Errors and Appeals, this eighteenth day of March, A. D. 1918.

THOMAS F. MARTIN,
Clerk.

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Stipulation.

Stipulation.

Filed March 5, 1918.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

PASSAIC WATER COMPANY,
Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,
Respondents.

*Stipulation
as to
Certification
of Record.*

10

20

IT IS STIPULATED by and between the parties that the state of case certified to the United States Supreme Court on Writ of Error in the cause entitled Erie Railroad Company *vs.* Board of Public Utility Commissioners and others (Case No. 1), shall be used on the argument of this cause as if certified herein.

Dated March 7, 1918.

HUMPHREYS & SUMNER,
Attorneys for Appellants.

L. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys for Respondents.

30

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

40

*Passaic Water Company Case.***Check List.**

Filed October 11, 1917.

State of New Jersey.

COURT OF ERRORS AND APPEALS.

10

November Term, 1916.

PASSAIC WATER COMPANY,

*Appellant,**and*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

20

*Respondents.**Appeal from
Supreme
Court.*

No. 55 of Nov. Term, 1916.

Date 1917.

Chancellor presiding.

Opinion by the court below.

		Check List.	Affirm	Reverse	Modify
30	The Chancellor,		1		
	“ Chief Justice,			1	
	Mr. Justice Swayze,			1	
	“ “ Parker,			1	
	“ “ Bergen,			1	
	“ “ Minturn,		1		
	“ “ Kalisch,		1		
	Judge White,		1		
	“ Heppenheimer,			1	
	“ Williams,		1		
40	“ Taylor,		1		
	“ Gardner,		1		
Totals,			7	5	

Opinion of N. J. Court of Errors and Appeals.

Opinion.

Filed October 11, 1917.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

No. 55—November Term, 1916.

10

PASSAIC WATER COMPANY,

Prosecutor-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, *et al.*,

Defendants-Respondents.

Per Curiam.

On appeal from the Supreme Court, in which the following per curiam was filed:

20

“In this case there are twelve reasons presented to the court for setting aside the order made by the Board of Public Utility Commissioners. They are, however, argued under four points in prosecutor’s brief. The first and fourth points argued are the statute upon which the order under review is based is invalid and unconstitutional, because it takes the private property of the prosecutor for public use without any compensation, denies the prosecutor the equal protection of the law; impairs the obligation of contracts, &c. All these points are disposed of in the opinion of the court in *Erie Railroad Company v. Board of Public Utility Commissioners*.

30

The second point argued is, the statute is unconstitutional insofar as it deprives the Court of Chancery of its exclusive jurisdiction over the

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Passaic Water Company Case.

regulation of the use of easements. This point is disposed of in the opinion of the court in the case of the *Erie Railroad Company v. Board of Public Utility Commissioners*.

- 10 The third point argued is, the order is invalid and beyond the jurisdiction of the Board, insofar as it requires the prosecutor to change the location of its water pipes, water mains, &c., arguing that the title of the statute does not truly express the object of the legislation which it embodies, this and the other points under this head are disposed of also in the opinion of the court in the case of the *Erie Railroad Company v. Board of Public Utility Commissioners*.

The order under review will be affirmed with costs."

- 20 For prosecutor-appellant, Humphreys & Sumner.
For defendants-respondents, L. Edward Herrmann and Frank H. Sommer.

Per Curiam:

The judgment under review will be affirmed for the reasons set forth in the opinion of the Supreme Court.

Endorsed:

- 30 "Filed Oct. 11, 1917.
THOMAS F. MARTIN,
Clerk."

Order on Affirmance of Judgment.

Order of Affirmance of Judgment.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

10

Between

PASSAIC WATER COMPANY,
Plaintiff-Appellant,
vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

Defendants-Respondents.

*On Appeal
from Supreme
Court.*

*Order on
Affirmance
of Judgment.*

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This cause having been duly argued at the November Term, 1916, of this court by Messrs. Humphreys & Sumner, of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court;

It is thereupon, on this eleventh day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

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On motion of

**L. EDWARD HERRMANN,
FRANCIS SCOTT.**

Attorneys for Respondents.

40

Passaic Water Company Case.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

10

Petition for Writ of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

PASSAIC WATER COMPANY,*Appellant,**vs.*20 BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Petition for
Writ of
Error.**To the Honorable Edwin Robert Walker, Chan-
cellor and Presiding Judge of the Court of Errors
and Appeals of the State of New Jersey:*30 PASSAIC WATER COMPANY, a corporation, the ap-
pellant in the above entitled cause, feeling ag-
grieved by the judgment of this court, entered on
the fifth day of March, 1918, affirming the final
judgment of the Supreme Court of the State of
New Jersey herein, dated June 28, 1916, which
judgment affirmed an order of the Board of Public
Utility Commissioners, dated April 20, 1915, in
a certain proceeding entitled, "In the Matter of
the Application of the City of Paterson for altera-
40 tion of grade crossings on the line of the Erie

Petition for Writ of Error.

Railroad," whereby the Erie Railroad Company was ordered to alter certain grade crossings, according to the plan therefor annexed to said order and made part thereof, and whereby certain other of the parties to said proceeding, including the petitioner herein, were ordered to make certain changes in their property and construction and to comply with all of the requirements of said order, comes now, by Humphreys & Sumner, its attorneys, and respectfully represents as follows: 10

1. The said cause was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, to review the legality of the said order of said Board, dated April 20, 1916, requiring your petitioner to change or remove its property or construction to carry said order into effect, according to a certain plan thereto annexed and made part thereof; and further requiring your petitioner to proceed with due diligence to the execution of said order and to comply with all of the requirements thereof and the duties imposed upon it thereby, and by the statute under which said order was made, and the laws of the State of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the laws of said State. 20 30

2. Upon the hearing of said writ of certiorari the Supreme Court of the State of New Jersey affirmed the said order of said Board and thereupon your petitioner appealed from said judgment to the Court of Errors and Appeals of the State of New Jersey, and the matter having been heard by said court, the judgment of the said Supreme Court was in all things affirmed.

Passaic Water Company Case.

3. Your petitioner shows that the said order of said Board of Public Utility Commissioners, and the statute of the State of New Jersey (being Chapter 57 of the Laws of 1913), upon which such order purported to be based, insofar as the same or either of them affect the rights and property of your petitioner, are invalid, and in violation of the Constitution of the United States in that:

(a) Said order and statute take the private property of your petitioner for public use without just or any compensation;

(b) Said order and statute deny to your petitioner the equal protection of the law and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States;

(c) Said order and statute are contrary to Article I, Section 10, paragraph 1 of said Constitution, in that they impair the obligation of contracts;

(d) Said order and statute require the property of your petitioner to be taken for the private use of other persons or corporations;

4. Your petitioner urged in said Supreme Court and said Court of Errors and Appeals of the State of New Jersey that all of the said matters and things were secured to your petitioner by virtue of the provisions of the Constitution of the United States and the amendments thereto, and that the judgments of the said Supreme Court and of the Court of Errors and Appeals were and are in violation of the Constitution of the United States and the amendments thereto.

5. The said Court of Errors and Appeals of the State of New Jersey is the highest court of said State in which judgment could be rendered in said

Petition for Writ of Error.

proceeding; and said court having affirmed the judgment of the Supreme Court of the State of New Jersey, whereby it was decided that said order of said Board of Public Utility Commissioners was valid, and having decided that your petitioner was and is not entitled to the rights claimed by virtue of the provisions of the Constitution of the United States and the amendments thereto, as above set forth, your petitioner alleges that it is aggrieved in that, by the proceedings and judgments aforesaid, it has been denied the rights to which it is entitled by virtue of the said provisions of the Constitution of the United States and the amendments thereto. 10

6. Your petitioner therefore prays that an order may be made allowing your petitioner to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided, directed to the said New Jersey Court of Errors and Appeals, removing the judgments and proceedings aforesaid, and that your petitioner may have such other relief as may be proper. 20

And your petitioner will ever pray, etc.

HUMPHREYS & SUMNER,

Attorneys of Petitioner. 30

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

*Passaic Water Company Case.***Order Allowing Writ of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

PASSAIC WATER COMPANY,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Order Allow-
ing Writ of
Error.*

20

Upon reading and filing the petition for writ of error and the assignments of error to review the judgment entered in the above entitled cause affirming the final judgment of the Supreme Court of the State of New Jersey, dated June 28, 1916:

It is ORDERED that a writ of error be and it hereby is allowed to have reviewed in the United States Supreme Court the said judgment heretofore entered herein, and that the amount of bond on said writ of error be and it hereby is fixed at

30

Five hundred dollars.

Dated March 5, 1918.

E. R. WALKER,*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,*Clerk."*

40

*Bond.***BOND.**

KNOW ALL MEN BY THESE PRESENTS, That we, PASSAIC WATER COMPANY, a corporation of the State of New Jersey, as principal, and NATIONAL SURETY COMPANY, a corporation of the State of New York, as surety, are held and firmly bound unto BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, in the just and full sum of Five hundred dollars (\$500) to be paid to them and each of them, their and each of their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns jointly and severally firmly by these presents. 10

Scaled with our respective corporate seals and dated the 13th day of December, in the year of our Lord, one thousand nine hundred and seventeen. 20

WHEREAS, lately at the session of the Court of Errors and Appeals of the State of New Jersey in an action pending in said court between Passaic Water Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, a final judgment was rendered affirming the judgment of the Supreme Court of the State of New Jersey in favor of the said respondents, and the said appellant having obtained from said court a writ of error to reverse the judgment in the aforesaid action and a citation directed to said respondents is about to be issued, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington— 30

Now the condition of the above obligation is such that if the Passaic Water Company shall prosecute its writ of error to effect and shall 40

Passaic Water Company Case.

answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

PASSAIC WATER COMPANY,

10

By John H. Cook,
Vice-President.

(SEAL)

Attest:

Albert P. Fisher,
Secretary.

NATIONAL SURETY COMPANY,

20

By H. E. Emmett,
Resident Vice-President.

(SEAL)

Attest:

E. M. McCarthy,
Resident Assistant Secretary.

Authority of officers to execute the above bond is attached.

Approved March 5, 1918.

30

E. R. WALKER,
*Chancellor, Presiding Judge Court of
Errors and Appeals of New Jersey.*

Writ of Error.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do HEREBY CERTIFY that the original bond, in the case of PASSAIC WATER COMPANY, Appellant, vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this Eighteenth day of March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk.

Writ of Error.

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES TO THE HONORABLE JUDGES OF THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY, GREETING: 30

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the 40

Passaic Water Company Case.

10 said state in which a decision could be had, in an action between Passaic Water Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents—manifest error hath happened to the great damage of Passaic Water Company, appel-

20 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200 210 220 230 240 250 260 270 280 290 300 310 320 330 340 350 360 370 380 390 400 410 420 430 440 450 460 470 480 490 500 510 520 530 540 550 560 570 580 590 600 610 620 630 640 650 660 670 680 690 700 710 720 730 740 750 760 770 780 790 800 810 820 830 840 850 860 870 880 890 900 910 920 930 940 950 960 970 980 990 1000

lant, as by its complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and complete justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth day of April, next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and Constitution of the United States should be done.

Allowed by

E. R. WALKER,

30 *Chancellor, Presiding Judge of the New Jersey Court of Errors and Appeals.*

WITNESS, the Honorable Edward Douglas White, Chief Justice of the United States, the Fifth day of March, Nineteen hundred and eighteen.

GEORGE T. CRANMER,

Clerk of the United States District Court for the District of New Jersey.

By ROBERT S. CHEVRIER,

Deputy.

Writ of Error.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original Writ of Error in the case of PASSAIC WATER COMPANY, Appellant, *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen, together with a copy thereof for the said respondent. 10

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk.

*Passaic Water Company Case.***Assignments of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

- | | | | |
|----|--|---|----------------------------------|
| 10 | PASSAIC WATER COMPANY,
<div style="text-align: right;"><i>Appellant,</i></div> <div style="text-align: center; margin: 10px 0;"><i>vs.</i></div> BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,
<div style="text-align: right;"><i>Respondents.</i></div> | } | <i>Assignments
of Error.</i> |
|----|--|---|----------------------------------|

- 20 PASSAIC WATER COMPANY, by Humphreys & Sumner, its attorneys, comes and files the following assignments of error upon which it will rely:

1. The said Court of Errors and Appeals of the State of New Jersey erred in affirming the judgment of the Supreme Court of the State of New Jersey, which had affirmed a certain report, determination or order made by the Board of Public Utility Commissioners of the State of New Jersey dated July 9, 1915, and brought up to the said Supreme Court by the writ of certiorari issued out of that court.
- 30

2. The said Court of Errors and Appeals of the State of New Jersey erred in not reversing the said judgment of the said Supreme Court of the State of New Jersey, for the several grounds of appeal, or for one or more thereof, filed by the appellant, and in not sustaining the said grounds of appeal, or some one or more of them.

- 40 3. The said Court of Errors and Appeals erred in holding that the said order made by said Board

Assignments of Error.

of Public Utility Commissioners dated April 20, 1915, and the statute of the State of New Jersey whereon the same was based, did not violate the rights of the appellant secured to it by the Constitution of the United States and the several amendments thereto.

4. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deprive the appellant of its liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States, reading as follows: 10

“ARTICLE V.

“No person shall be * * * deprived of life, liberty or property, without due process of law.” 20

“ARTICLE XIV.

“Nor shall any State deprive any person of life, liberty or property without due process of law.”

5. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deny to appellant the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows: 30

“Nor shall any State deny to any person within its jurisdiction the equal protection of the laws.”

6. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not abridge the privileges or immunities of the appellant, contrary 40

Passaic Water Company Case.

to the Fourteenth Amendment of the Constitution, reading as follows:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

7. The said Court of Errors and Appeals erred
10 in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not take the private property of the appellant for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

“Nor shall private property be taken for public use without just compensation.”

8. The said Court of Errors and Appeals erred
20 in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not impair the obligation of contracts between the State of New Jersey and the appellant, contrary to Article I, Section X, paragraph 1, reading as follows:

“No State shall pass any . . . law impairing the obligation of contracts.”

The appellant, PASSAIC WATER COMPANY, there-
fore prays that the judgment aforesaid may be
30 reversed, annulled and for nothing holden, and that it may be restored to all things that it may have lost by occasion of said judgment.

HUMPHREYS & SUMNER,
Attorneys of Appellant.

Endorsed:

“Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk.”

Citation.

Citation.

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

(SEAL) THE PRESIDENT OF THE UNITED
STATES TO BOARD OF PUBLIC UTILITY
COMMISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF SAID CITY,
GREETING: 10

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the Fourth day of April, A. D. Nineteen hundred and eighteen, pursuant to a writ of error filed in the Clerk's office of the Court of Errors and Appeals of the State of New Jersey, wherein Passaic Water Company, a corporation, is plaintiff-in-error, and you are defendants-in-error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf. 20

WITNESS, THE HONORABLE EDWARD DOUGLAS WHITE, Chief Justice of the United States of America, this Fifth day of March, A. D. Nineteen hundred and eighteen.

E. R. WALKER, 30
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

THOMAS F. MARTIN,
Clerk.

Service of this citation and receipt of a copy thereof for defendants-in-error acknowledged this Seventh day of March, 1918.

L. EDWARD HERRMANN,
FRANCIS SCOTT, 40
Attorneys of Defendants-in-Error.

Passaic Water Company Case.

STATE OF NEW JERSEY.

Department of State.

In obedience to the commands of the within writ,
I herewith transmit to the Supreme Court of the
United States a duly certified transcript of the
10 complete record and proceedings in the within en-
titled cause, with all things concerning the same.

WITNESS my hand and the seal of
the Court of Errors and Appeals
this eighteenth day of March, A.
(SEAL) D. 1918.

THOMAS F. MARTIN,

Clerk.

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Stipulation.

Stipulation.

Filed March 5, 1918.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

WESTERN UNION TELEGRAPH COM-
PANY,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

Respondents.

*Stipulation
as to
Certification
of Record.*

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IT IS STIPULATED by and between the parties that the state of case certified to the United States Supreme Court on writ of error in the cause entitled Erie Railroad Company vs. Board of Public Utility Commissioners and others (Case No. 1), shall be used on the argument of this cause as if certified herein.

Dated, March 7, 1918.

COLLINS & CORBIN,

Attorneys for Appellant.

L. EDWARD HERRMANN,

FRANCIS SCOTT,

Attorneys for Respondents.

30

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

40

Filed October 11, 1917.

COURT OF ERRORS AND APPEALS.

10

Appellant,

*Appeal from
Supreme
Court.*

Respondents.

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Chancellor presiding.

Check List.

Affirm Reverse Modify

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Clerk."

Opinion of N. J. Court of Errors and Appeals.

Opinion.

Filed October 11, 1917.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

WESTERN UNION TELEGRAPH COM-
PANY,

Prosecutor-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, *et al.*,

Defendants-Respondents.

No. 52.
November
Term, 1916.
Per Curiam.

10

On appeal from the Supreme Court, in which the following per curiam was filed: 20

"In this case, there are eleven reasons presented to the court for setting aside the order made by the Board of Public Utility Commissioners. They are in the main identical with the reasons presented by the prosecutor, the Passaic Water Company, except an additional reason, viz., the order is invalid, because it imposes a burden upon the interstate traffic of the prosecutor, interferes with and impairs its ability to perform its duty as a common carrier of such traffic. 30

They are, however, argued under five points, in prosecutor's brief. The first four points are constitutional questions, all of which are disposed of in the opinion of the court in the case of *Eric Railroad Company v. Board of Public Utility Commissioners*.

The fifth point is, the order is invalid, stating six reasons; these, also, have been disposed of in

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Western Union Telegraph Company Case.

the opinion of the court in the case of *Erie Railroad Company v. Board of Public Utility Commissioners*. They had no further discussion.

The order under review will be affirmed with costs."

For prosecutor-appellant, Collins & Corbin.

10 For defendants-respondents, L. Edward Herrmann and Frank H. Sommer.

Per Curiam:

The judgment under review will be affirmed for the reasons set forth in the opinion of the Supreme Court.

Endorsed:

"Filed Oct. 11, 1917.

20 THOMAS F. MARTIN,
Clerk."

30

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Order on Affirmance of Judgment.

Order of Affirmance of Judgment.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

Between

**WESTERN UNION TELEGRAPH
COMPANY,**

Plaintiff-Appellant,

vs.

**BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,**

Defendants-Respondents.

*On Appeal
from Supreme
Court.*

*Order on
Affirmance
of Judgment.*

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This cause having been duly argued at the November Term, 1916, of this court by Messrs. Collins & Corbin, of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court;

It is thereupon, on this eleventh day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

30

On motion of

**L. EDWARD HERRMANN,
FRANCIS SCOTT,**

Attorneys for Respondents.

40

Western Union Telegraph Company Case.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
*Clerk."***Petition for Writ of Error.**

10

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**WESTERN UNION TELEGRAPH COM-
PANY,*Appellant,*

vs.

20

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Petition for
Writ of Error.**To the Honorable Edwin Robert Walker, Chancel-
lor and Presiding Judge of the Court of Errors
and Appeals of the State of New Jersey:*

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WESTERN UNION TELEGRAPH COMPANY, a cor-
poration, the appellant in the above entitled cause,
feeling aggrieved by the judgment of this court,
entered on the Fifth day of March, 1918, affirming
the final judgment of the Supreme Court of the
State of New Jersey herein, dated June 28th, 1916,
which judgment affirmed an order of the Board
of Public Utility Commissioners, dated April 20,
1915, in a certain proceeding entitled "In the
Matter of the Application of the City of Paterson
for alteration of grade crossings on the line of
40 the Erie Railroad," whereby the Erie Railroad

Petition for Writ of Error.

Company was ordered to alter certain grade crossings, according to the plan therefor annexed to said order and made part thereof, and whereby certain other of the parties to said proceeding, including the petitioner herein, were ordered to make certain changes in their property and construction and to comply with all of the requirements of said order, comes now, by Collins & Corbin, its attorneys, and respectfully represents as follows: 10

1. The said cause was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, to review the legality of the said order of said Board dated April 20, 1915, requiring your petitioner to change or remove its property or construction to carry said order into effect, according to a certain plan thereto annexed and made part thereof; and further requiring your petitioner to proceed with due diligence to the execution of said order and to comply with all of the requirements thereof and the duties imposed upon it thereby, and by the statute under which said order was made, and the laws of the State of New Jersey, and that to that end it exercises in good faith all of the powers conferred upon it by the laws of said state. 20

2. Upon the hearing of said writ of certiorari the Supreme Court of the State of New Jersey affirmed the said order of said Board and thereupon your petitioner appealed from said judgment to the Court of Errors and Appeals of the State of New Jersey, and the matter having been heard by said court the judgment of the said Supreme Court was in all things affirmed. 30

Western Union Telegraph Company Case.

3. Your petitioner shows that the said order of said Board of Public Utility Commissioners and the statute of the State of New Jersey (being Chapter 57 of the Laws of 1913) upon which such order purported to be based, in so far as the same or either of them affect the rights and property of your petitioner, are invalid, and in violation of the Constitution of the United States in that:

(a) Said order and statute take the private property of your petitioner for public use without just or any compensation;

(b) Said order and statute deny to your petitioner the equal protection of the law and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States;

(c) Said order and statute are contrary to Article I, Section 10, paragraph 1 of said Constitution, in that they impair the obligation of contracts;

(d) Said order and statute require the property of your petitioner to be taken for the private use of other persons or corporations;

(e) Said order and statute impose a burden upon the interstate traffic of your petitioner and interfere with and impair its ability to perform its duty as a common carrier of such interstate traffic.

4. Your petitioner urged in said Supreme Court and said Court of Errors and Appeals of the State of New Jersey that all of the said matters and things were secured to your petitioner by virtue of the provisions of the Constitution of the United States and the amendments thereto, and that the judgments of the said Supreme Court and

Petition for Writ of Error.

of the Court of Errors and Appeals were and are in violation of the Constitution of the United States and the amendments thereto.

5. The said Court of Errors and Appeals of the State of New Jersey is the highest court of said state in which judgment could be rendered in said proceeding; and said court having affirmed the judgment of the Supreme Court, of the State of New Jersey, whereby it was decided that said order of said Board of Public Utility Commissioners was valid, and having decided that your petitioner was and is not entitled to the rights claimed by virtue of the provisions of the Constitution of the United States and the amendments thereto, as above set forth, your petitioner alleges that it is aggrieved in that, by the proceedings and judgments aforesaid, it has been denied the rights to which it is entitled by virtue of the said provisions of the Constitution of the United States and the amendments thereto.

6. Your petitioner therefore prays that an order may be made allowing your petitioner to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided, directed to the said New Jersey Court of Errors and Appeals, removing the judgments and proceedings aforesaid, and that your petitioner may have such other relief as may be proper.

And your petitioner will ever pray, etc.

COLLINS & CORBIN,
Attorneys of Petitioner.

Endorsed:

“Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk.”

*Western Union Telegraph Company Case.***Order Allowing Writ of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

WESTERN UNION TELEGRAPH COM-
PANY,*Appellant,**vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Order
Allowing
Writ of
Error.*

20

Upon reading and filing the petition for writ of error and the assignments of error to review the judgment entered in the above entitled cause affirming the final judgment of the Supreme Court of the State of New Jersey, dated June 28, 1916:

It is ORDERED that a writ of error be and it hereby is allowed to have reviewed in the United States Supreme Court the said judgment heretofore entered herein, and that the amount of bond on said writ of error be and it hereby is fixed at five hundred dollars.

30

Dated, March 5, 1918.

E. R. WALKER,*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.***Endorsed:**

"Filed Mar. 5, 1918.

40

THOMAS F. MARTIN,
Clerk."

Bond.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That we, WESTERN UNION TELEGRAPH COMPANY, a corporation of the State of New York, as principal, and NATIONAL SURETY COMPANY, a corporation of the State of New York, as surety, are held and firmly bound unto BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, in the just and full sum of five hundred dollars (\$500), to be paid to them and each of them, their and each of their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns jointly and severally firmly by these presents. 10

Sealed with our respective corporate seals and dated the thirteenth day of December, in the year of our Lord, one thousand nine hundred and seventeen. 20

WHEREAS, lately at the session of the Court of Errors and Appeals of the State of New Jersey in an action pending in said court between Western Union Telegraph Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, a final judgment was rendered affirming the judgment of the Supreme Court of the State of New Jersey in favor of the said respondents, and the said appellant having obtained from said court a writ of error to reverse the judgment in the aforesaid action, and a citation directed to said respondents is about to be issued, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington; 30

Now, the condition of the above obligation is such that if the Western Union Telegraph Company shall prosecute its writ of error to effect and 40

Western Union Telegraph Company Case.

shall answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

WESTERN UNION TELEGRAPH
COMPANY,

10

By Rush Taggart,
Vice-President.

(SEAL)

Attest:

Andrew F. Burleigh,
Secretary.

NATIONAL SURETY COMPANY,

20

By H. E. Emmett,
Resident Vice-President.

Attest:

E. M. McCarthy,
Resident Assistant Secretary.

(SEAL)

Authority of officers to execute the above bond is attached.

30

Approved March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge, Court of Errors
and Appeals of New Jersey.*

Writ of Error.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original Bond, in the case of WESTERN UNION TELEGRAPH COMPANY, Appellant, *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton this eighteenth day of March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk.

Writ of Error.

Filed March 5, 1918.

UNITED STATES OF AMERICA, *ss.:*

THE PRESIDENT OF THE UNITED STATES TO THE HONORABLE JUDGES OF THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY, GREETING: 30

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the 40

Western Union Telegraph Company Case.

said State in which a decision could be had, in an action between Western Union Telegraph Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents—manifest error hath happened to the great damage of Western Union

10 Telegraph Company, appellant, as by its complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and complete justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with

20 this writ, so that you may have the same at Washington on the fourth day of April, next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and Constitution of the United States should be done.

WITNESS, the Honorable Edward Douglas White, Chief Justice of the United States, the fifth day of March, Nineteen hundred and eighteen.

30

GEORGE T. CRANMER,

*Clerk of the United States District Court
for the District of New Jersey.*

By ROBERT S. CHEVRIER,
Deputy.

Allowed by

E. R. WALKER,

*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

40

Writ of Error.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original Writ of Error in the case of WESTERN UNION TELEGRAPH COMPANY, Appellant, vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen, together with a copy thereof for the said Respondents. 10

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton this eighteenth day of March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk.

*Western Union Telegraph Company Case.***Assignments of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

- | | | | |
|----|---|---|----------------------------------|
| 10 | WESTERN UNION TELEGRAPH COM-
PANY, | } | <i>Appellant,</i> |
| | <i>vs.</i> | | |
| | BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY, | } | <i>Assignments
of Error.</i> |
| | <i>Respondents.</i> | | |

- 20 WESTERN UNION TELEGRAPH COMPANY, by Collins & Corbin, its attorneys, comes and files the following assignments of error upon which it will rely:

1. The said Court of Errors and Appeals of the State of New Jersey erred in affirming the judgment of the Supreme Court of the State of New Jersey, which had affirmed a certain report, determination or order made by the Board of Public Utility Commissioners of the State of New Jersey dated July 9, 1915, and brought up to the said Supreme Court by the writ of certiorari issued out of that court.
- 30

2. The said Court of Errors and Appeals of the State of New Jersey erred in not reversing the said judgment of the said Supreme Court of the State of New Jersey, for the several grounds of appeal, or for one or more thereof, filed by the appellant, and in not sustaining the said grounds of appeal, or some one or more of them.

- 40 3. The said Court of Errors and Appeals erred in holding that the said order made by said Board

Assignments of Error.

of Public Utility Commissioners dated April 20, 1915, and the statute of the State of New Jersey whereon the same was based, did not violate the rights of the appellant secured to it by the Constitution of the United States and the several amendments thereto.

4. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deprive the appellant of its liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States, reading as follows: 10

"ARTICLE V.

"No person shall be * * * deprived of life, liberty or property, without due process of law." 20

"ARTICLE XIV.

"Nor shall any State deprive any person of life, liberty or property without due process of law."

5. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute hereon the same was based did not deny to appellant the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows: 30

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

6. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not abridge 40

Western Union Telegraph Company Case.

the privileges or immunities of the appellant, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

- 10 7. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not take the private property of the appellant for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

"Nor shall private property be taken for public use without just compensation."

- 20 8. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not create a burden upon and operate as a regulation of, and an interference with interstate commerce, contrary to Article I, Section VIII, paragraph 3, reading as follows:

"The Congress shall have power * * *

- 30 3. To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes."

9. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not impair the obligation of contracts between the State of New Jersey and the appellant, contrary to Article I, Section X, paragraph 1, reading as follows:

"No State shall pass any * * * law impairing the obligation of contracts."

Citation.

The appellant, WESTERN UNION TELEGRAPH COMPANY, therefore prays that the judgment aforesaid may be reversed, annulled and for nothing holden, and that it may be restored to all things which it may have lost by occasion of said judgment.

COLLINS & CORBIN,
Attorneys of Appellant.

10

Endorsed:

"Filed March 5, 1918,

THOMAS F. MARTIN,
Clerk."

Citation.

Filed March 5, 1918.

20

UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED
STATES TO BOARD OF PUBLIC UTILITY
(SEAL) COMMISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID CITY,
GREETING:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the fourth day of April, A. D. Nineteen hundred and eighteen, pursuant to a writ of error filed in the Clerk's office of the Court of Errors and Appeals of the State of New Jersey, wherein Western Union Telegraph Company, a corporation, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

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Western Union Telegraph Company Case.

WITNESS, the Honorable Edward Douglas White,
Chief Justice of the United States of America,
this fifth day of March, A. D., Nineteen hundred
and eighteen.

E. R. WALKER,

*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

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THOMAS F. MARTIN,
Clerk.

Service of this citation and receipt of a copy
thereof for defendants in error acknowledged this
Seventh day of March, 1918.

L. EDWARD HERRMANN,
FRANCIS SCOTT,

Attorneys of Defendants in Error.

20

STATE OF NEW JERSEY,

Department of State.

In obedience to the commands of the within
Writ, I herewith transmit to the Supreme Court of
the United States, a duly certified transcript of
the complete record and proceedings in the within
entitled cause, with all things concerning the same.

30

WITNESS my hand and the seal of
the Court of Errors and Appeals,
this eighteenth day of March, A.
D. 1918.

(SEAL)

THOMAS F. MARTIN,
Clerk.

Stipulation.

Stipulation.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

D. FULLERTON & Co.,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF SAID
CITY,

Respondents.

*Stipulation
as to
Certification
of Record.*

19

IT IS STIPULATED by and between the parties that the state of case certified to the United States Supreme Court on Writ of Error in the cause entitled Erie Railroad Company vs. Board of Public Utility Commissioners and others (Case No. 1) shall be used on the argument of this cause as if certified herein.

Dated March 7, 1918.

HUDSON & JOELSON,

Attorneys for Appellant.

L. EDWARD HERRMANN,

FRANCIS SCOTT,

Attorneys for Respondents.

30

Endorsed:

"Filed March 5, 1918.

THOMAS F. MARTIN,

Clerk."

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*D. Fullerton & Company Case.***Check List.**

Filed October 11, 1917.

State of New Jersey.

COURT OF ERRORS AND APPEALS.

November Term, 1916.

10

D. FULLERTON & Co.,

*Appellant,**and*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Appeal
from Supreme
Court.*

No. 139 of Nov. Term, 1916.

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Date

1917.

Chancellor presiding.

Opinion by the Court below.

Check List.

Affirm Reverse Modify

The Chancellor,

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" Chief Justice,

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Mr. Justice Swayze,

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" " Parker,

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" " Bergen,

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" " Minturn,

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30 " " Kalisch,

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Judge White,

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" Heppenheimer,

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" Williams,

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" Taylor,

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" Gardner

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Totals,

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Filed Oct. 11, 1917.

THOMAS F. MARTIN,
Clerk.

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Opinion of N. J. Court of Errors and Appeals.

Opinion.

Filed October 11, 1917.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

D. FULLERTON & COMPANY, Prosecutor-Appellant,	}	No. 139.	10
vs.		November	
BOARD OF PUBLIC UTILITY COM- MISSIONERS, et al., Defendants-Respondents.		Term, 1916.	
		Per Curiam.	

On appeal from the Supreme Court in which the following *per curiam* was filed:

"In this case, there are eight reasons presented to the court for setting aside the order made by the Board of Public Utility Commissioners. They are, however, argued under four points in prosecutor's brief.

The first point argued is that the order, if construed to require prosecutor to make changes in its building necessary to have the same conform to the side track of the Erie Railroad, when reconstructed, is invalid, because the prosecutor is not a public utility and the Board has no power to order it to make such changes.

The second point argued is that the order, if construed to require the prosecutor at its own expense to reconstruct the existing side track, it is without the jurisdiction of the Board. The work commanded to be done by the order in altering the crossing is specifically (a) the changing of the highways and (b) the reconstruction of the railroad.

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D. Fullerton & Company Case.

The third point argued is, the order under review takes the private property of the prosecutor for public use, without just or any compensation, and takes the property of the prosecutor for private use of other companies.

- 10 The fourth point argued is the order under review takes the property of the prosecutor without due process of law and deprives the prosecutor of the equal protection of the law. All these points are disposed of in the opinion of the court in the case of *Erie Railroad Company v. Board of Public Utility Commissioners*.

The order under review will be affirmed with costs."

For prosecutor-appellant, Hudson & Joelson.

- 20 For defendants-respondents, L. Edward Herrmann and Frank H. Sommer.

Per Curiam:

The judgment under review will be affirmed for the reasons set forth in the opinion of the supreme court.

Endorsed:

"Filed Oct. 11, 1917.

- 30 THOMAS F. MARTIN,
Clerk."

*Order on Affirmance of Judgment.***Order of Affirmance of Judgment.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

10

*Between*D. FULLERTON & Co.,
Plaintiff-Appellant,
*vs.*BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,
*Defendants-Respondents.**On Appeal
from
Supreme
Court.**Order on
Affirmance
of Judgment.*

20

This cause having been duly argued at the November Term, 1916, of this court by Walter R. Hudson, of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel for the respondent, and the court having considered the same, and finding no error in the record of proceedings in the Supreme Court,

It is thereupon, on this 11th day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

30

On motion of

L. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys for Respondents.

40

D. Fullerton & Company Case.

Endorsed:

"Filed March 5, 1918.

THOMAS F. MARTIN,
Clerk."

10

Petition for Writ of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

D. FULLERTON & Co.,

*Appellant,**vs.*

20

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,*Respondents.**Petition
for Writ
of Error.**To the Honorable Edwin Robert Walker, Chancellor
and Presiding Judge of the Court of Errors
and Appeals of the State of New Jersey:*

30

D. FULLERTON & Co., a corporation, the appellant
in the above entitled cause, feeling aggrieved by
the judgment of this court, entered on the fifth
day of March, 1918, affirming the final judgment of
the Supreme Court of the State of New Jersey
herein, dated June 28, 1916, which judgment af-
firmed an order of the Board of Public Utility
Commissioners, dated April 20, 1915, in a certain
proceeding entitled "In the Matter of the Appli-

40

cation of the City of Paterson for alteration of

Petition for Writ of Error.

grade crossings on the line of the Erie Railroad'', whereby the Erie Railroad Company was ordered to alter certain grade crossings, according to the plan therefor annexed to said order and made part thereof, and whereby certain other of the parties to said proceeding, including the petitioner herein, were ordered to make certain changes in their property and construction and to comply with all of the requirements of said order, comes now, by Hudson & Joelson, its attorneys, and respectfully represents as follows: 10

1. The said cause was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, to review the legality of the said order of said Board dated April 20, 1915, requiring your petitioner to change or remove its property or construction to carry said order into effect, according to a certain plan thereto annexed and made part thereof; and further requiring your petitioner to proceed with due diligence to the execution of said order and to comply with all of the requirements thereof and the duties imposed upon it thereby, and by the statute under which said order was made, and the laws of the State of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the laws of said State. 20 30

2. Upon the hearing of said writ of certiorari the Supreme Court of the State of New Jersey affirmed the said order of said Board and thereupon your petitioner appealed from said judgment to the Court of Errors and Appeals of the State of New Jersey, and the matter having been heard by said court the judgment of the said Supreme Court was in all things affirmed. 40

D. Fullerton & Company Case.

3. Your petitioner shows that the said order of said Board of Public Utility Commissioners, and the statute of the State of New Jersey (being Chapter 57 of the Laws of 1913) upon which such order purported to be based, in so far as the same or either of them affect the rights and property
10 of your petitioner, are invalid, and in violation of the Constitution of the United States in that:

(a) Said order and statute take the private property of your petitioner for public use without just or any compensation;

(b) Said order and statute deny to your petitioner the equal protection of the law and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States;

20 (c) Said order and statute are contrary to Article I, Section 10, Paragraph 1 of said Constitution, in that they impair the obligation of contracts;

(d) Said order and statute require the property of your petitioner to be taken for the private use of other persons or corporations.

4. Your petitioner urged in said Supreme Court and said Court of Errors and Appeals of the State of New Jersey that all of the said matters and
30 things were secured to your petitioner by virtue of the provisions of the Constitution of the United States and the amendments thereto, and that the judgments of the said Supreme Court and of the Court of Errors and Appeals were and are in violation of the Constitution of the United States and the amendments thereto.

5. The said Court of Errors and Appeals of the State of New Jersey is the highest court of said State in which judgment could be rendered in said
40 proceeding; and said court having affirmed the

Petition for Writ of Error.

judgment of the Supreme Court of the State of New Jersey, whereby it was decided that said order of said Board of Public Utility Commissioners was valid, and having decided that your petitioner was and is not entitled to the rights claimed by virtue of the provisions of the Constitution of the United States and the amendments thereto, as above set forth, your petitioner alleges that it is aggrieved in that, by the proceedings and judgments aforesaid, it has been denied the rights to which it is entitled by virtue of the said provisions of the Constitution of the United States and the amendments thereto. 10

6. Your petitioner therefore prays that an order may be made allowing your petitioner to prosecute a writ of error in the United States Supreme Court under and according to the laws of the United States in that behalf made and provided, directed to the said New Jersey Court of Errors and Appeals, removing the judgments and proceedings aforesaid, and that your petitioner may have such other relief as may be proper. 20

And your petitioner will ever pray, etc.

HUDSON & JOELSON,
Attorneys for Appellant.

Endorsed: 30

"Filed March 5, 1918.

THOMAS F. MARTIN,
Clerk."

D. Fullerton & Company Case.

Order Allowing Writ of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

D. FULLERTON & Co.,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONEERS, CITY OF PATERSON
AND BOARD OF FINANCE OF SAID
CITY,

Respondents.

*Order
Allowing
Writ of
Error.*

20

Upon reading and filing the petition for writ of error and the assignments of error to review the judgment entered in the above entitled cause affirming the final judgment of the Supreme Court of the State of New Jersey, dated June 28, 1916:

It is ORDERED that a writ of error be and it hereby is allowed to have reviewed in the United States Supreme Court the said judgment heretofore entered herein, and that the amount of bond on said writ of error be and it hereby is fixed at

30

Five hundred dollars.

Dated March 5, 1918.

E. R. WALKER,

*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,

Clerk."

Bond.

BOND.

KNOW ALL MEN BY THESE PRESENTS, That we, D. FULLERTON & Co., a corporation of the State of New Jersey, as principal, and NATIONAL SURETY COMPANY, a corporation of the State of New York, as surety, are held and firmly bound unto BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, in the just and full sum of Five hundred dollars (\$500.) to be paid to them and each of them, their and each of their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns jointly and severally firmly by these presents.

10

Sealed with our respective corporate seals and dated the 13th day of December, in the year of our Lord, One thousand nine hundred and seventeen.

20

WHEREAS, lately at the session of the Court of Errors and Appeals of the State of New Jersey in an action pending in said Court between D. Fullerton & Co., appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, a final judgment was rendered affirming the judgment of the Supreme Court of the State of New Jersey in favor of said respondents, and the said appellant having obtained from said Court a writ of error to reverse the judgment in the aforesaid action and a citation directed to said respondents is about to be issued, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington—

30

Now the condition of the above obligation is such that if D. Fullerton & Co. shall prosecute its writ of error to effect and shall answer all damages

40

D. Fullerton & Company Case.

and costs that may be awarded against it, if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

D. FULLERTON & CO.,

10

By E. G. Fullerton,
Treasurer.

(SEAL)

NATIONAL SURETY COMPANY,

By H. E. Emmett,
Resident Vice-President.

(SEAL)

Attest:

20

E. M. McCarthy,
Resident Assistant Secretary.

Authority of officers to execute the above bond is attached.

Approved March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge Court of
Errors and Appeals of New Jersey.*

30

Writ of Error.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original Bond, in the case of D. FULLERTON & Co., Appellant 10
vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen.

IN TESTIMONY WHEREOF, I have here-
 unto set my hand and affixed the
 Official Seal of said Court at
 (SEAL) Trenton this eighteenth day of 20
 March, A. D. 1918.

THOMAS F. MARTIN,
Clerk.

Writ of Error.

Filed March 5, 1918.

UNITED STATES OF AMERICA, *vs.*:

THE PRESIDENT OF THE UNITED 30
 STATES TO THE HONORABLE JUDGES
 (SEAL) OF THE COURT OF ERRORS AND AP-
 PEALS OF THE STATE OF NEW JERSEY,
 GREETING:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the

D. Fullerton & Company Case.

said state in which a decision could be had, in an action between D. Fullerton & Co., appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, manifest error hath happened to the great damage of D. Fullerton & Co., appellant, as
 10 by its complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and complete justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may
 20 have the same at Washington on the fourth day of April next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and Constitution of the United States should be done.

WITNES, The Honorable Edward Douglas White,
 Chief Justice of the United States, the fifth day
 30 of March, Nineteen hundred and eighteen.

GEORGE T. CRANMER,
*Clerk of the United States District Court
 for the District of New Jersey.*

By ROBERT S. CHEVRIER,
Deputy.

Allowed by

E. R. WALKER,
*Chancellor, Presiding Judge of the New
 Jersey Court of Errors and Appeals.*

Writ of Error.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and *ex-officio* Clerk of the Court of Errors and Appeals in the last resort in all causes, do HEREBY CERTIFY that the original Writ of Error in the case of D. FULLERTON & Co., Appellant vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen, together with a copy thereof for the said Respondents. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk.

30

40

*D. Fullerton & Company Case.***Assignments of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

D. FULLERTON & Co.,*Appellant,**vs.***BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,***Respondents.**Assignments
of Error.*

20

D. FULLERTON & Co., by Hudson & Joelson, its attorneys, comes and files the following assignments of error upon which it will rely:

30 1. The said Court of Errors and Appeals of the State of New Jersey erred in affirming the judgment of the Supreme Court of the State of New Jersey, which had affirmed a certain report, determination or order made by the Board of Public Utility Commissioners of the State of New Jersey dated July 9, 1915, and brought up to the said Supreme Court by the writ of certiorari issued out of that court.

40 2. The said Court of Errors and Appeals of the State of New Jersey erred in not reversing the said judgment of the said Supreme Court of the State of New Jersey, for the several grounds of appeal, or for one or more thereof, filed by the appellant, and in not sustaining the said grounds of appeal, or some one or more of them.

Assignments of Error.

3. The said Court of Errors and Appeals erred in holding that the said order made by said Board of Public Utility Commissioners dated April 20, 1915, and the statute of the State of New Jersey whereon the same was based, did not violate the rights of the appellant secured to it by the Constitution of the United States and the several amendments thereto. 10

4. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deprive the appellant of its liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States, reading as follows:

"ARTICLE V. 20

"No person shall be * * * deprived of life, liberty or property, without due process of law."

"ARTICLE XIV.

"Nor shall any State deprive any person of life, liberty or property without due process of law."

5. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deny to appellant the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows: 30

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

6. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute 40

D. Fullerton & Company Case.

whereon the same was based did not abridge the privileges or immunities of the appellant, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

10 "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

7. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not take the private property of the appellant for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

"Nor shall private property be taken for public use without just compensation."

20 8. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not impair the obligation of contracts between the State of New Jersey and the appellant, contrary to Article I, Section X, paragraph 1, reading as follows:

"No State shall pass any . . . law impairing the obligation of contracts."

30 The appellant, D. FULLERTON & Co., therefore prays that the judgment aforesaid may be reversed, annuled and for nothing holden, and that it may be restored to all things that it may have lost by occasion of said judgment.

HUDSON & JOELSON,
Attorneys of Appellant.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

Citation.

Citation.

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED
STATES TO BOARD OF PUBLIC UTILITY
(SEAL) COMMISSIONERS, CITY OF PATERSON 10
and BOARD OF FINANCE OF SAID CITY,
GREETING:

You are hereby cited and admonished to be and
appear at a Supreme Court of the United States,
at Washington, on the fourth day of April, A. D.,
Nineteen hundred and , pursuant to a
writ of error filed in the Clerk's office of the Court
of Errors and Appeals of the State of New Jersey,
wherein D. Fullerton & Co., a corporation, is plain-
tiff in error, and you are defendants in error, to 20
show cause, if any there be, why the judgment in
the said writ of error mentioned should not be
corrected and speedy justice should not be done
to the parties in that behalf.

WITNESS, the Honorable Edward Douglas White,
Chief Justice of the United States of America, this
fifth day of March, A. D., Nineteen hundred and
eighteen.

E. R. WALKER, 30
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

THOMAS F. MARTIN,
Clerk.

Service of this citation and receipt of a copy
thereof for defendants in error acknowledged this
Seventh day of March, 1918.

J. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys of Defendants in Error. 40

D. Fullerton & Company Case.

STATE OF NEW JERSEY.

Department of State.

In obedience to the commands of the within Writ,
I herewith transmit to the Supreme Court of the
United States, a duly certified transcript of the
10 complete record and proceedings in the within
entitled cause, with all things concerning the same.

(SEAL) WITNESS my hand and the seal of
the Court of Errors and Appeals,
this eighteenth day of March, A.
D. 1918.

THOMAS F. MARTIN,
Clerk.

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30

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Stipulation.

Stipulation.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

JACOB MEYER and KOMMER DE
VOGEL, partners, etc., as MEYER
& DE VOGEL,

Appellants,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

Respondents.

10

*Stipulation
as to
Certification
of Record.*

20

IT IS STIPULATED by and between the parties that the state of case certified to the United States Supreme Court on Writ of Error in the cause entitled Erie Railroad Company vs. Board of Public Utility Commissioners and others, (Case No. 1) shall be used on the argument of this cause as if certified herein.

March 7, 1918.

30

WILLIAM B. GOURLEY,
Attorney for Appellant.

L. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys for Respondents.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

40

Meyer & De Vogel Case.

Check List.

Filed October 11, 1917.

State of New Jersey.

COURT OF ERRORS AND APPEALS.

November Term, 1916.

10	JACOB MEYER, <i>et al.</i> ,	<i>Appellants,</i>	<i>Appeal from Supreme Court.</i>
	<i>and</i>		
	BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY,		
		<i>Respondents.</i>	

20	No. 63 of Nov. Term, 1916.		
	Date	1917.	
		Chancellor presiding.	
	Opinion by Court below.		
	Check List.	Affirm	Reverse Modify
	The Chancellor,	1	
	" Chief Justice,		1
	Mr. Justice Swayze,		1
	" " Parker,		1
	" " Bergen,		1
30	" " Minturn,	1	
	" " Kalisch,	1	
	Judge White,	1	
	" Heppenheimer		1
	" Williams,	1	
	" Taylor,	1	
	" Gardner,	1	
	Totals,	7	5
	Filed Oct. 11, 1917.		
40	THOMAS F. MARTIN,		
	Clerk.		

Opinion of N. J. Court of Errors and Appeals.

Opinion.

Filed October 11, 1917.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

MEYER & DE VOGEL,
FULLER'S EXPRESS COMPANY,
MORRIS & COMPANY,
Prosecutors-Appellants,
vs.
BOARD OF PUBLIC UTILITY COM-
MISSIONERS, *et al.*,
Defendants-Respondents.

*No. 63 and
No. 64.*

*November
Term, 1916.*

Per Curiam.

20

On appeal from the Supreme Court in which the following *per curiam* was filed:

"In each of these cases, there are eight reasons presented to the court for setting aside the order made by the Board of Public Utility Commissioners. They are identical with the reasons presented in the case of D. Fullerton & Co., prosecutor, except in the case of Fuller's Express Co., prosecutor, presents an additional reason, viz.: the order directing changes, relocation, &c., is invalid because it imposes a burden upon the interstate traffic of the prosecutor, interferes with and impairs its ability to perform its duty, as a common carrier of such interstate traffic. These cases were argued orally before the court by Mr. Gourley. All the points in these cases are disposed of in the opinion of the court in the case of the *Erie Railroad Company v. Board of Public Utility Com-*

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40

Meyer & De Vogel Case.

missioners. The order under review will be affirmed with costs."

William B. Gourley, for prosecutors-appellants.
L. Edward Herrmann and Frank H. Sommer,
for defendants-respondents.

10 *Per Curiam:*

The judgment under review will be affirmed for the reasons set forth in the opinion of the Supreme Court.

Endorsed:

"Filed Oct. 11, 1917.

THOMAS F. MARTIN,
Clerk."

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30

40

Order on Affirmance of Judgment.

Order of Affirmance of Judgment.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

10

Between

JACOB MEYER, *et al.*, partners,
&c.,

Plaintiff-Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,
Defendants-Respondents.

*On Appeal
from Supreme
Court.*

*Order on
Affirmance
of Judgment.*

20

This cause having been duly argued at the November Term, 1916, of this court by William B. Gourley, Esq., of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court,

30

It is thereupon, on this 11th day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

40

Meyer & De Vogel Case.

On motion of

L. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys for Respondents.

Endorsed:

10

"Filed MAY. 5, 1918.

THOMAS F. MARTIN, *Clerk.*"

Petition for Writ of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

20

JACOB MEYER and KOMMER DE
VOGEL, partners, &c., as MEYER
& DE VOGEL, *Appellants,*

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
Respondents. CITY,

*Petition for
Writ of Error.*

30

*To the Honorable Edwin Robert Walker, Chan-
cellor and Presiding Judge of the Court of Er-
rors and Appeals of the State of New Jersey:*

JACOB MEYER and KOMMER DE VOGEL, partners as
Meyer & De Vogel, appellants in the above entitled
cause, feeling aggrieved by the judgment of this
court, entered on the day of December, 1917,
affirming the final judgment of the Supreme Court
of the State of New Jersey herein, dated June 28,
1916, which judgment affirmed an order of the
Board of Public Utility Commissioners, dated April
40 20, 1915, in a certain proceeding entitled "In the

Petition for Writ of Error.

Matter of the Application of the City of Paterson for alteration of grade crossings on the line of the Erie Railroad," whereby the Erie Railroad Company was ordered to alter certain grade crossings, according to the plan therefor annexed to said order and made part thereof, and whereby certain other of the parties to said proceeding, including the petitioners herein, were ordered to make certain changes in their property and construction and to comply with all of the requirements of said order, comes now, by William B. Gourley, their attorney and respectfully represent as follows: 10

1. The said cause was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, to review the legality of the said order of said Board dated April 20, 1915, requiring your petitioners to change or remove their property or construction to carry said order into effect, according to a certain plan thereto annexed and made part thereof; and further requiring your petitioners to proceed with due diligence to the execution of said order and to comply with all of the requirements thereof and the duties imposed upon it thereby, and by the statute under which said order was made, and the laws of the State of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the laws of said State. 20 30

2. Upon the hearing of said writ of certiorari the Supreme Court of the State of New Jersey affirmed the said order of said Board and thereupon your petitioners appealed from said judgment to the Court of Errors and Appeals of the State of New Jersey, and the matter having been heard by said court the judgment of the said Supreme Court was in all things affirmed. 40

Meyer & De Vogel Case.

10 3. Your petitioners show that the said order of said Board of Public Utility Commissioners, and the statute of the State of New Jersey (being Chapter 57 of the Laws of 1913) upon which such order purported to be based, in so far as the same or either of them affect the rights and property of your petitioners, are invalid and in violation of the Constitution of the United States in that:

(a) Said order and statute take the private property of your petitioners for public use without just or any compensation;

(b) Said order and statute deny to your petitioners the equal protection of the law and deprive them of their property without due process of law, and abridge their privileges and immunities as a citizen of the United States;

20 (c) Said order and statute are contrary to Article I, Section 10, Paragraph 1 of said Constitution, in that they impair the obligation of contracts;

(d) Said order and statute require the property of your petitioners to be taken for the private use of other persons or corporations.

30 4. Your petitioners urged in said Supreme Court and said Court of Errors and Appeals of the State of New Jersey that all of the said matters and things were secured to your petitioners by virtue of the provisions of the Constitution of the United States and the amendments thereto, and that the judgments of the said Supreme Court and of the Court of Errors and Appeals were and are in violation of the Constitution of the United States and the amendments thereto.

40 5. The said Court of Errors and Appeals of the State of New Jersey is the highest court of said State in which judgment could be rendered in said

Petition for Writ of Error.

proceeding; and said court having affirmed the judgment of the Supreme Court of the State of New Jersey, whereby it was decided that said order of said Board of Public Utility Commissioners was valid, and having decided that your petitioners were not and are not entitled to the rights claimed by virtue of the provisions of the Constitution of the United States and the amendments thereto, as above set forth, your petitioners allege that they are aggrieved in that, by the proceedings and judgments aforesaid, they have been denied the rights to which they are entitled by virtue of the said provisions of the Constitution of the United States and the amendments thereto. 10

6. Your petitioners therefore pray that an order may be made allowing your petitioners to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided, directed to the said New Jersey Court of Errors and Appeals, removing the judgments and proceedings aforesaid, and that your petitioners may have such other relief as may be proper. 20

And your petitioners will ever pray, etc.

WILLIAM B. GOURLEY,
Attorneys for Appellants. 30

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

Meyer & De Vogel Case.

Order Allowing Writ of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10	JACOB MEYER and KOMMER DE VOGEL, partners, &c., as MEYER & DE VOGEL,	<i>Appellants,</i>	} <i>Order Allowing Writ of Error.</i>
	<i>vs.</i>		
20	BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY,	<i>Respondents.</i>	

Upon reading and filing the petition for writ of error and the assignments of error to review the judgment entered in the above entitled cause affirming the final judgment of the Supreme Court of the State of New Jersey, dated June 28, 1916:

It is ORDERED that a writ of error be and it hereby is allowed to have reviewed in the United States Supreme Court the said judgment heretofore entered herein, and that the amount of bond on said writ of error be and it hereby is fixed at Five Hundred Dollars.

Dated March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge of the
New Jersey Court of Errors and Appeals.*

Endorsed:

“Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk.”

*Bond.***BOND.**

KNOW ALL MEN BY THESE PRESENTS, That we, JACOB MEYER and KOMMER DE VOGEL, partners, &c., as MEYER & DEVOGEL, as principal, and NATIONAL SURETY COMPANY, a corporation of the State of New York, as surety, are held and firmly bound unto BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, in the just and full sum of Five Hundred Dollars (\$500), to be paid to them and each of them, their and each of their heirs, successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, successors and assigns jointly and severally firmly by these presents. 10

Sealed with our seals and dated the 13th day of December, in the year of our Lord, one thousand nine hundred and seventeen. 20

WHEREAS, lately at the session of the Court of Errors and Appeals of the State of New Jersey in an action pending in said Court between Jacob Meyer and Kommer DeVogel, partners, &c., as Meyer & DeVogel, appellants, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, a final judgment was rendered affirming the judgment of the Supreme Court of the State of New Jersey in favor of the said respondents, and the said appellants having obtained from said Court a writ of error to reverse the judgment in the aforesaid action and a citation directed to said respondents is about to be issued, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington— 30

Now the condition of the above obligation is such that if Jacob Meyer and Kommer DeVogel, partners, &c., as Meyer & DeVogel, shall prosecute their writ of error to effect and shall answer all 40

Meyer & De Vogel Case.

damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

JACOB MEYER, (L.S.)
KOMMER DEVOGEL. (L.S.)

10

In the presence of
As to Jacob Meyer and
Kommer DeVogel,

ALBERT COMSTOCK.

NATIONAL SURETY COMPANY,

By H. E. Emmett,
(Seal) *Resident Vice-President.*

Attest:

20

E. M. McCarthy,
Resident Assistant Secretary.

Authority of officers to execute the above bond,
is attached.

Approved March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge, Court of
Errors and Appeals of New Jersey.*

30

STATE OF NEW JERSEY

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original Bond, in the case of JACOB MEYER and KOMMER DEVOGEL, partners, &c., as MEYER & DEVOGEL, Ap-

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Writ of Error.

pellants *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the fifth day of March, nineteen hundred and eighteen.

(SEAL)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918.

10

THOMAS F. MARTIN,
Clerk.

Writ of Error.

Filed March 5, 1918.

20

UNITED STATES OF AMERICA, ss:

(SEAL)

THE PRESIDENT OF THE UNITED STATES
TO THE HONORABLE JUDGES OF THE
COURT OF ERRORS AND APPEALS OF
THE STATE OF NEW JERSEY,
GREETING:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had, in an action between Jacob Meyer and Kommer DeVogel, partners, &c., as Meyer & De Vogel, appellants, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, manifest error hath happened to the great damage of Jacob Meyer and Kommer De Vogel,

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40

Meyer & De Vogel Case.

- partners, &c., as Meyer & De Vogel, appellants, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and complete justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly
- 10 and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth day of April next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what
- 20 of right and according to the laws and Constitution of the United States should be done.

WITNESS, the Honorable Edward Douglas White, Chief Justice of the United States, the fifth day of March, nineteen hundred and eighteen.

GEORGE T. CRANMER.

*Clerk of the United States District
Court for the District of New Jersey.*

By ROBERT S. CHEVRIER,
Deputy.

30 Allowed by

E. R. WALKER,
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

Writ of Error.

STATE OF NEW JERSEY

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original Writ of Error in the case of JACOB MEYER and KOMMER DeVogel, partners, etc., as MEYER & DeVogel, Appellants, *vs.* BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON AND BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the fifth day of March, nineteen hundred and eighteen, together with a copy thereof for the said Respondents. 10

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk.

Meyer & De Vogel Case.

Assignments of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

- | | | | |
|----|--|---|---|
| 10 | <p>JACOB MEYER and KOMMER DE
VOGEL, partners, &c., as MEYER
& DE VOGEL, <i>Appellants,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY, <i>Respondents.</i></p> | } | <p><i>Assignments
of Error.</i></p> |
|----|--|---|---|

- 20 JACOB MEYER and KOMMER DEVOGEL, partners, &c., as MEYER & DEVOGEL, by William B. Gourley, their attorney, come and file the following assignments of error upon which they will rely:

1. The said Court of Errors and Appeals of the State of New Jersey erred in affirming the judgment of the Supreme Court of the State of New Jersey, which had affirmed a certain report, determination or order made by the Board of Public Utility
- 30 Commissioners of the State of New Jersey dated July 9, 1915, and brought up to the said Supreme Court by the writ of certiorari issued out of that court.

2. The said Court of Errors and Appeals of the State of New Jersey erred in not reversing the said judgment of the said Supreme Court of the State of New Jersey, for the several grounds of appeal, or for one or more thereof, filed by the appellants, and in not sustaining the said grounds
- 40 of appeal, or some one or more of them.

Assignments of Error.

3. The said Court of Errors and Appeals erred in holding that the said order made by said Board of Public Utility Commissioners dated April 20, 1915, and the statute of the State of New Jersey whereon the same was based, did not violate the rights of the appellants secured to them by the Constitution of the United States and the several amendments thereto. 10

4. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deprive the appellants of their liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States, reading as follows:

"ARTICLE V.

20

"No person shall be * * * deprived of life, liberty or property, without due process of law."

"ARTICLE XIV.

"Nor shall any State deprive any person of life, liberty or property without due process of law."

5. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deny to the appellants the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows: 30

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

6. The said Court of Errors and Appeals erred in not holding that the said order of said Board 40

Meyer & De Vogel Case.

of Public Utility Commissioners and the statute whereon the same was based did not abridge the privileges or immunities of the appellants, contrary to the Fourteenth Amendment of the Constitution, reading as follows:

- 10 "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

7. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not take the private property of the appellants for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

- 20 "Nor shall private property be taken for public use without just compensation."

8. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not impair the obligation of contracts between the State of New Jersey and the appellants, contrary to Article I, Section X, paragraph 1, reading as follows:

- 30 "No State shall pass any . . . law impairing the obligation of contracts."

The appellants, JACOB MEYER and KOMMER DE-VOGEL, partners, &c., as KOMMER & DE VOGEL, therefore pray that the judgment aforesaid may be reversed, annulled and for nothing holden, and that they may be restored to all things that they may have lost by occasion of said judgment.

WILLIAM B. GOURLEY,
Attorney of Appellants.

Citation.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

Citation.

10

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

(SEAL) THE PRESIDENT OF THE UNITED STATES
TO BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON, AND
BOARD OF FINANCE OF SAID CITY,
GREETING:

You are hereby cited and admonished to be and
appear at a Supreme Court of the United States,
at Washington, on the fourth day of April, A. D.,
nineteen hundred and eighteen, pursuant to a writ
of error filed in the Clerk's office of the Court of
Errors and Appeals of the State of New Jersey,
wherein Jacob Meyer and Konner DeVogel, part-
ners, &c., as Meyer & DeVogel, are plaintiffs in
error, and you are defendants in error, to show
cause, if any there be, why the judgment in the
said writ of error mentioned should not be cor-
rected and speedy justice should not be done to
the parties in that behalf.

WITNESS, THE HONORABLE EDWARD DOUGLAS
WHITE, Chief Justice of the United States of
America, this fifth day of March, A. D., nineteen
hundred and eighteen.

E. R. WALKER,
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

40

Meyer & De Vogel Case.

THOMAS F. MARTIN,
Clerk.

Service of this citation and receipt of a copy thereof for defendants-in-error acknowledged this seventh day of March, 1918.

10

L. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys of Defendants-in-Error.

STATE OF NEW JERSEY

Department of State.

20

In obedience to the commands of the within Writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

(SEAL)

WITNESS my hand and the seal of the Court of Errors and Appeals, this eighteenth day of March, A. D., 1918.

THOMAS F. MARTIN,
Clerk.

30

Stipulation.

Stipulation.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

MORRIS & COMPANY,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
AND BOARD OF FINANCE OF SAID
CITY,

Respondents.

*Stipulation
as to
Certification
of Record.*

10

20

IT IS STIPULATED by and between the parties that the state of case certified to the United States Supreme Court on Writ of Error in the cause entitled Erie Railroad Company vs. Board of Public Utility Commissioners and others (Case No. 1) shall be used on the argument of this cause as if certified herein.

Dated March 7, 1918.

WILLIAM B. GOURLEY,

Attorney for Appellant.

L. EDWARD HERRMANN,

FRANCIS SCOTT,

Attorneys for Respondents.

30

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,

Clerk."

40

*Morris & Company Case.***Check List.**

Filed October 11, 1917.

State of New Jersey.

COURT OF ERRORS AND APPEALS.

November Term, 1916.

10 MORRIS & COMPANY,
Appellant,
and
 BOARD OF PUBLIC UTILITY COM-
 MISSIONERS, CITY OF PATERSON
 and BOARD OF FINANCE OF SAID
 CITY, *Respondents.* } *Appeal*
from Supreme
Court.

No. 64 of November Term, 1916.

20 Date 1917.

Chancellor presiding.

Opinion by the court below.

	Check List.	Affirm	Reverse	Modify
	The Chancellor,	1		
	" Chief Justice,		1	
	Mr. Justice Swayze,		1	
	" " Parker,		1	
	" " Bergen,		1	
	" " Minturn,	1		
30	" " Kalisch,	1		
	Judge White,	1		
	" Heppenheimer,		1	
	" Williams,	1		
	" Taylor,	1		
	" Gardner,	1		
	Totals,	7	5	

Filed Oct. 11, 1917.

THOMAS F. MARTIN,
Clerk.

*Opinion of N. J. Court of Errors and Appeals.***Opinion.**

Filed October 11, 1917.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

MEYER & DE VOGEL,
FULLER'S EXPRESS COMPANY,
MORRIS & COMPANY,
Prosecutors-Appellants,
vs.
BOARD OF PUBLIC UTILITY COM-
MISSIONERS, *et al.*,
Defendants-Respondents.

No. 63 and
No. 64.

November
Term, 1916.
Per Curiam.

10

An appeal from the Supreme Court, in which the following *per curiam* was filed:

"In each of these cases, there are eight reasons presented to the court for setting aside the order made by the Board of Public Utility Commissioners. They are identical with the reasons presented in the case of D. Fullerton & Co., prosecutor, except in the case of Fuller's Express Co., prosecutor, presents an additional reason, viz: the order directing changes, relocation, &c., is invalid because it imposes a burden upon the interstate traffic of the prosecutor, interferes with and impairs its ability to perform its duty, as a common carrier of such interstate traffic. These cases were argued orally before the court by Mr. Gourley. All the points in these cases are disposed of in the opinion of the court in the case of the *Erie Railroad Company v. Board of Public Utility Commissioners*. The order under review will be affirmed with costs."

20

30

40

Morris & Company Case.

For prosecutors-appellants, William B. Gourley.

For defendants-respondents, L. Edward Herrmann and Frank H. Sommer.

Per Curiam:

10 The judgment under review will be affirmed for the reasons set forth in the opinion of the Supreme Court.

Endorsed:

"Filed Oct. 11, 1917.

THOMAS F. MARTIN,
Clerk."

Order of Affirmance of Judgment.

Filed March 5, 1918.

20

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

November Term, 1917.

Between

MORRIS & COMPANY,
Plaintiff-Appellant,
vs.

30

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,
Defendants-Respondents.

*On Appeal
from Supreme
Court.*

*Order on
Affirmance
of Judgment.*

40 This cause having been duly argued at the November Term, 1916, of this court by William B. Gourley, Esq., of counsel for the appellant, and L. Edward Herrmann and Francis Scott, of counsel

Order on Affirmance of Judgment.

for the respondent, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court;

It is thereupon, on this eleventh day of October, in the year of our Lord one thousand nine hundred seventeen, ordered and adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court. 10

On motion of

L. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys for Respondents.

Endorsed:

20

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

30

40

*Morris & Company Case.***Petition for Writ of Error.**

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

MORRIS & COMPANY,*Appellant,**vs.***BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,***Respondents.**Petition for
Writ of Error.*

20

*To the Honorable Edwin Robert Walker, Chancel-
lor and Presiding Judge of the Court of Errors
and Appeals of the State of New Jersey:*

30 **MORRIS & COMPANY**, a corporation, the appellant
in the above-entitled cause, feeling aggrieved by
the judgment of this court, entered on the fifth
day of December, 1918, affirming the final judgment
of the Supreme Court of the State of New Jersey
herein, dated June 28, 1916, which judgment af-
firmed an order of the Board of Public Utility
Commissioners, dated April 20, 1915, in a certain
proceeding entitled, "In the Matter of the Appli-
cation of the City of Paterson for alteration of
grade crossings on the line of the Erie Railroad,"
whereby the Erie Railroad Company was ordered
to alter certain grade crossings, according to the
plan therefor annexed to said order and made part
40 thereof, and whereby certain other of the parties

Petition for Writ of Error.

to said proceeding, including the petitioner herein, were ordered to make certain changes in their property and construction and to comply with all of the requirements of said order, comes now, by William B. Gourley, its attorney, and respectfully represents as follows:

1. The said cause was upon a writ of certiorari issued by the Supreme Court of the State of New Jersey to the Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, to review the legality of the said order of said Board, dated April 20, 1915, requiring your petitioner to change or remove its property or construction to carry said order into effect, according to a certain plan thereto annexed and made part thereof; and further requiring your petitioner to proceed with due diligence to the execution of said order and to comply with all of the requirements thereof and the duties imposed upon it thereby, and by the statute under which said order was made, and the laws of the State of New Jersey, and that to that end it exercise in good faith all of the powers conferred upon it by the laws of said State. 10 20

2. Upon the hearing of said writ of certiorari the Supreme Court of the State of New Jersey affirmed the said order of said Board and thereupon your petitioner appealed from said judgment to the Court of Errors and Appeals of the State of New Jersey, and the matter having been heard by said Court the judgment of the said Supreme Court was in all things affirmed. 30

3. Your petitioner shows that the said order of said Board of Public Utility Commissioners, and the statute of the State of New Jersey (being Chapter 57 of the Laws of 1913), upon which such 40

Morris & Company Case.

order purported to be passed, insofar as the same or either of them, affect the rights and property of your petitioner, are invalid, and in violation of the Constitution of the United States in that:

10 (a) Said order and statute take the private property of your petitioner for public use without just or any compensation;

(b) Said order and statute deny to your petitioner the equal protection of the law and deprive it of its property without due process of law, and abridge its privileges and immunities as a citizen of the United States;

(c) Said order and statute are contrary to Article I, Section 10, paragraph 1 of said Constitution, in that they impair the obligation of contracts;

20 (d) Said order and statute require the property of your petitioner to be taken for the private use of other persons or corporations.

4. Your petitioner urged in said Supreme Court and said Court of Errors and Appeals of the State of New Jersey that all of the said matters and things were secured to your petitioner by virtue of the provisions of the Constitution of the United States and the amendments thereto, and that the judgments of the said Supreme Court and of the
30 Court of Errors and Appeals were and are in violation of the Constitution of the United States and the amendments thereto.

5. The said Court of Errors and Appeals of the State of New Jersey is the highest court of said State in which judgment could be rendered in said proceeding; and said court having affirmed the judgment of the Supreme Court of the State of New Jersey, whereby it was decided that said order of said Board of Public Utility Commissioners was
40

Petition for Writ of Error.

valid, and having decided that your petitioner was and is not entitled to the rights claimed by virtue of the provisions of the Constitution of the United States and the amendments thereto, as above set forth, your petitioner alleges that it is aggrieved in that, by the proceedings and judgments aforesaid, it has been denied the rights to which it is entitled by virtue of the said provisions of the Constitution of the United States and the amendments thereto. 10

6. Your petitioner therefore prays that an order may be made allowing your petitioner to prosecute a writ of error to the United States Supreme Court under and according to the laws of the United States in that behalf made and provided, directed to the said New Jersey Court of Errors and Appeals, removing the judgments and proceedings aforesaid, and that your petitioner may have such other relief as may be proper. 20

And your petitioner will ever pray, etc.

WILLIAM B. GOURLEY,
Attorney for Appellant.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

30

Morris & Company Case.

Order Allowing Writ of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10	MORRIS & COMPANY,	<i>Appellant,</i>	}	<i>Order Allowing Writ of Error.</i>
	<i>vs.</i>			
	BOARD OF PUBLIC UTILITY COM- MISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY,			
	<i>Respondents.</i>			

20 Upon reading and filing the petition for writ of error and the assignments of error to review the judgment entered in the above-entitled cause affirming the final judgment of the Supreme Court of the State of New Jersey, dated June 28, 1916:

It is ORDERED that a writ of error be and it hereby is allowed to have reviewed in the United States Supreme Court the said judgment heretofore entered herein, and that the amount of bond
30 on said writ of error be and it hereby is fixed at five hundred dollars.

Dated, March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge of the New
Jersey Court of Errors and Appeals.*

Endorsed:

“Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk.”

Bond.

KNOW ALL MEN BY THESE PRESENTS, That we MORRIS & COMPANY, a corporation of the State of New Jersey, as principal, and NATIONAL SURETY COMPANY, a corporation of the State of New York, as surety, are held and firmly bound unto BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, in the just and full sum of Five hundred dollars (\$500.00), to be paid to them and each of them, their and each of their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors and assigns jointly and severally firmly by these presents. 10

Sealed with our respective corporate seals and dated the 13th day of December, in the year of our Lord, One thousand nine hundred and seventeen.

WHEREAS, lately at the session of the Court of Errors and Appeals of the State of New Jersey in an action pending in said court between Morris & Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, a final judgment was rendered affirming the judgment of the Supreme Court of the State of New Jersey in favor of the said respondents, and the said appellant having obtained from said court a writ of error to reverse the judgment in the aforesaid action and a citation directed to said respondents is about to be issued, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington; 20 30

Now, the condition of the above obligation is such that if Morris & Company shall prosecute its writ of error to effect and shall answer all damages and costs that may be awarded against it, if it fails to make its plea good, then the above 40

Morris & Company Case.

obligation to be void; otherwise to remain in full force and virtue.

MORRIS AND COMPANY,

(SEAL)

By Nelson Morris,
President.

10 Attest:

NATIONAL SURETY COMPANY,

(SEAL)

By H. E. Emmett,
Resident Vice-President.

Attest:

E. M. McCarthy,
Resident Assistant Secretary.

20 Authority of officers to execute the above bond is attached.

Approved March 5, 1918.

E. R. WALKER,
*Chancellor, Presiding Judge, Court of
Errors and Appeals of New Jersey.*

30

*Writ of Error.***STATE OF NEW JERSEY.****Department of State.**

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last recort in all CRUSES, DO HEREBY CERTIFY that the original bond, in the case of MORRIS AND COMPANY, Appellant, vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen. 10

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
(SEAL) Official Seal of said Court at
Trenton, this eighteenth day of
March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk. 21

Writ of Error.

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES 30
TO THE HONORABLE JUDGES OF THE
(SEAL) COURT OF ERRORS AND APPEALS OF
THE STATE OF NEW JERSEY,
GREETING:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the 40

Morris & Company Case.

said state in which a decision could be had, in an action between Morris and Company, appellant, and Board of Public Utility Commissioners, City of Paterson and Board of Finance of said City, respondents, manifest error hath happened to the great damage of Morris and Company, appellant,

10 as by its complaint appears; we, being willing that error, if any hath been, should be duly corrected and full and complete justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth day

20 of April next, in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and Constitution of the United States should be done.

WITNESS, the Honorable Edward Douglas White, Chief Justice of the United States, the fifth day of

30 March, nineteen hundred and eighteen.

GEORGE T. CRANMER,
*Clerk of the United States District
 Court for the District of New Jersey.*

By ROBERT S. CHEVRIER,
Deputy.

Allowed by

E. R. WALKER,
*Chancellor, Presiding Judge of the
 New Jersey Court of Errors and Appeals.*

Writ of Error.

STATE OF NEW JERSEY.

Department of State.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, DO HEREBY CERTIFY that the original writ of error in the case of MORRIS AND COMPANY, Appellant, vs. BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY, Respondents, was lodged in this office on the Fifth day of March, Nineteen hundred and eighteen, together with a copy thereof for the said Respondents. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this eighteenth day of March, A. D. 1918. 20

THOMAS F. MARTIN,
Clerk.

Morris & Company Case.

Assignments of Error.

Filed March 5, 1918.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.**

10

MORRIS & COMPANY,

Appellant,

vs.

BOARD OF PUBLIC UTILITY COM-
MISSIONERS, CITY OF PATERSON
and BOARD OF FINANCE OF SAID
CITY,

Respondents.

*Assignments
of Error.*

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MORRIS AND COMPANY, by William B. Gourley, its attorney, comes and files the following assignments of error upon which it will rely:

1. The said Court of Errors and Appeals of the State of New Jersey erred in affirming the judgment of the Supreme Court of the State of New Jersey, which had affirmed a certain report, determination or order made by the Board of Public Utility Commissioners of the State of New Jersey, dated July 9, 1915, and brought up to the said Supreme Court by the writ of certiorari issued out of that court.

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2. The said Court of Errors and Appeals of the State of New Jersey erred in not reversing the said judgment of the said Supreme Court of the State of New Jersey, for the several grounds of appeal, or for one or more thereof, filed by the appellant, and in not sustaining the said grounds of appeal, or some one or more of them.

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Assignments of Error.

3. The said Court of Errors and Appeals erred in holding that the said order made by said Board of Public Utility Commissioners, dated April 20, 1915, and the statute of the State of New Jersey whereon the same was based, did not violate the rights of the appellant secured to it by the Constitution of the United States and the several amendments thereto. 10

4. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deprive the appellant of its liberty and property without due process of law, contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States, reading as follows:

"ARTICLE V.

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"No person shall be * * * deprived of life, liberty or property, without due process of law."

"ARTICLE XIV.

"Nor shall any State deprive any person of life, liberty or property without due process of law."

5. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not deny to appellant the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution, reading as follows: 30

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

6. The said Court of Errors and Appeals erred in not holding that the said order of said Board 40

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of Public Utility Commissioners and the statute whereon the same was based did not abridge the privileges or immunities of the appellant, contrary to the Fourteenth Amendment to the Constitution, reading as follows:

- 10 "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

7. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not take the private property of the appellant for public use without just compensation, contrary to the Fifth Amendment of the said Constitution, reading as follows:

- 20 "Nor shall private property be taken for public use without just compensation."

8. The said Court of Errors and Appeals erred in not holding that the said order of said Board of Public Utility Commissioners and the statute whereon the same was based did not impair the obligation of contracts between the State of New Jersey and the appellant, contrary to Article 1, Section 10, paragraph 1, reading as follows:

- 30 "No State shall pass any . . . law impairing the obligation of contracts."

The appellant, MORRIS AND COMPANY, therefore prays that the judgment aforesaid may be reversed, annulled and for nothing holden, and that it may be restored to all things that it may have lost by occasion of said judgment.

WILLIAM B. GOURLEY,
Attorney of Appellant.

Endorsed:

"Filed Mar. 5, 1918.

THOMAS F. MARTIN,
Clerk."

Citation.

Citation.

Filed March 5, 1918.

UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED STATES TO BOARD OF PUBLIC UTILITY COMMISSIONERS, CITY OF PATERSON and BOARD OF FINANCE OF SAID CITY,
(SEAL) GREETING: 10

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the fourth day of April, A. D. nineteen hundred and eighteen, pursuant to a writ of error filed in the Clerk's office of the Court of Errors and Appeals of the State of New Jersey, wherein Morris and Company, a corporation, is plaintiff-in-error, and you are defendants-in-error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf. 20

WITNESS, THE HONORABLE EDWARD DOUGLAS WHITE, Chief Justice of the United States of America, this fifth day of March, A. D. nineteen hundred and eighteen. 30

E. R. WALKER,
Chancellor, Presiding Judge of the New Jersey Court of Errors and Appeals.

THOMAS F. MARTIN,
Clerk.

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Service of this citation and receipt of a copy thereof for defendants-in-error acknowledged this seventh day of March, 1918.

L. EDWARD HERRMANN,
FRANCIS SCOTT,
Attorneys of Defendants-in-Error.

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STATE OF NEW JERSEY.

Department of State.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

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WITNESS my hand and the seal of
the Court of Errors and Appeals
this eighteenth day of March,
A. D. 1918.

(SEAL.)

THOMAS F. MARTIN,
Clerk.

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